

# 1993 IOWA CODE SUPPLEMENT

Containing

Sections of the Laws of Iowa  
of a General and Permanent Nature  
Enacted, Amended, Repealed or  
otherwise affected by the  
1993 Regular Session  
of the

GENERAL ASSEMBLY OF THE  
STATE OF IOWA



Published under the authority of Iowa Code chapter 2B  
by the  
Legislative Service Bureau  
GENERAL ASSEMBLY OF IOWA  
Des Moines  
1993



# PREFACE TO 1993 IOWA CODE SUPPLEMENT

This 1993 Iowa Code Supplement is published pursuant to Code chapter 2B. It shows sections of the laws of Iowa enacted, amended, repealed, or otherwise affected by the 1993 regular session of the Iowa General Assembly or by an earlier session if the effective date was deferred, arranged in the numerical sequence followed by the 1993 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, 1993. See the 1993 Iowa Acts to determine specific effective dates not shown.

**NOTES.** A source note following each new or amended section refers to 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 1993 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 1993 Code are not included but will be corrected as necessary and appear in the 1995 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 2B.13 of the 1993 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 1993 Acts, and a table of corresponding sections from the 1993 Code to the 1993 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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**CONSTITUTION OF  
THE STATE OF IOWA  
(CODIFIED)**

as amended in November 1992

ARTICLE I.

BILL OF RIGHTS.

**Dueling.** SEC. 5.

Repealed 1992

# IOWA CODE SUPPLEMENT

1993

## 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 con-

vening 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.

8. A member of the general assembly may return to the state treasury all or a part of the salary, per diem, or expenses paid to the member pursuant to this section. The member may specify the public use for the returned money. A member has no income tax liability for that portion of the member's salary or per diem which is returned to the state treasury pursuant to this subsection. The administrative officer of each house shall provide a form at the convening of each legislative session to allow legislators to return any portion of their salaries or expenses according to this section.

93 Acts, ch 177, §17

For amendments to subsections 1, 3, 6, and 7, effective January 1, 1995, see

93 Acts, ch 177, §16, 18

NEW subsection 8

## 2.50 Duties of legislative fiscal director.

The legislative fiscal director shall:

1. Employ and supervise all employees of the legislative fiscal bureau in such positions and at such salaries as shall be authorized by the legislative council.

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

3. Attend, or designate a representative who shall attend, the budget hearings required by section 8.26 and may offer explanations or suggestions and make inquiries with respect to such budget hearings.

4. Perform the duties pertaining to the preparation of correctional impact statements, as provided in section 2.56.

93 Acts, ch 171, §13

NEW subsection 4

## 2.56 Correctional impact statements.

1. Prior to debate on the floor of a chamber of the general assembly, a correctional impact statement shall be attached to any bill, joint resolution, or amendment which proposes a change in the law which creates a public offense, significantly changes an existing public offense or the penalty for an existing offense, or changes existing sentencing, parole, or probation procedures. The statement shall include information concerning the estimated number of criminal cases per year that the legislation will impact, the fiscal impact of confining persons pursuant to the legislation, the impact of the legislation upon existing correctional institutions, community-based correctional facilities and services, and jails, the likelihood that the legislation may create a need for additional prison capacity, and other relevant matters. The statement shall be factual and shall, if possible, provide a reasonable estimate of both the immediate effect and the long-range impact upon prison capacity.

2. a. The preliminary determination of whether a bill, joint resolution, or amendment appears to require a correctional impact statement shall be made by the legislative service bureau, which shall send a copy of the bill, joint resolution, or amendment, upon completion of the draft, to the legislative fiscal director for review, unless the requestor specifies the request is to be confidential.

b. When a committee of the general assembly reports a bill, joint resolution, or amendment to the floor, the committee shall state in the report whether a correctional impact statement is or is not required.

c. The legislative fiscal director shall review all bills and joint resolutions placed on the calendar of either chamber of the general assembly, as well as amendments filed to bills or joint resolutions on the calendar, to determine whether a correctional impact statement is required.

d. A member of the general assembly may request the preparation of a correctional impact statement by submitting a request to the legislative fiscal bureau.

3. The legislative fiscal director shall cause to be

prepared and shall approve a correctional impact statement within a reasonable time after receiving a request or determining that a proposal is subject to this section. All correctional impact statements approved by the legislative fiscal director shall be transmitted immediately to either the chief clerk of the house or the secretary of the senate, after notifying the sponsor of the legislation that the statement has been prepared, for publication in the daily clip sheet. The chief clerk of the house or the secretary of the senate shall attach the statement to the bill, joint resolution, or amendment affected as soon as it is available.

4. The legislative fiscal director may request the cooperation of any state department or agency or political subdivision in preparing a correctional impact statement.

5. A revised correctional impact statement shall be prepared if the correctional impact has been changed by the adoption of an amendment, and may be requested by a member of the general assembly or be prepared upon a determination made by the legislative fiscal director. However, a request for a revised correctional impact statement shall not delay action on the bill, joint resolution, or amendment unless so ordered by the presiding officer of the chamber.

93 Acts, ch 171, §14  
NEW section

2.57 Reserved.

2.91 **Iowa boundary commission.** Repealed effective July 1, 1993, by 86 Acts, ch 1245, § 2052; 90 Acts, ch 1028, § 1.

## CHAPTER 4

### CONSTRUCTION OF STATUTES

#### 4.1 Rules.

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

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

2. “*Child*” includes child by adoption.

3. *Clerk — clerk’s office.* The word “*clerk*” means clerk of the court in which the action or proceeding is brought or is pending; and the words “*clerk’s office*” means the office of that clerk.

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

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

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

7. *Executor — administrator.* The term “*executor*” includes administrator, and the term “*administrator*” includes executor, where the subject matter justifies such use.

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

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

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

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

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

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

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

15. *Mentally ill.* The words “*mentally ill person*” include mental retardates, psychotic persons, severely depressed persons and persons of unsound mind. A person who is hospitalized or detained for treatment of mental illness shall not be deemed or

presumed to be incompetent in the absence of a finding of incompetence made pursuant to section 229.27.

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

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

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

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

20. *Person.* Unless otherwise provided by law, “person” means individual, corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

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

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

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

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

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

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

27. “*Rule*” includes “*regulation*”.

28. *Seal.* Where the seal of a court, public office or officer, or public or private corporation, may be required to be affixed to any paper, the word “seal” shall include an impression upon the paper alone, as well as upon wax or a wafer affixed thereto or an official ink stamp if a notarial seal.

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

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

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

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

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

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

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

35. “United States” includes all the states.

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

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

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

39. *Written — in writing — signature.* The words “written” and “in writing” may include any mode of representing words or letters in general use. A signature, when required by law, must be made by the writing or markings of the person whose signature is required. If a person is unable due to a physical handicap to make a written signature or mark, that person may substitute the following in lieu of a signature required by law:

a. The handicapped person’s name written by another upon the request and in the presence of the handicapped person; or,

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

40. The word "year" means twelve consecutive months.

93 Acts, ch 9, §1  
1993 amendment to subsection 34 retroactive to December 1, 1992, 93 Acts, ch 9, §2  
Subsection 34 amended

## CHAPTER 6A

### EMINENT DOMAIN LAW (CONDEMNATION)

#### 6A.10 Initiating railroad condemnation.

1. The railway corporation shall apply to the department of transportation for permission to condemn. The railway corporation shall serve notice of the application and hearing and provide a copy of the legal description of the property to be condemned to the owner and any recordholders of liens and encumbrances on any land described in the application. The department may, after hearing, report

to the clerk of the district court of the county in which the land is situated the description of the land sought to be condemned. The corporation may begin condemnation procedures in district court for the land described by the department.

2. The railway finance authority may begin condemnation proceedings in district court.

93 Acts, ch 47, §17, 93 Acts, ch 87, §1  
See Code editor's note  
Subsection 1 amended

## CHAPTER 7A

### OFFICIAL REPORTS AND PUBLICATIONS

#### 7A.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. Commission of libraries.
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 reports 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.

93 Acts, ch 48, §1  
Subsection 10 amended

**7A.11A Reports to the general assembly.**

All reports required to be filed with the general assembly by a state department or agency shall be filed by delivering one printed copy and one copy in elec-

tronic format as prescribed by the secretary of the senate and the chief clerk of the house.

93 Acts, ch 178, §27  
NEW section

## CHAPTER 7E

### EXECUTIVE BRANCH ORGANIZATION

**7E.5 Principal departments and primary responsibilities.**

1. The principal central departments of the executive branch as established by law are listed in this section for central reference purposes as follows:

*a.* The department of management, created in section 8.4, which has primary responsibility for coordination of state policy planning, management of interagency programs, economic reports, and program development.

*b.* The department of personnel, created in section 19A.1, which has primary responsibility for personnel management.

*c.* The department of general services, created in section 18.2, which has primary responsibility for property and records management, risk management, purchasing, printing, and data processing.

*d.* The department of revenue and finance, created in section 421.2, which has primary responsibility for revenue collection and revenue law compliance, financial management and assistance, and the Iowa lottery.

*e.* The department of inspections and appeals, created in section 10A.102, which has primary responsibility for coordinating the conducting of various inspections, investigations, appeals, hearings, and audits.

*f.* The department of agriculture and land stewardship, created in section 159.2, which has primary responsibility for encouraging, promoting, and advancing the interests of agriculture and allied industries. The secretary of agriculture is the director of the department of agriculture and land stewardship.

*g.* The department of commerce, created in section 546.2, which has primary responsibility for business and professional regulatory, service, and licensing functions.

*h.* The Iowa department of economic development, created in section 15.104, which has primary responsibility for programs for carrying out the economic development policies of the state.

*i.* The department of employment services, created in section 84A.1, which has primary responsibility for administering the laws relating to unemployment compensation insurance, job placement and training, employment safety, labor standards, workers' compensation, and related matters.

*j.* The department of human services, created in section 217.1, which has primary responsibility for services to individuals to promote the well-being and the social and economic development of the people of the state.

*k.* The Iowa department of public health, created in chapter 135, which has primary responsibility for supervision of public health programs, promotion of public hygiene and sanitation, treatment and prevention of substance abuse, and enforcement of related laws.

*l.* The department of elder affairs, created in section 231.21, which has primary responsibility for leadership and program management for programs which serve the senior citizens of the state.

*m.* The department of cultural affairs, created in section 303.1, which has primary responsibility for managing the state's interests in the areas of the arts, history, and other cultural matters.

*n.* The department of education, created in section 256.1, which has primary responsibility for supervising public education at the elementary and secondary levels and for supervising the community colleges.

*o.* The department of corrections, created in section 904.102, which has primary responsibility for corrections administration, corrections institutions, prison industries, and the development, funding, and monitoring of community-based corrections programs.

*p.* The department of public safety, created in section 80.1, which has primary responsibility for statewide law enforcement and public safety programs that complement and supplement local law enforcement agencies and local inspection services.

*q.* The department of public defense, created in section 29.1, which has primary responsibility for state military forces and emergency management.

*r.* The department of natural resources, created in section 455A.2, which has primary responsibility for state parks and forests, protecting the environment, and managing energy, fish, wildlife, and land and water resources.

*s.* The department of transportation, created in section 307.2, which has primary responsibility for development and regulation of highway, railway, and

air transportation throughout the state, including public transit.

*t.* The department of human rights, created in section 216A.1, which has primary responsibility for services relating to Latino persons, women, persons with disabilities, community action agencies, criminal and juvenile justice planning, the status of African-Americans, and deaf and hard-of-hearing persons.

*u.* In the area of higher education, an agency headed by the state board of regents and including all the institutions administered by the state board of regents, which has primary responsibility for state involvement in higher education.

*v.* The department for the blind, created in section 216B.2, which has primary responsibility for services relating to blind persons.

*w.* The commission of veterans affairs, which has primary responsibility for state veterans affairs.

2. *a.* There is a civil rights commission, a public employment relations board, an interstate cooperation commission, an ethics and campaign disclosure board, and an Iowa law enforcement academy.

*b.* The listing of additional state agencies in this subsection is for reference purposes only and is not exhaustive.

3. The responsibilities listed for each department and agency in this section are generally descriptive of the department's or agency's duties, are not all-inclusive, and do not exclude duties and powers specifically prescribed for by statute, or delegated to, each department or agency.

93 Acts, ch 48, §2, 93 Acts, ch 75, §1, 93 Acts, ch 163, §38

Subsection 1, paragraphs m and t amended

Subsection 1, paragraph o, reference to transferred section corrected editorially

Subsection 2, paragraph a, name change applied

## CHAPTER 8

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

#### 8.59 Appropriations freeze.

Notwithstanding contrary provisions of the Code, the amounts appropriated under the applicable sections of the Code for fiscal years commencing on or after July 1, 1993, are limited to those amounts expended under those sections for the fiscal year commencing July 1, 1992. If an applicable section appropriates moneys to be distributed to different recipients and the operation of this section reduces the total amount to be distributed under the applicable section, the moneys shall be prorated among the recipients. As used in this section, "applicable sections" means the following sections: 53.50, 229.35, 230.8, 230.11, 405A.8, 411.20, 425.1, 425.39, 426A.1, 663.44, and 822.5.

93 Acts, ch 180, §1

Section amended

#### 8.60 Use of designated moneys.

Moneys credited to or deposited in the general fund of the state on or after July 1, 1993, which under law were previously collected to be used for specific purposes, or to be credited to, or be deposited to a particular account or fund shall only be used for the purposes for which the moneys were collected, including but not limited to moneys collected in accordance with any of the following provisions:

1. Pari-mutuel regulation fund created in section 99D.17.

2. Gamblers assistance fund pursuant to section 99E.10, subsection 1.

3. Excursion boat gambling special account pursuant to section 99F.4, subsection 2.

4. Milk fund created in section 192.111.

5. Dairy trade practices trust fund pursuant to section 192A.30.

6. Commercial feed fund created in section 198.9.

7. Fertilizer fund created in section 200.9.

8. Pesticide fund created in section 206.12.

9. Motor vehicle fraud account pursuant to section 312.2, subsection 13.

10. Public transit assistance fund pursuant to section 312.2, subsection 15, and section 324A.6.

11. Salvage vehicle fee paid to the Iowa law enforcement academy pursuant to section 321.52.

12. Railroad assistance fund created in section 327H.18.

13. Special railroad facility fund created in section 327I.23.

14. State aviation fund created in section 328.36.

15. Marine fuel tax fund created in section 452A.79.

16. Public outdoor recreation and resources fund pursuant to section 461A.79.

17. Energy research and development account created in section 473.11.

18. Utilities trust fund created in section 476.10.

19. Banking revolving fund created in section 524.207.

20. Credit union revolving fund created in section 533.67.

21. Professional licensing revolving fund created in section 546.10.

22. Administrative services trust fund created in section 546.11.

93 Acts, ch 131, §1

NEW section

## CHAPTER 8A

### IOWA COUNCIL ON HUMAN INVESTMENT

#### 8A.1 Iowa council on human investment.

An Iowa council on human investment is established to define a human service agenda for the state and to propose benchmarks for the strategic goals of the state identified by the council. The governor or the governor's designee shall be a member and chairperson of the council and the council shall consist of eight other members appointed by the governor, subject to confirmation by the senate. The appointments shall be made in a manner so that all of the state's congressional districts are represented along with the ethnic, cultural, social, and economic diversity of the state. Terms of office of members other than the governor are three years. Council members shall be reimbursed for actual and necessary expenses incurred in performance of their duties. Members may also be eligible to receive compensation as provided in section 7E.6. The governor shall assign staffing services to the council which may include the staff identified by the director of the department of management. The council shall do all of the following:

1. Develop an overall long-term human investment strategy for the state including broad policy goals and benchmarks which are goal statements reflecting specific results or achievements in public policy at a particular time in the future. The strategy shall be developed through a process involving input from and consensus-building with a broad cross-section of the state's population. Public hearings shall be held by the council in developing the strategy and benchmarks. The human investment strategy and benchmarks shall be submitted to the governor and the general assembly for a determination as to how the strategy and benchmarks will be set and achieved.

2. Develop an Iowa human investment budget and accounting model which provides a financial weighting of human investments. The budget and

accounting model shall provide a means to reflect public and private investments in the skills and employability of Iowans. It is anticipated that the accounting system will indicate that human investments will generate returns in excess of the investments. The council shall implement the model on a pilot project basis and report annually concerning the model and the pilot project to the governor, general assembly, and the public.

3. Study the potential for the state to appropriate moneys according to the highest return on human investment. The council shall recommend to the governor and the general assembly a method for fully implementing the human investment budget and accounting model developed pursuant to subsection 2. The model shall provide for incentives for state agencies to utilize appropriations in a manner in order to achieve the highest returns on human investments.

4. Develop and apply return on human investment accounting standards. The council shall monitor state human investments according to the standards it applies and regularly report to the governor, general assembly, and public concerning actual returns on human investment.

5. Advocate for regulatory and legislative initiatives for decategorization of funding and deregulation to improve human investment.

6. Educate the public, community agencies, and the general assembly concerning human investment principles and practices.

7. Conduct customer satisfaction surveys of the users of public services and utilize the information from the surveys in establishing returns on human investments and determining the effectiveness of the public programs.

93 Acts, ch 97, §1  
Confirmation, §2 32  
Initial appointments, 93 Acts, ch 97, §2  
NEW section

## CHAPTER 9

### SECRETARY OF STATE

#### 9.4 Fees.

The secretary of state shall collect all fees directed by law to be collected by the secretary of state, including the following:

1. For certificate, with seal attached, three dollars.

2. For a copy of any law or record, upon the request of any person, a fee to be determined by the secretary of state by rule adopted pursuant to chapter 17A.

93 Acts, ch 143, §1  
Subsection 2 amended

## CHAPTER 9H

### CORPORATE OR PARTNERSHIP FARMING

#### 9H.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 or who is a member or manager of the limited liability company 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.

3A. "*Authorized limited liability company*" means a limited liability company other than a family farm limited liability company founded for the purpose of farming and the ownership of agricultural land in which all of the following apply:

a. The members do not exceed twenty-five in number.

b. The members 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. "*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, limited liability company, 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, limited liability company, or trust.

6. "*Contract feeder*" means a person owning in the applicable reporting year, as provided in section 9H.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.

8A. "*Family farm limited liability company*" means a limited liability company which meets all of the following conditions:

a. The limited liability company is founded for the purpose of farming and the ownership of agricultural land in which the majority of the members 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 the members of the limited liability company are natural persons or persons acting in a fiduciary capacity for the benefit of natural persons or family trusts.

c. Sixty percent of the gross revenues of the limited liability company 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.

13A. "*Limited liability company*" means a limited liability company as defined in section 490A.102.

14. "*Limited partnership*" means a partnership as defined in section 487.101, 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.

f. A limited liability company organized in the United States or elsewhere, beneficial ownership of which is held, directly or indirectly, by nonresident alien individuals.

17. "*Processor*" means a person, firm, corporation, limited liability company, or limited partner-

ship, 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, limited liability company, or limited partner with a ten percent or greater interest in another person, firm, corporation, limited liability company, 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.

93 Acts, ch 39, §1-4  
Subsection 1, unnumbered paragraph 1 amended  
NEW subsections 3A and 8A  
Subsection 5 amended

## 9H.2 Prohibited operations — exceptions.

In order to preserve free and private enterprise, prevent monopoly, and protect consumers, it is unlawful for any processor of beef or pork or limited partnership in which a processor holds partnership shares as a general partner or partnership shares as a limited partner, or limited liability company in which a processor is a member, to own, control or operate a feedlot in Iowa in which hogs or cattle are fed for slaughter. In addition, a processor shall not directly or indirectly control the manufacturing, processing, or preparation for sale of pork products derived from swine if the processor contracted for the care and feeding of the swine in this state. However, this section does not apply to a cooperative association organized under chapter 497, 498, or 499, if the cooperative association contracts for the care and feeding of swine with a member of the cooperative association who is actively engaged in farming. This section does not apply to an association organized as a cooperative in which another cooperative association organized under chapter 497, 498, or 499 is a member, if the association contracts with a member which is a cooperative association organized under chapter 497, 498, or 499, which contracts for the care and feeding of swine with a member of the cooperative who is actively engaged in farming. This section shall not preclude a processor, limited partnership, or limited liability company from contracting for the purchase of hogs or cattle, provided that where the

contract sets a date for delivery which is more than twenty days after the making of the contract it shall:

1. Specify a calendar day for delivery of the livestock; or

2. Specify the month for the delivery, and shall allow the farmer to set the week for the delivery within such month and the processor, limited partnership, or limited liability company to set the date for delivery within such week. This section shall not prevent processors or educational institutions from carrying on legitimate research, educational, or demonstration activities, nor shall it prevent processors from owning and operating facilities to provide normal care and feeding of animals for a period not to exceed ten days immediately prior to slaughter, or for a longer period in an emergency. Any processor or limited partnership which owns, controls, or operates a feedlot on August 15, 1975 shall have until July 1, 1985 to dispose of the property.

93 Acts, ch 39, §5, 6  
Unnumbered paragraph 1 amended  
Subsection 2 amended

**9H.3A Limited liability companies — prohibitions.** Repealed by 93 Acts, ch 39, § 37.

**9H.4 Restriction on increase of holdings — exceptions — penalty.**

A corporation, limited liability company, or trust, other than a family farm corporation, authorized farm corporation, family farm limited liability company, authorized limited liability company, family trust, authorized trust or testamentary trust shall not, 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 or limited liability company. Commercial sales are incidental to the research or experimental purposes of the corporation or limited liability company 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

or limited liability company, 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 or limited liability company 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 or limited liability company shall not renew a lease. The corporation or limited liability company shall not enter into a lease under this paragraph, if the corporation or limited liability company 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 or limited liability company of the breeding stock or breeding stock progeny subsequent to the sale.

(3) The number of acres of agricultural land held by the corporation or limited liability company must not exceed six hundred forty acres.

(4) The corporation or limited liability company 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 or limited liability company 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 or limited liability company for immediate or potential use in nonfarming purposes.

5. Agricultural land acquired by a corporation or limited liability company 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 or a limited liability company organized under chapter 490A 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, limited liability company, or trust, other than a family farm corporation, authorized farm corporation, family farm limited liability company, authorized limited liability company, 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.

93 Acts, ch 39, §7-13

Unnumbered paragraph 1 amended

Subsection 2, paragraphs a and c amended

Subsections 4, 5, and 8 amended

Unnumbered paragraph 2 amended

#### **9H.5 Restrictions on authorized farm corporations, authorized limited liability companies, authorized trusts, and limited partnerships — penalty.**

1. An authorized farm corporation, authorized limited liability company, 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, authorized limited liability company, 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 9H.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, a member of an authorized limited liability company, 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.
- d. A member of an authorized limited liability company.

However, this subsection shall not apply to limited partners in a family farm limited partnership.

3. a. An authorized farm corporation, authorized trust, authorized limited liability company, 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, member of an authorized limited liability company, 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, limited liability company, 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.

93 Acts, ch 39, §14-16  
 Subsection 1, unnumbered paragraph 1 amended  
 Subsection 2 amended  
 Subsection 3, paragraph a amended

### 9H.5A Reports.

1. An annual report shall be filed by a reporting entity with the secretary of state on or before June

30 of 1989, and thereafter on or before March 31 of each year on forms adopted pursuant to chapter 17A and supplied by the secretary of state.

2. As used in this section, a "reporting entity" means any of the following:

a. A person serving as the president or other officer or authorized representative of a corporation (other than a family farm corporation) and including an authorized farm corporation, owning or leasing agricultural land or engaged in farming in this state.

b. A person acting as the general partner of a limited partnership, other than a family farm limited partnership, owning or leasing agricultural land or engaged in farming in this state.

c. A person acting in a fiduciary capacity or as a trustee on behalf of a person, including a corporation, limited partnership, or nonresident alien, who holds in a trust (other than through a family trust) including through an authorized trust, agricultural land in this state.

d. A person who is a member, manager, or authorized representative of a limited liability company, other than a family farm limited liability company, including an authorized limited liability company, owning or leasing agricultural land or engaged in farming in this state.

3. The report shall contain information for the last year regarding the reporting entity's corporation, limited partnership, limited liability company, or trust, and the agricultural land owned, leased, or held. However, this subsection shall not apply to a family farm corporation, a family farm limited partnership, a family farm limited liability company, or a family trust. The report shall contain the following information, if applicable:

a. Whether the reporting entity represents a corporation, trust, limited liability company, or limited partnership. If the reporting entity represents a corporation or limited liability company the report shall specify if the corporation or limited liability company is foreign or domestic, profit or nonprofit, or an authorized farm corporation or authorized limited liability company. If the reporting entity represents a trust the report shall specify if the trust is an authorized trust.

b. The name of the reporting entity and the name and address of the person supervising the daily operations on the agricultural land.

c. The name, address, and citizenship if not from the United States, of each shareholder, limited partner, member, or beneficiary of a corporation, trust, limited liability company, or limited partnership.

d. The total approximate number of acres, and the approximate number of acres by named county, of agricultural land which is owned, leased, or held by the corporation, trust, limited liability company, or limited partnership.

e. The approximate number of acres of agricultural land which is owned and operated by the corporation, limited liability company, or limited partnership; the approximate number of acres of agricul-

tural land which is leased by the corporation, limited liability company, limited partnership, or trust as a lessee; the approximate number of acres of agricultural land which is leased from the corporation, limited liability company, limited partnership, or trust as a lessor; and the approximate number of acres of agricultural land which is held in fee and operated by a trust.

f. The approximate number of acres of agricultural land which the corporation, limited liability company, trust, or limited partnership used for the production of row crops.

g. The approximate number of livestock, including cattle, sheep, swine, or poultry, owned, contracted for, or kept by the corporation, limited liability company, trust, or limited partnership, and the approximate number of offspring produced from the livestock.

93 Acts, ch 39, §17, 18  
 Subsection 2, NEW paragraph d  
 Subsection 3 amended

**9H.10 Signing reports.**

Reports by corporations shall be signed by the president or other officer or authorized representative. Reports by limited liability companies shall be signed by a manager or other authorized representative. Reports by limited partnerships shall be signed

by the president or other authorized representative of the partnership. Reports by individuals shall be signed by the individual or an authorized representative.

93 Acts, ch 39, §19  
 Section amended

**9H.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 liability companies, 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.

93 Acts, ch 39, §20  
 Section amended

**CHAPTER 10A**

**DEPARTMENT OF INSPECTIONS AND APPEALS**

**10A.104 Powers and duties of the director.**

The director or designees of the director shall:

1. Coordinate the internal operations of the department and develop and implement policies and procedures designed to ensure the efficient administration of the department.
2. Appoint the administrators of the divisions within the department and all other personnel deemed necessary for the administration of this chapter, except the state public defender, assistant state public defenders, administrator of the racing and gaming commission, members of the employment appeal board, and administrator of the state citizen foster care review board. All persons appointed and employed in the department are covered by the provisions of chapter 19A, but persons not appointed by the director are exempt from the merit system provisions of chapter 19A.
3. Prepare an annual budget for the department.
4. Develop and recommend legislative proposals deemed necessary for the continued efficiency of department functions, and review legislative proposals

generated outside of the department which are related to matters within the department's purview.

5. Adopt rules deemed necessary for the implementation and administration of this chapter in accordance with chapter 17A, including rules governing hearing and appeal proceedings.
6. Issue subpoenas and distress warrants, administer oaths, and take depositions in connection with audits, appeals, investigations, inspections, and hearings conducted by the department. If a person refuses to obey a subpoena or distress warrant issued by the department or otherwise fails to cooperate in proceedings of the department, the director may enlist the assistance of a court of competent jurisdiction in requiring the person's compliance. Failure to obey orders of the court renders the person in contempt of the court and subject to penalties provided for that offense.
7. Enter into contracts for the receipt and provision of services as deemed necessary. The director and the governor may obtain and accept federal grants and receipts to or for the state to be used for the administration of this chapter.

8. Establish by rule standards and procedures for certifying that targeted small businesses are eligible to participate in the procurement set-aside program established in sections 73.15 through 73.21. The procedure for determination of eligibility shall not include self-certification by a business. Rules and guidelines adopted pursuant to this subsection are subject to review and approval by the director of the department of management. The director shall maintain a current directory of targeted small businesses which have been certified pursuant to this subsection.

9. Administer and enforce this chapter, and chapters 99B, 135B, 135C, 137A, 137B, 137C, 137D, and 137E.

10. Enter into and implement agreements or compacts between the state of Iowa and Indian tribes located in the state which are entered into under the authority of the Indian Gaming Regulatory Act (25 U.S.C. §2701 et seq.). The agreements or compacts shall contain provisions intended to implement the policies and objectives of the Indian Gaming Regulatory Act.

93 Acts, ch 53, §1  
Subsection 6 amended

### 10A.202 Responsibilities.

1. The administrator shall coordinate the division's conduct of appeals and hearings as otherwise provided for by law including but not limited to the following:

a. Hearings and appeals relative to foster care facilities, child day care facilities, administration of the state medical assistance program, administration of the state supplementary assistance program, administration of the food stamps program, and administration of the family investment program, and other programs administered by the department of human services. Decisions of the division in these areas are subject to review by the department of human services.

b. Hearings and appeals relative to occupational safety and health regulations and the state elevator code. Decisions of the division in these areas are subject to review by the employment appeal board.

c. Hearings and appeals relative to administration of the department of general services. Decisions of the division in this area are subject to review by the department of general services.

d. Hearings and appeals relative to administration of the department of transportation. Decisions of the division in this area are subject to review by the department of transportation.

e. Appeals relative to professional and occupational license denials, suspensions, revocations, and other matters involving professional and occupational discipline 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.

Judicial review of the division's actions in these areas may be sought in accordance with the terms of chapter 17A.

f. Hearings and appeals relative to administration of the department of elder affairs. Decisions of the division in this area are subject to review by the department of elder affairs.

g. Hearings and appeals relative to the administration of the department of inspections and appeals. Decisions of the division in this area are subject to review by the department of inspections and appeals.

h. Hearings and appeals relative to the administration of the department of public health. Decisions of the division in this area are subject to review by the department of public health.

i. Hearings and appeals relative to administration of the department of public safety. Decisions of the division in this area are subject to review by the department of public safety.

j. Hearings and appeals relative to the administration of the department of personnel except those cases within the jurisdiction of the public employment relations board. Decisions of the division in this area shall be determined by the employment appeal board, and the appeal board's decisions shall be considered final agency action under chapter 17A, except for reduction in force appeals which shall be subject to review by the director of the department of personnel.

k. Hearings and appeals relative to the administration of the department of cultural affairs. Decisions of the division in this area are subject to review by the department of cultural affairs.

l. Hearings and appeals relative to administration of the department of natural resources. Decisions of the division in this area are subject to review by the department of natural resources.

m. Hearings and appeals relative to the administration of the department of revenue and finance. Decisions of the division in this area are subject to review by the department of revenue and finance.

n. Hearings relative to motor fuel and special fuel franchises, as provided in chapter 323.

2. The administrator shall coordinate the division's conduct of all nonstatutory administrative hearings and appeals provided for in the Iowa administrative code and bulletin.

93 Acts, ch 97, §22  
Subsection 1, paragraph a amended

### 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, distress warrants, 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 family investment 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.

93 Acts, ch 53, §2; 93 Acts, ch 97, §23  
Subsections 5 and 7 amended

## CHAPTER 12

### TREASURER OF STATE

#### 12.30 Coordination of bonding activities.

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

a. "Authority" means a department, or public or quasi-public instrumentality of the state including, but not limited to, the authority created under chapter 16, 16A, 175, 257C, 261A, or 327I, which has the power to issue obligations, except that "authority" does not include the state board of regents or the Iowa finance authority to the extent it acts pursuant to chapter 260C.

b. "Obligations" means notes, bonds, including refunding bonds, and other evidences of indebtedness of an authority.

2. Notwithstanding any other provision of the Code the treasurer shall coordinate the issuance of obligations by authorities. The treasurer, or the treasurer's designee, shall serve as ex officio nonvoting member of each authority. Prior to the issuance of obligations, an authority shall notify the treasurer of its intention to do so. The treasurer shall:

a. Select and fix the compensation for, in consultation with the respective authority, through a competitive selection procedure, attorneys, accountants, financial advisors, banks, underwriters, insurers, and other employees and agents which in the treasurer's judgment are necessary to carry out the authority's intention. Prior to the initial selection, the treasurer shall, after consultation with the authorities, 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 treasurer 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 individ-

uals with specific knowledge in the relevant subject matter and length of the engagement. The treasurer may waive the requirements for a competitive selection procedure for any specific employment upon written notice to the executive council stating why the waiver is in the public interest. Upon selection by the treasurer, the authority shall promptly employ the individual or firm and be responsible for payment of costs.

b. Submit an account to the respective authority for all costs incurred in each transaction. The treasurer will charge an authority for costs of administration. The authority shall disburse to the treasurer the amounts set forth in the account.

c. Direct the investment or deposit of the proceeds of the sale of the obligations, in accordance with the language of the documents drafted to effectuate issuance of the obligations, except for the proceeds necessary to fund the ongoing operations of the authority. This paragraph does not apply to proceeds of obligations issued before July 1, 1986.

d. Collect from an authority and other sources, any statistical and financial information necessary to draft an offering document or prepare a presentation necessary for the issuance or marketing of the obligations.

3. Each respective authority shall consult with the treasurer on the following:

a. Amount, terms, and conditions of the obligations to be issued by the authority including other provisions deemed necessary by the treasurer or the authority.

b. The documents or instruments necessary to effectuate issuance of the obligation.

c. Presentations to rating agencies and marketing activities. The treasurer may choose to participate in these presentations.

4. Professional services, including but not limit-

ed to attorneys, accountants, financial advisors, banks, underwriters, insurers, and other employees employed by a project sponsor may be selected by the project sponsor, if the obligation is issued in behalf of the project sponsor and the purchaser of the obligation does not have recourse to the authority or state.

5. The treasurer may delay implementation of this section for up to six months following July 1, 1986, for an authority to facilitate an orderly transition.

Section not amended  
Subsection 1, paragraph a, reference to transferred chapter corrected editorially

## CHAPTER 12C

### DEPOSIT OF PUBLIC FUNDS

#### 12C.1 Deposits in general — definitions.

1. All funds held in the hands of the following officers or institutions shall be deposited in one or more depositories first approved by the appropriate governing body as indicated: For the treasurer of state, by the executive council; for judicial officers and court employees, by the supreme court; for the county treasurer, recorder, auditor, and sheriff, by the board of supervisors; for the city treasurer or other designated financial officer of a city, by the city council; for the county public hospital or merged area hospital, by the board of hospital trustees; for a memorial hospital, by the memorial hospital commission; for a school corporation, by the board of school directors; for a city utility or combined utility system established under chapter 388, by the utility board; for a regional library established under chapter 256, by the regional board of library trustees; and for an electric power agency as defined in section 28F.2, by the governing body of the electric power agency. However, the treasurer of state and the treasurer of each political subdivision or the designated financial officer of a city shall invest all funds not needed for current operating expenses in time certificates of deposit in approved depositories pursuant to this chapter or in investments permitted by section 12B.10. The list of public depositories and the amounts severally deposited in the depositories are matters of public record. This subsection does not limit the definition of "public funds" contained in subsection 2.

2. As used in this chapter unless the context otherwise requires:

a. "Depository" means a bank, a savings and loan, or a credit union in which public funds are deposited under this chapter.

b. "Public funds" and "public deposits" mean the moneys of the state or a political subdivision or instrumentality of the state including a county, school corporation, special district, drainage district, unincorporated town or township, municipality, or mu-

nicipal corporation or any agency, board, or commission of the state or a political subdivision; any court or public body noted in subsection 1; a legal or administrative entity created pursuant to chapter 28E; an electric power agency as defined in section 28F.2; and federal and state grant moneys of a quasi-public state entity that are placed in a depository pursuant to this chapter.

c. "Bank" means a corporation engaged in the business of banking authorized by law to receive deposits and whose deposits are insured by the bank insurance fund of the federal deposit insurance corporation and includes any office of a bank.

d. "Savings and loan" means a corporation authorized to operate under chapter 534 or the federal Home Owner's Loan Act of 1933, 12 U.S.C. § 1461, et seq., and includes a savings and loan association, a savings bank, or any branch of a savings and loan association or savings bank.

e. "Credit union" means a cooperative, nonprofit association incorporated under chapter 533 or the federal Credit Union Act, 12 U.S.C. § 1751, et seq., and that is insured by the national credit union administration and includes an office of a credit union.

f. "Financial institution" means a bank, savings and loan, or a credit union.

3. A deposit of public funds in a depository pursuant to this chapter shall be secured as follows:

a. If a depository is a savings and loan or a credit union, then public deposits in the savings and loan or credit union shall be secured pursuant to sections 12C.16 through 12C.19 and sections 12C.23 and 12C.24.

b. If a depository is a bank, then public deposits in the bank shall be secured pursuant to sections 12C.21, 12C.23, and 12C.24.

4. Ambiguities in the application of this section shall be resolved in favor of preventing the loss of public funds on deposit in a depository.

93 Acts, ch 48, §3  
Subsection 1 amended



## CHAPTER 13

### ATTORNEY GENERAL

#### SUBCHAPTER II

#### FARM ASSISTANCE PROGRAM

Subchapter repealed July 1, 1995, §13 25

#### 13.25 Repeal of farm mediation and legal assistance provisions.

This subchapter is repealed on July 1, 1995.

93 Acts, ch 29, §1, 5, 93 Acts, ch 171, §15, 26

See Code editor's note to §6A 10

Subchapter subject to future repeal consists of §13 13 through §13 25

Section amended

## CHAPTER 13A

### PROSECUTING ATTORNEYS TRAINING CO-ORDINATOR

#### 13A.2 Establishment of office and council — coordinator.

1. The office of the prosecuting attorneys training coordinator is established as an entity in the department of justice.

2. The prosecuting attorneys training coordination council is established to consult with and advise the attorney general and the coordinator on the operation of the office.

3. The attorney general shall, with the advice and consent of the council, appoint an attorney with knowledge and experience in prosecution to the office of prosecuting attorneys training coordinator. The prosecuting attorneys training coordinator shall be the administrator of the office of the prosecuting attorneys training coordinator. The coordinator's term of office is four years, beginning on July 1 of the year of appointment and ending on June 30 of the year of expiration.

4. If a vacancy occurs in the office of prosecuting attorneys training coordinator, the vacancy shall be filled for the unexpired portion of the term in the same manner as the original appointment was made.

5. The attorney general may, with the advice of the council, remove the prosecuting attorneys training coordinator for malfeasance or nonfeasance in office, for any cause which renders the coordinator ineligible for appointment, or for any cause which renders the coordinator incapable or unfit to discharge the duties of office. The prosecuting attorneys training coordinator may also be removed upon the unanimous vote of the council. The removal of a prosecuting attorneys training coordinator under this section is final.

93 Acts, ch 171, §16, 17

Subsection 3 stricken and rewritten

NEW subsections 4 and 5

## CHAPTER 13B

### PUBLIC DEFENDERS

#### 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 report in writing to the general assembly on January 20 of each year regarding any funds recouped or collected pursuant to section 331.756, subsection 86,\* during the previous calendar year.

7. The state public defender shall adopt rules pursuant to chapter 17A, as necessary, to administer this chapter and section 815.9.

93 Acts, ch 175, §15

\*Subsection 5 probably intended, corrective legislation is pending

1991 amendment striking and rewriting section is repealed July 1, 1995, in instructions to Code editor, 91 Acts, ch 268, §439

Pilot project to contract with private attorneys, report, future repeal, 92 Acts, ch 1242, § 44, 45, 92 Acts, 1st Ex, ch 1003, § 1, 2

1993 amendment to subsection 7 takes effect September 1, 1993, 93 Acts, ch 175, §28

Subsection 7 amended

### 13B.10 Determination of indigence.

1. For purposes of this chapter, a determination of indigence shall be made pursuant to section 815.9.

2. A determination of indigence shall not be made except upon the basis of information contained in a detailed financial statement submitted by the person or by the person's parent, guardian, or custodian. The financial statement shall be in the form prescribed by the state public defender. If a person is determined to be indigent and given legal assistance, the financial statement shall be filed in the person's court file and with the state public defender. A defendant who is employed shall execute a wage assignment for indigent defense costs to be paid as a precondition for appointment of counsel.

3. A person who knowingly submits a false financial statement for the purpose of obtaining legal assistance at public expense commits a fraudulent practice. As used in this subsection "legal assistance" includes appointed counsel, transcripts, witness fees and expenses, and any other goods or services required by law to be provided to an indigent person at public expense.

4. The district court shall decide, based upon the financial statement and other relevant information, whether the person is indigent. A public defender may make a temporary determination of indigence prior to the initial arraignment or other initial court appearance.

93 Acts, ch 175, §16

1993 amendment to subsection 2 takes effect September 1, 1993, 93 Acts, ch 175, §28

Subsection 2 amended

## CHAPTER 15

### DEPARTMENT OF ECONOMIC DEVELOPMENT

#### 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 federal 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 15E.11 to 15E.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 15E.25 to 15E.29.

d. Provide administration for the Iowa product development corporation created in sections 15E.81 to 15E.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, con-

tacting 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 15E.106 to 15E.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, statewide, 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 communities 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.

o. Establish a revolving fund to receive contributions to be used for cooperative advertising efforts. Fees and royalties obtained as a result of licensing the use of logos and other creative materials for sale by private vendors on selected products may be deposited in the fund. The department shall adopt by rule a schedule for fees and royalties to be charged.

The department may establish a revolving fund to receive contributions and funds from the product sales center to be used for start-up or expansion of tourism special events, fairs, and festivals as established by department rule.

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 260E, and the Iowa small business new jobs training Act in chapter 260F. 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 assistance under the family investment program.

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 15E.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 dol-

lar 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.

*j.* Establish and administer the economic development deaf interpreters revolving fund.

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 7D.33, 15E.82, 15E.87, 260C.23, and 262.9, 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.

e. At the director's discretion, accept payment by credit card of any fees, interest, penalties, subscriptions, registrations, purchases, or other payments, or any portion of such payments, which are due or collected by the department. 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.

10. *Economic development planning and research activities.* To provide leadership and support for economic and community development activities statewide. To carry out this responsibility, the department may establish a research center for economic development programs and services whose duties may include but are not limited to the following:

a. Implementation of a comprehensive statewide economic development planning process and provision of leadership, coordination, and support to regional and local economic and community planning efforts.

b. Coordination of the delivery of economic and community development programs with other local, regional, state, federal, and private sector programs and activities.

c. Collection and analysis of data and information, development of databases and performing research to keep abreast of Iowa's present economic base, changing market demands, and emerging trends, including identification of targeted markets and development of marketing strategies.

d. Provision of access to databases to facilitate sales and exports by Iowa businesses.

e. Establishment of a database of community and economic information to aid local regional and statewide economic development and service delivery efforts.

93 Acts, ch 167, §9, 93 Acts, ch 180, §34, 35  
Subsection 5, NEW paragraph o and unnumbered paragraph 2  
Subsection 6, paragraph e, name change applied editorially  
Subsection 7, NEW paragraph j

#### 15.111 Rural development coordination.

The office of rural resources coordinator is created within the department of economic development and shall be staffed by an appointee of the director. The coordinator shall perform duties related to the coordination of rural development programs and shall:

1. Monitor state and federal rural development programs.

2. Evaluate the effectiveness of the administration of rural development resources by the department of economic development.

3. Implement policies and procedures designed to coordinate services under rural development programs administered by the department of economic development.

4. Cooperate with other state and federal agencies to coordinate services under rural development programs, to increase the effectiveness of the pro-

grams, and to decrease the level of duplication in services.

5. Collect information and data related to rural development programs, including information and data generated from any computer system supported by the department of economic development, and provide referral and educational assistance to interested persons and agencies about the programs.

93 Acts, ch 180, §36, 37  
Subsection 1 stricken and subsection 2 changed to an unnumbered paragraph  
Former subsection 2, paragraph a stricken and paragraphs b-f renumbered as subsections 1-5

#### 15.112 Farmworks matching funds.

If the federal government funds the "farmworks" national demonstration project for distressed family farmers, the department shall allocate to the project from the rural enterprise fund or another fund, an amount equal to four percent of the federal funding each year for a three-year period on a dollar-for-dollar matching basis with local or private contributions.

93 Acts, ch 180, §38  
NEW section

#### 15.113 through 15.200 Reserved.

#### 15.225 Iowa conservation corps established — programs.

1. The Iowa conservation corps is established in this state. The objectives of the corps are to provide meaningful and productive public service jobs for the young, the unemployed, the handicapped, and the elderly. The corps shall provide opportunities in the areas of park maintenance and restoration, soil conservation, wildlife and land management, energy savings, community improvement projects, tourism, economic development, and work benefiting human service programs. The general assembly intends that participation in the corps will provide the participants with an opportunity to explore careers, gain work experience, and contribute to the general welfare of their communities and state. The corps shall provide the following programs:

a. A full-time public service employment and training program for young adults with a program emphasis on resource and wildlife conservation, public recreation, or related areas to be known as the "young adult program".

b. A public service employment program for disadvantaged and handicapped youth attending school to be known as the "in-school program".

c. A summer employment program for youth of all economic classifications to be known as the "summer youth program".

d. A youth volunteer program to be known as the "Iowa corps".

e. A program to encourage and promote meaningful and respectable employment of the elderly in conservation and outdoor recreation related fields to be known as the "green thumb program".

f. Apprenticeship opportunities in conjunction



with paragraphs "a" through "d" or in accordance with rules adopted by the board.

2. The department of economic development shall give priority to enrolling participants in the corps programs from areas of the state which will likely receive the greatest benefit from the employment and training activities of the corps. Work activities of the corps shall not replace existing maintenance or other full-time employment provided by a participating agency or private organization.

93 Acts, ch 180, §39  
 Subsection 1, NEW paragraph f

**15.251 Coordination with vocational education.**

1. Under the terms of section 123 of the Job Training Partnership Act of 1982, Pub. L. No. 97-300, the department and the department of education shall enter into a cooperative agreement as a condition to providing funds under that section.

2. The department may charge, within thirty days following the sale of certificates under chapter 260E, the board of directors of the merged area a fee of up to one percent of the gross sale amount of the certificates issued. The amount of this fee shall be deposited into a job training fund created in the department and may be used by the department to cover the costs of management of chapter 260E and to support other efforts by the community colleges related to providing productivity and quality enhancement training. Funds deposited under this subsection into the job training fund during a fiscal year which are not expended by the department in that fiscal year are available for use by the department under this subsection for subsequent fiscal years.

3. In order to finance the equipment purchases needed by the community colleges to support the ac-

tivities, the community colleges may use a portion of their share of the equipment funds appropriated to them under section 99E.31, subsection 5, paragraph "c", or section 99E.32, subsection 5, paragraph "a".

93 Acts, ch 180, §40  
 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 15E.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.

Notwithstanding the restrictions on the use of the revolving fund in this section, the director may use unallocated repayments to the revolving fund to pay for administration of programs and to provide matching funds under the Cranston-Gonzalez National Affordable Housing Act of 1990, Pub. L. No. 101-625.

93 Acts, ch 180, §41  
 Unnumbered paragraph 2 amended

**CHAPTER 15B**

**INTERNATIONAL NETWORK ON TRADE (INTERNET)**

Chapter repealed effective July 1, 1994, agreement regarding state access to information, 93 Acts, ch 167, §5, 13

## CHAPTER 15E

### DEVELOPMENT ACTIVITIES

#### 15E.89 Iowa product development corporation fund.

There is created an “*Iowa product development corporation fund*”. All funds of the corporation including the proceeds from the issuance of notes or sale of bonds under this division, any funds appropriated to the corporation, and income derived from other sources from the exercise of powers granted to the corporation under this division shall be paid into the Iowa product development corporation fund notwithstanding section 12.10. The money in the Iowa product development corporation fund, except moneys held by a trustee or a depository pursuant to a bond resolution or indenture relating to the issuance of bonds or notes pursuant to section 15E.90 or 15E.91, shall be paid out on the order of the person authorized by the corporation. The money in the Iowa product development corporation fund shall be used for repayment of notes and bonds issued under this division and the extension of financial aid granted by the corporation under this division, and the amount remaining may be used for the payment of the administrative and overhead costs of the corporation to the extent required. There is also created in the Iowa product development corporation fund an Iowa technology assistance program account, which shall provide seed capital for the commercialization of products, or the development of processes or materials through research at Iowa colleges and universities or by private industry.

Notwithstanding section 8.33, no part of the Iowa product development corporation fund shall revert at or after the close of a fiscal year unless otherwise provided by the general assembly, but shall remain in the fund and appropriated for the purposes of this division. The board shall seek to repay the state for appropriations by recommending to the general assembly reversions from income received from successful ventures. The board shall recommend such action at any time when the revenue available to the board is deemed sufficient to continue existing operations.

93 Acts, ch 167, §10  
Section amended

#### 15E.92 Reporting and fund solvency.

The chairperson of the corporation on or before December 31 of each fiscal year shall make and deliver a report to the governor and the legislative fiscal committee. The report shall include all transactions conducted by the corporation in the preceding fiscal year. The report shall also include a balance sheet outlining the financial solvency of the Iowa product development corporation fund, a certified copy of any audits of the corporation conducted in the pre-

ceding fiscal year, and other information requested by the governor or the legislative fiscal committee.

93 Acts, ch 180, §42  
Section amended

#### 15E.152 Wallace technology transfer foundation of Iowa established — mission.

The general assembly finds and declares that the public good requires that Iowa successfully participate and compete in the emerging world economy. A Wallace technology transfer foundation of Iowa is established to formulate and implement plans and programs for the development of advanced sciences and technologies and to facilitate their commercial application within the state, including determining the needs of individual Iowa businesses and farms for scientific and technological innovations to improve products and processes, and encouraging the transfer of the technology from the laboratory to the factory and farm.

The mission of the foundation shall include but is not limited to the following:

1. A program to identify barriers which may hinder the development and exploitation of technology in the global economy.
2. Continued development of Iowa’s capacity for scientific and technological innovation.
3. A cooperative, coordinated program of forecasting, assessment, development, and commercial transfer involving Iowa’s capacity for scientific and technological innovation.
4. Formulation of a long-range strategic plan to guide state investment in applied research, development, and commercial transfer of selected scientific and technological innovation and in the development of Iowa science infrastructure.
5. A mechanism to organize funding from a variety of sources to support the development and commercial transfer of scientific and technological innovation.
6. An outreach program to actively seek and improve products and processes with Iowa’s scientific and technological innovations.

The foundation consists of a board of directors, an advisory council, and staff.

93 Acts, ch 49, §1, 93 Acts, ch 167, §11  
Subsection 7 stricken  
Unnumbered paragraph 3 amended

#### 15E.153 Authorized corporation.

A Wallace technology transfer foundation of Iowa shall be incorporated under chapter 504A. The foundation shall not be regarded as a state agency, except for purposes of chapter 17A. A member of the board of directors is not considered a state employee, except for purposes of chapter 669. A natural person

employed by the foundation is a state employee for purposes of the Iowa public employees' retirement system, state health and dental plans, and other state employee benefits plans and chapter 669. Chapters 8, 18, 19A, and 20, and other provisions of law that relate to requirements or restrictions dealing with state personnel or state funds, do not apply to the foundation and any employees of the board or the foundation except to the extent provided in this chapter.

93 Acts, ch 49, §2  
Section amended

#### 15E.154 Board of directors.

1. The board of directors of the foundation shall consist of nine voting members and nine ex officio, nonvoting members as follows:

a. Nine members appointed by the governor and confirmed by the senate pursuant to section 2.32 for the terms determined by the board at its first meeting which shall not exceed three years. Of these nine members, two shall be chosen from the three names submitted by the governing bodies of the three state-wide labor organizations representing building trades and manufacturing employees, one shall be chosen from production agriculture, at least one shall be chosen from a food processing business, at least one shall be chosen from a biotechnology business, and at least two shall be chosen from manufacturing businesses. Also, two of these members shall be chosen from businesses with fewer than one hundred employees.

b. The following nine ex officio, nonvoting members with one member appointed by each of the following persons: the speaker of the house of representatives, the minority leader of the house of representatives, the president of the senate, after consultation with the majority leader and the minority leader of the senate, and the minority leader of the senate, after consultation with the president of the senate, the president, or the president's designee, of the university of northern Iowa, the state university of Iowa, and Iowa state university, and one person each, with a preference given to persons with experience in manufacturing technology transfer, chosen by the Iowa association of community college presidents and the Iowa association of independent colleges and universities.

2. The board of directors shall be bipartisan and gender-balanced in accordance with sections 69.16 and 69.16A and shall be as geographically balanced as possible. The appointing authorities in subsection 1 shall coordinate their appointments to ensure that the provisions of this subsection are met.

3. The terms of the members shall be staggered as determined by vote of the board at its first meeting after July 1, 1993. A vacancy shall be filled by the appointing authority. Members are eligible for actual expense reimbursement while fulfilling duties of the board. The board shall elect a chairperson from among its members.

93 Acts, ch 49, §3  
Transition to newly constituted board, 93 Acts, ch 49, §8, 9  
Section stricken and rewritten

#### 15E.155 General powers and duties.

The board of directors shall have all the general powers needed to carry out its mission and duties including but not limited to the following:

1. To prepare and adopt a strategic plan as defined in section 15E.157.

2. To fund research projects as defined in section 15E.158.

3. To sue and be sued in its own name.

4. To adopt a corporate seal.

5. To adopt bylaws for its management consistent with the provisions of this division.

6. To make and execute agreements, contracts and other instruments, with any public or private entity, including but not limited to a state, federal, or other governmental agency.

7. To accept contributions, including but not limited to appropriations, gifts, grants, loans, services, or other aid or assistance from public or private entities. A record of all contributions, stating the type, amount, and donor, shall be clearly set forth in the board's annual report along with a record of other receipts.

8. To establish policy in the general administration of the affairs of the foundation.

9. To perform the following duties:

a. Employ and direct staff to operate and manage the foundation under the direction of the board. Foundation staff shall not also be employed by a state agency or department after June 30, 1994.

b. Receive and approve an annual report of the foundation's activities and fiscal condition, including:

(1) Matters relating to operations and accomplishments.

(2) A summary of receipts and expenditures, in accordance with the classifications the board establishes for its operating accounts.

(3) A summary of assets and liabilities and the status of special accounts.

(4) A statement of proposed and projected activities.

(5) Recommendations to the general assembly.

(6) An identification of performance goals of the foundation and the extent of progress during the reporting period in attaining the goals.

c. Collect pertinent information on research in process and funding requests where appropriate at Iowa state university of science and technology, the university of Iowa, and the university of northern Iowa for the purpose of encouraging technology transfer where appropriate.

d. Carry out the duties specified in section 15E.166 regarding the manufacturing technology program and adopt rules pursuant to chapter 17A for the monitoring and enforcement of contracts awarded to community colleges to carry out the purposes of the program. The foundation shall review all contracts annually and may delay renewal of a contract if all contractual obligations were not fulfilled during the preceding year. This annual review shall not deprive the foundation of any other remedy for a breach of the contract by a community college.

10. To seek to achieve through the powers of the board the findings of section 15E.152.

11. To collaborate with the consortia as established in chapter 262B.

12. To provide as necessary, staff services for the advisory council.

13. To convene the advisory council annually to receive the board of director's recommendations.

14. To establish committees of business, agriculture, academic specialists, or others as deemed necessary.

15. Submit an annual report to the governor, the secretary of the senate, and the chief clerk of the house of representatives, not later than November 1 of each year.

16. To collaborate with the Iowa product development corporation to acquire new technology where appropriate.

17. To broker relationships furthering the mission of the foundation among state board of regents institutions of higher education, community colleges, and private colleges and universities and private investors, entrepreneurs, and executives of existing businesses.

18. To promote communication, inventory resources, and assist in the coordination of business and technology assistance activities of state board of regents institutions, community colleges, and private colleges and universities with the private sector, the department of economic development, and local and regional economic development groups.

93 Acts, ch 49, §4, 5

Statewide initiative to encourage businesses to develop cooperative networks, 93 Acts, ch 97, §21

Subsection 9 stricken and rewritten  
NEW subsections 17 and 18

**15E.156 Executive director — duties.** Repealed by 93 Acts, ch 49, § 7. See § 15E.155.

**15E.166 Regionally based manufacturing technology program.**

1. Contingent on the availability of funding from sources other than the general fund of the state or other state funds, the foundation shall contract with six or more community colleges for employment of an industrial technology outreach specialist to work with individual industry or industrial sectors to determine company needs and provide technical assistance or referral to services, or to coordinate with other service providers to determine how services should be accessed or provided. However, if the foundation does not receive funding from other sources, the foundation shall contract with at least four community colleges. The contract shall include but is not limited to the following:

a. The establishment of an industrial technology outreach program that will identify needs of individual industry or industrial sectors.

b. Criteria for assuring access to programs and services to assist individual industry or industrial sectors.

c. An annual budget for operation of the program

and activities agreed to in the contract including provisions related to the transfer of funds to the community college, as agreed upon by the president of the community college and the foundation.

d. Performance measures for quarterly and annual evaluation of the program and activities agreed to in the contract. The foundation may withhold the disbursement of funds for failure to achieve criteria established in the contract.

e. The duties of the industrial technology outreach specialist.

f. The provision of technical assistance to existing individual industry or industrial sectors or non-manufacturing business regarding available technological and management innovations to improve products, processes, and management systems, including implementation of total quality management methods.

2. The foundation may provide or contract for the delivery of technical services to individual industry or industrial sectors.

3. The foundation shall issue requests for proposals to the community colleges and shall select the best proposals after considering, among other factors, the geographic distribution of the provision of the program services to areas of the state which do not serve a city with a population over twenty thousand, the number of small and medium-sized industries within the community college district, and the level of community college interaction with those industries. Community colleges in contiguous regions may submit a joint proposal.

93 Acts, ch 49, §6  
Section amended

**15E.169 Iowa business investment corporation — purpose.**

1. The purpose of this section is to provide for or facilitate the development of organizations, structures, or other entities organized to provide capital or technical or other assistance to start new Iowa businesses or to help existing Iowa businesses remain viable or expand through the incorporation under chapter 504A of a nonprofit corporation to organize, capitalize, and fund the following:

a. An Iowa-based small business investment company which shall have the purpose of increasing the availability of funds for investment in and loans to Iowa small businesses on a regional basis. The small business investment company shall be incorporated under the Iowa law.

b. An Iowa-based Iowa development bank or other community development entity organized to take advantage of the availability of federal programs, funds, guarantees, or other initiatives for the benefit of Iowa communities and small businesses.

2. In addition to the powers granted under chapter 504A, the corporation shall have the power to invest in the small business investment company and to serve as guarantor of the preferred stock of the small business investment company.

In exchange for the guaranty, the corporation shall receive warrants for a percentage of the pre-

ferred stock of the small business investment company. The guaranty shall expire ten years after the guaranty agreement is entered into. The corporation shall only be liable as guarantor in the event that capital replenishment becomes necessary due to fed-

eral small business administration requirements or in the event of a capital loss upon liquidation of the small business investment company.

93 Acts, ch 180, §43  
 Subsection 1 amended

## CHAPTER 16

### IOWA FINANCE AUTHORITY

**16.162 Authority to issue community college dormitory bonds and notes.**

The authority shall assist a community college or the state board for community colleges as provided in chapter 260C, and the authority shall have all of the powers delegated to it in a chapter 28E agreement by a community college board of directors, the state board for community colleges, or a private developer contracting with a community college to develop a housing facility, such as a dormitory, for the community college, with respect to the issuance or securing of bonds or notes as provided in sections 260C.71 and 260C.72.

Section not amended  
 Reference to transferred chapter corrected editorially

**MUNICIPAL INVESTMENT RECOVERY PROGRAM**

Effect of repeal of §16 171-16 176, 92 Acts, ch 1001, § 7

**16.171 Legislative findings.** Repealed effective August 1, 1993, by 92 Acts, ch 1001, § 7.

**16.172 Establishment of municipal investment recovery program — definitions.** Repealed effective August 1, 1993, by 92 Acts, ch 1001, § 7.

**16.173 Loan agreements — bonds and notes.** Repealed effective August 1, 1993, by 92 Acts, ch 1001, § 7.

**16.174 Security — reserve funds — pledges — nonliability — irrevocable contracts.** Repealed effective August 1, 1993, by 92 Acts, ch 1001, § 7.

**16.175 Powers of municipalities.** Repealed effective August 1, 1993, by 92 Acts, ch 1001, § 7.

**16.176 Other laws not applicable.** Repealed effective August 1, 1993, by 92 Acts, ch 1001, § 7.

## CHAPTER 18

### DEPARTMENT OF GENERAL SERVICES

**18.8 Capitol buildings and grounds — services.**

The director shall provide necessary telephone, telegraph, lighting, fuel, and water services for the state buildings and grounds located at the seat of government, except the buildings and grounds referred to in section 216B.3, subsection 6.

The director shall establish, supervise, and maintain a central mail unit for the use of all state officials and agencies located at the seat of government. All state officials and agencies located at the seat of government shall be required to dispatch first and second class mail and parcel post mail, at the mail unit for the purpose of having the mail sealed, metered, and posted.

The director shall allow a department to seal, meter or stamp, and post mail directly from such department if it would be more efficient and economical.

Postage shall not be furnished to the general assembly, its members, officers, employees, or committees.

Except for buildings and grounds described in section 216B.3, subsection 6, and section 2.43, unnumbered paragraph 1, the director shall assign office space at the capitol, other state buildings and elsewhere in the city of Des Moines, for all executive and judicial state agencies. Assignments may be changed at any time. The various officers to whom rooms have been so assigned may control the same while

the assignment to them is in force. Official apartments shall be used only for the purpose of conducting the business of the state. The term "capitol" or "capitol building" as used in the Code shall be descriptive of all buildings upon the capitol grounds. The capitol building itself is reserved for the operations of the general assembly, the governor and the courts and the assignment and use of physical facilities for the general assembly shall be pursuant to section 2.43.

The director shall appoint a superintendent of buildings and grounds, who shall serve at the pleasure of the director and is not governed by the merit system provisions of chapter 19A.

Section not amended  
Unnumbered paragraph 1, reference to transferred chapter corrected editorially

### 18.8A Terrace Hill commission.

1. The Terrace Hill commission is created consisting of nine persons, appointed by the governor, who are knowledgeable in business management and historic preservation and renovation. The governor shall appoint the chairperson. The terms of the commission members are for three years beginning on July 1 and ending on June 30.

2. The Terrace Hill commission may consult with the Terrace Hill society, Terrace Hill foundation, the executive and legislative branches of this state, and other persons interested in the property.

3. The Terrace Hill commission may enter into contracts, subject to this chapter, to execute its purposes.

4. The commission may adopt rules to administer and implement the programs of the commission. The decision of the commission is final agency action under chapter 17A.

93 Acta, ch 48, §4  
NEW section

### 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 fifty percent of its total weight consisting of secondary and postconsumer 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. Postconsumer material does not include manufacturing wastes.

(3) "Secondary material" means fragments of finished products or finished products of a manufacturing process which has converted a resource into a commodity of real economic value, and includes postconsumer material but does not include excess virgin resources of the manufacturing process.

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.

c. The department shall adopt standards for the allowable content of postconsumer and secondary material of recycled paper which shall conform with but may be more stringent than the American society for testing and materials standards.

d. The department shall establish a prioritization procedure for the purchase of recycled paper which provides for a five percent differential in the cost of the purchase of paper which has been recycled through the use of a nonchlorinated process.

e. If a provision under this subsection results in the limitation of sources for the purchase of printing and writing paper to three or fewer sources, the department may waive the requirement in order to purchase necessary amounts of printing and writing paper.

f. The department, in conjunction with the department of natural resources, shall review the availability of a higher percentage content of postconsumer content printing and writing paper and shall, by rule, adjust the percentage requirement accordingly.

g. Notwithstanding the requirements of this subsection regarding the purchase of recycled paper, the department shall purchase acid-free permanent paper in the amount necessary for the production or reproduction of documents, papers, or similar materials produced or reproduced for permanent preservation pursuant to law.

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.

8. The department of general services, by January 1, 1993, shall seek an agreement with the agencies of the states of Minnesota and Wisconsin authorized to purchase general use items for state agencies, to provide for the cooperative purchase of recycled products.

9. The department shall, whenever technically feasible, purchase and use degradable loose foam packing material manufactured from grain starches or other renewable resources, unless the cost of the packing material is more than ten percent greater than the cost of packing material made from nonrenewable resources. For the purposes of this subsection, "packing material" means material, other than an exterior packing shell, that is used to stabilize, protect, cushion, or brace the contents of a package.

93 Acts, ch 176, §26  
NEW subsection 9

**18.87 Libraries.**

The completed journals of the general assembly, and the official register shall be sent to each free public library in Iowa, the division of libraries and information services of the department of education, the commission of libraries, libraries at state institutions, and college libraries.

93 Acts, ch 48, §5  
Section 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 division of libraries and information services of the department of education .. 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.

93 Acts, ch 48, §6  
Subsection 17 amended

**18.100 Exchange.**

The volumes delivered to the state law library shall be used for the purpose of effecting exchange with other states, foreign countries, and provinces, for similar reports. All books received in such exchange shall become a part of the division of libraries and information services of the department of education.

93 Acts, ch 48, §7  
Section 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 ap-

proval 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. However, the sticker is not required to be affixed to an unmarked vehicle used for purposes of providing law enforcement or security.



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.

93 Acts, ch 26, §1  
Subsection 3 amended

### 18.133 Definitions.

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

1. "Director" means the director of the department of general services or the director's designee.

2. "Private agency" means accredited nonpublic schools and nonprofit institutions of higher education eligible for tuition grants.

3. "Public agency" means a state agency, a school corporation, a city library, a regional library as provided in chapter 256, and a county library as provided in chapter 336.

4. "State communications" refers to the transmission of voice, data, video, the written word or other visual signals by electronic means to serve the needs of state agencies but does not include communications activities of the state board of regents, radio and television facilities and other educational telecommunications systems and services including narrowcast and broadcast systems under the division of public broadcasting, department of transportation distributed data processing and mobile radio network, or law enforcement communications systems.

93 Acts, ch 48, §8  
Subsection 3 amended

### 18.134 Powers — facilities — leases.

1. The department of general services may purchase, lease-purchase, lease, and improve property, equipment, and services for telecommunications for public and private agencies, including the broadcast and narrowcast systems, and may dispose of property and equipment when not necessary for its purposes. However, the department of general services shall not provide or resell communications services to entities other than public and private agencies. The public or private agency shall not provide communication services of the network to another entity at a cost greater than that charged to the agency pursuant to section 18.136, subsections 11 and 12. The department may arrange for joint use of available services and facilities, and may enter into leases and agreements with private and public agencies with respect to a state communications system, and public agencies are authorized to enter into leases and

agreements with respect to the system for their use and operation. Rentals and other amounts due under the agreements or leases entered into pursuant to this section by a state agency are payable from funds annually appropriated by the general assembly or from other funds legally available. Other public agencies may pay the rental costs and other amounts due under an agreement or lease from their annual budgeted funds or other funds legally available or to become available. This section comprises a complete and independent authorization and procedure for a public agency, with the approval of the department, to enter into a lease or agreement and related security enhancement arrangements and this section is not a qualification of any other powers which a public agency may possess and the authorizations and powers granted under this section are not subject to the terms, requirements, or limitations of any other provisions of law. All moneys received by the department from agreements and leases entered into pursuant to this section with private and public agencies shall be deposited in the state communications network fund.

It is the intent of the general assembly that rental and other costs due under agreements and leases entered into pursuant to this section by state agencies be replaced by supplemental appropriations to the state agencies.

2. A political subdivision receiving communications services from the state as of April 1, 1986, may continue to do so but communications services shall not be provided or resold to additional political subdivisions other than a school corporation, a city library, a regional library as provided in chapter 256, and a county library as provided in chapter 336. The rates charged to the political subdivision shall be the same as the rates charged to state agencies.

93 Acts, ch 48, §9  
Subsection 2 amended

### 18.136 State communications network.

1. Moneys in the state communications network fund are appropriated to the Iowa public broadcasting board for purposes of providing financing for the procurement, operation, and maintenance of a state communications network with sufficient capacity to serve the video, data, and voice requirements of state agencies and the educational telecommunications system. The state communications network consists of Part I, Part II, and Part III of the system.

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

a. "*Part I of the system*" means the communications connections between central switching and the regional switching centers for the remainder of the network.

b. "*Part II of the system*" means the communications connections between the regional switching centers and the secondary switching centers.

c. "*Part III of the system*" means the communications connection between the secondary switching centers and the agencies defined in section 18.133, subsections 3 and 4.

3. The financing for the procurement costs for the entirety of Part I of the system, and the video, data, and voice capacity for state agencies for Part II and Part III of the system, shall be provided by the state. The financing for the procurement costs for Part II of the system shall be provided from the state. The financing for the procurement and maintenance costs for Part III of the system shall be provided eighty percent from the state and twenty percent from the local school boards of the areas which receive transmissions from the system. A local school board may elect to provide one hundred percent of the financing for the procurement and maintenance costs for Part III to become part of the system. The local school boards may meet all or part of the match requirements of Part III of the system through a cooperative arrangement with community colleges. The basis for the state match is eighty percent of a single interactive audio and one-way video for Part III of the system, and such data and voice capacity as is necessary. The local school boards and community colleges may meet the match requirements for Part III of the system from funds they have already spent for their systems, from funds available in the school budget, or from funds received from other nonstate sources. In the case of existing systems, in order to upgrade facilities to the specifications of the state communications network, the local school boards and community colleges, in lieu of a cash match, may meet the match requirements from funds they have already spent for their systems provided that the state match does not exceed the lesser of eighty percent of the total cost of the upgraded system or eighty percent of the replacement cost of the system. The communications equipment funds used as a match by a community college shall be calculated based on verified expenditures for capital, equipment, hardware, and software for long-distance learning technologies, including both audio and visual transmission. The communications equipment used as a match shall not subsequently be used as a match by another educational entity or for another part of the system. A local school board may request the school budget review committee to adjust the allowable growth for the school district so that the resulting increase in budget could be used for the match. A local school board may also elect not to become part of the system. Such election shall be made on an annual basis. State matching funds shall not be provided for Part III of the system until Part I and Part II of the system have been completed. Construction of Part III of the system may proceed before Part I and Part II of the system have been completed.

4. The department of general services shall develop the requests for proposals that are needed for a state communications network with sufficient capacity to serve the video, data, and voice requirements of state agencies and the educational telecommunications applications required by the Iowa public broadcasting board. The department shall develop a request for proposals for each of the systems

that will make up the network. The department may develop a request for proposals for each definitive component of Part I, Part II, and Part III of the system or the department may provide in the request for proposals for each such system that separate contracts may be entered into for each definitive component covered by the request for proposals. The requests for proposals may be for the purchase, lease-purchase, or lease of the component parts of the system, may require maintenance costs to be identified, and the resulting contract may provide for maintenance for parts of the system. The master contract may provide for electronic classrooms, satellite equipment, receiving equipment, studio and production equipment, and other associated equipment as required.

5. It is the intent of the general assembly that during the implementation of Parts I and II of the system, the department of general services shall employ a consultant to report to it on the impact of changing technology on the potential cost and capabilities of the system. It is also the intent of the general assembly that the department of education shall study new techniques in distant teaching. These reports shall be made available to the general assembly.

6. Prior to the awarding of a contract under this section, the department shall notify the legislative council and the department of management of the department's intent to award a contract and of the cost to the state. The department of management and the legislative council shall determine if the anticipated financial resources of the state are adequate to fund the expenditure during the fiscal years covered by the contract, and if so, the department of management shall certify the determination to the department. Upon certification, the department may enter into the contract.

7. The department of general services shall be responsible for the network system design and shall be responsible for the implementation of each component of the network as it is incorporated into the network system. The final design selected shall optimize the routing for all users in order to assure maximum utilization by all agencies of the state. Efficiencies achieved in the implementation of the network shall be used to fund further implementation and enhancement of the network, and shall be considered part of the operational cost of the network. The department shall be responsible for all management, operations, control switching, diagnostics, and maintenance functions of Part I and Part II of the system operations, except as designated in subsection 8. The performance of these duties is intended to provide optimal utilization of the facilities, and the assurance that future growth requirements will be provided for, and that sufficient network capacity will be available to meet the needs of all users. The telecommunications information management council, created by executive order of the governor, shall provide general oversight for these functions.

8. The Iowa public broadcasting board retains

sole authority over the educational telecommunications applications of Part I of the system, and its authority shall include management and operational control, programming, budget, personnel, scheduling, and program switching of educational material carried by Part I of the system. The Iowa public broadcasting board, through its narrowcast system advisory committee, retains coordination authority over the educational telecommunications applications of Part II and Part III of the system. Community colleges are responsible for scheduling and switching of educational materials carried by Part II and Part III of the system within their respective areas. Such responsibility may be accomplished by a chapter 28E agreement with the department of general services.

The narrowcast system advisory committee shall review all requests for grants for educational telecommunications applications, if they are a part of the state communications network, to ensure that the educational telecommunications application is consistent with the telecommunications plan. If the narrowcast system advisory committee finds that a grant request is inconsistent with the telecommunications plan, the grant request shall not be allowed.

9. The procurement and maintenance of electronic equipment including, but not limited to, master receiver antenna systems, studio and production equipment, and broadcast system components shall be provided for under department of general services' contracts. The Iowa public broadcasting board and other educational entities within the state have the option to use their existing or replacement resources and agreements in the operation and maintenance of these systems.

10. In addition to the other evaluation criteria specified in the request for proposals issued pursuant to this section, the department of general services, in evaluating proposals, shall base up to two percent of the total possible points on the public benefit that can be derived from a given proposal due to the increased private telecommunications capacity available to Iowa citizens located in rural Iowa. For purposes of this subsection, an area of the state is considered rural if it is not part of a federally designated standard metropolitan statistical area.

11. The fees charged for use of the network shall be based on the ongoing operational costs of the network only.

12. The Iowa public broadcasting board, in consultation with its narrowcast system advisory committee, shall determine the fee to be charged per course or credit hour by the originating institution, and the fees shall be substantially the same for comparable courses.

13. Access to the network shall be offered on an equal basis to public and private agencies under subsection 8 if the private agency contributes an amount toward the match requirement comparable to its share of use for the part of the system in which it participates.

14. Notwithstanding chapter 476, the provisions

of chapter 476 shall not apply to a public utility in furnishing a telecommunications service or facility to the department of general services for the state

communications network.

93 Acts, ch 179, §16  
Subsection 3 amended

## CHAPTER 18A

### CAPITOL PLANNING

**18A.7 through 18A.10** Reserved.

**18A.11 Friends of capitol hill — authorized corporation.**

1. The friends of capitol hill corporation shall be incorporated under chapter 504A. The corporation shall be organized and operated for the preservation, restoration, and public use of the Iowa state capitol building, and for related charitable, cultural, and educational purposes.

The corporation shall not be regarded as a state agency and a state official or employee, acting in the official's or employee's official capacity, shall not be an incorporator of the corporation.

2. The membership of the board of directors of

the corporation shall be determined in accordance with the articles of incorporation of the corporation and shall include at least one member from each of the legislative, executive, and judicial branches of government, in addition to public members. Members of the board shall not be entitled in the performance of their duties to either a per diem or expenses.

3. In addition to the powers conferred on the board under chapter 504A, the board may accept contributions, including but not limited to appropriations, gifts, grants, loans, services, or other aid or assistance from public or private entities.

93 Acts, ch 77, §1  
NEW section

## CHAPTER 21

### OFFICIAL MEETINGS OPEN TO PUBLIC (OPEN MEETINGS)

**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.

h. An advisory board, advisory commission, advisory committee, task force, or other body created by statute or executive order of this state or created by an executive order of a political subdivision of this state to develop and make recommendations on public policy issues.

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 mem-

bers 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.

93 Acts, ch 25, §1  
Subsection 1, NEW paragraph h

### 21.3 Meetings of governmental bodies.

Meetings of governmental bodies shall be preceded by public notice as provided in section 21.4 and shall be held in open session unless closed sessions are expressly permitted by law. Except as provided in section 21.5, all actions and discussions at meet-

ings of governmental bodies, whether formal or informal, shall be conducted and executed in open session.

Each governmental body shall keep minutes of all its meetings showing the date, time and place, the members present, and the action taken at each meeting. The minutes shall show the results of each vote taken and information sufficient to indicate the vote of each member present. The vote of each member present shall be made public at the open session. The minutes shall be public records open to public inspection.

93 Acts, ch 25, §2  
Unnumbered paragraph 2 amended

## CHAPTER 22

### EXAMINATION OF PUBLIC RECORDS (OPEN RECORDS)

#### 22.7 Confidential records.

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

1. Personal information in records regarding a student, prospective student, or former student maintained, created, collected or assembled by or for a school corporation or educational institution maintaining such records.

2. Hospital records, medical records, and professional counselor records of the condition, diagnosis, care, or treatment of a patient or former patient or a counselee or former counselee, including outpatient. However, confidential communications between a crime victim and the victim's counselor are not subject to disclosure except as provided in section 236A.1. However, the Iowa department of public health shall adopt rules which provide for the sharing of information among agencies concerning the maternal and child health program, while maintaining an individual's confidentiality.

3. Trade secrets which are recognized and protected as such by law.

4. Records which represent and constitute the work product of an attorney, which are related to litigation or claim made by or against a public body.

5. Peace officers' investigative reports, except where disclosure is authorized elsewhere in this Code. However, the date, time, specific location, and immediate facts and circumstances surrounding a crime or incident shall not be kept confidential under this section, except in those unusual circumstances where disclosure would plainly and seriously jeopardize an investigation or pose a clear and present danger to the safety of an individual.

6. Reports to governmental agencies which, if released, would give advantage to competitors and serve no public purpose.

7. Appraisals or appraisal information concerning the purchase of real or personal property for public purposes, prior to public announcement of a project.

8. Iowa department of economic development information on an industrial prospect with which the department is currently negotiating.

9. Criminal identification files of law enforcement agencies. However, records of current and prior arrests shall be public records.

10. Personal information in confidential personnel records of the military division of the department of public defense of the state.

11. Personal information in confidential personnel records of public bodies including but not limited to cities, boards of supervisors and school districts.

12. Financial statements submitted to the department of agriculture and land stewardship pursuant to chapter 203 or chapter 203C, by or on behalf of a licensed grain dealer or warehouse operator or by an applicant for a grain dealer license or warehouse license.

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

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

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

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

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

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

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

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

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

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

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

21. Information concerning the nature and location of any archaeological resource or site if, in the opinion of the state archaeologist, disclosure of the information will result in unreasonable risk of damage to or loss of the resource or site where the resource is located. This subsection shall not be construed to interfere with the responsibilities of the federal government or the state historical preservation officer pertaining to access, disclosure, and use of archaeological site records.

22. Information concerning the nature and location of any ecologically sensitive resource or site if, in the opinion of the director of the department of natural resources after consultation with the state ecologist, disclosure of the information will result in unreasonable risk of damage to or loss of the resource or site where the resource is located. This subsection shall not be construed to interfere with the responsibilities of the federal government or the director of the department of natural resources and the state ecologist pertaining to access, disclosure, and use of the ecologically sensitive site records.

23. Reports or recommendations of the Iowa insurance guaranty association filed or made pursuant to section 515B.10, subsection 1, paragraph "a", subparagraph (2).

24. Information or reports collected or submitted pursuant to section 508C.12, subsections 3 and 5, and section 508C.13, subsection 2, except to the extent that release is permitted under those sections.

25. Records of purchases of alcoholic liquor from the alcoholic beverages division of the department of commerce which would reveal purchases made by an individual class "E" liquor control licensee. However, the records may be revealed for law enforcement purposes or for the collection of payments due the division pursuant to section 123.24.

26. Financial information, which if released would give advantage to competitors and serve no public purpose, relating to commercial operations conducted or intended to be conducted by a person submitting records containing the information to the agricultural diversification bureau of the department of agriculture and land stewardship for the purpose of obtaining assistance in business planning.

27. Applications, investigation reports, and case records of persons applying for county general assistance pursuant to section 252.25.

28. Marketing and advertising budget and strategy of a nonprofit corporation which is subject to this chapter. However, this exemption does not apply to salaries or benefits of employees who are employed by the nonprofit corporation to handle the marketing and advertising responsibilities.

29. The information contained in records of the centralized employee registry created in chapter 252G, except to the extent that disclosure is authorized pursuant to chapter 252G.

30. Records and information obtained or held by independent special counsel during the course of an investigation conducted pursuant to section 68B.34. Information that is disclosed to a legislative ethics

committee subsequent to a determination of probable cause by independent special counsel and made pursuant to section 68B.31 or 68B.32\* is not a confidential record unless otherwise provided by law.

93 Acts, ch 79, §2; 93 Acts, ch 163, §27

\*Reference to § 68B.32 probably erroneous; corrective legislation is pending  
NEW subsections 29 and 30

## CHAPTER 24

### LOCAL BUDGETS

#### 24.27 Protest to budget.

Not later than March 25 or April 25 if the municipality is a school district, a number of persons in any municipality equal to one-fourth of one percent of those voting for the office of governor, at the last general election in the municipality, but the number shall not be less than ten, and the number need not be more than one hundred persons, who are affected by any proposed budget, expenditure or tax levy, or by any item thereof, may appeal from any decision of the certifying board or the levying board by filing with the county auditor of the county in which the municipal corporation is located, a written protest setting forth their objections to the budget, expendi-

ture or tax levy, or to one or more items thereof, and the grounds for their objections. If a budget is certified after March 15 or April 15 in the case of a school district, all appeal time limits shall be extended to correspond to allowances for a timely filing. Upon the filing of a protest, the county auditor shall immediately prepare a true and complete copy of the written protest, together with the budget, proposed tax levy or expenditure to which objections are made, and shall transmit them forthwith to the state board, and shall also send a copy of the protest to the certifying board or to the levying board, as the case may be.

93 Acts, ch 1, §1  
Section amended

## CHAPTER 25

### CLAIMS AGAINST THE STATE AND BY THE STATE

#### 25.1 Receipt, investigation, and report.

When a claim is filed or made against the state, on which in the judgment of the director of management the state would be liable except for the fact of its sovereignty or which has no appropriation available for its payment, the director of management shall deliver that claim to the state appeal board. The state appeal board shall make a record of the receipt of that claim and forthwith deliver it to the special assistant attorney general for claims who shall, with a view to determining the merits and legality of it, fully investigate the claim, including the facts upon which it is based and report in duplicate findings and conclusions of law to the state appeal board. To help defray the initial costs of processing a claim and the costs of investigating a claim, the department of management may assess a processing fee and a fee to reimburse the office of the attorney gen-

eral for the costs of the claim investigation against the state agency which incurred the liability of the claim.

93 Acts, ch 180, §72  
Section amended

#### 25.2 Examination of report — approval or rejection — payment.

The state appeal board with the recommendation of the special assistant attorney general for claims may approve or reject claims against the state of less than ten years covering the following: Outdated warrants; outdated sales and use tax refunds; license refunds; additional agricultural land tax credits; outdated invoices; fuel and gas tax refunds; outdated homestead and veterans' exemptions; outdated funeral service claims; tractor fees; registration permits; outdated bills for merchandise; services fur-



nished to the state; claims by any county or county official relating to the personal property tax credit; and refunds of fees collected by the state. Payments authorized by the state appeal board shall be paid from the appropriation or fund of original certification of the claim. However, if that appropriation or fund has since reverted under section 8.33 then such

payment authorized by the state appeal board shall be out of any money in the state treasury not otherwise appropriated. Notwithstanding the provisions of this section, the director of revenue and finance may reissue outdated warrants.

93 Acts, ch 180, §73  
Section amended

## CHAPTER 34

### EMERGENCY TELEPHONE NUMBER (911)

#### 34.2 911 service.

1. After July 1, 1986, when 911 service is established in a service area each public agency, public safety agency, and private safety entity serving territory within the service area shall participate in providing the 911 service. The 911 service shall be established according to a written plan which has the written approval of the governing bodies of each public agency, public safety agency, and private safety entity serving territory within the 911 service area.

2. This chapter does not prohibit or discourage participation in or the provision of 911 service covering the territory of more than one public agency, public safety agency, or private safety entity. A system established pursuant to this section may serve the territory of more than one public agency, public safety agency, or private safety entity or may include a part of their respective territories. Public agencies, public safety agencies, and private safety entities may enter into agreements under chapter 28E to provide 911 service.

3. The digits "911" shall be the primary emergency telephone number within the 911 service areas established under this section. A public safety agency

or a private safety entity whose services are available through a 911 system may maintain a separate secondary backup number for emergencies, and shall maintain a separate number for nonemergency telephone calls.

4. A 911 system shall be capable of transmitting requests for law enforcement, fire fighting, and emergency medical and ambulance services to a public safety agency or agencies that provide the requested service at the place where the call originates. A 911 system may also provide for transmitting requests for emergency management, poison control, suicide prevention, and other emergency services. The public safety answering point shall be capable of receiving calls from deaf and hard-of-hearing persons through a telecommunications device for the deaf. Conferencing capability with counseling, aid to handicapped, and other services as deemed necessary for identifying appropriate emergency response services may be provided by the 911 service.

A public safety answering point may transmit emergency response requests to private safety entities.

93 Acts, ch 75, §2  
Subsection 4, unnumbered paragraph 1 amended

## CHAPTER 34A

### ENHANCED 911 EMERGENCY TELEPHONE SYSTEMS

#### 34A.2 Definitions.

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

1. "Access line" means a local exchange access line that has the ability to access local dial tone and reach a local public safety agency.

2. "Administrator" means the administrator of the division of emergency management of the department of public defense.

3. "Division" means the division of emergency management, department of public defense.

4. "Enhanced 911" or "E911" means a service which provides the user of a public telephone system the ability to reach a public safety answering point by dialing the digits 911, and which has the following additional features:

a. Routes an incoming 911 call to the appropriate public safety answering point selected from the

public safety answering points operating in a 911 service area.

b. Automatically displays the name, address, and telephone number of an incoming 911 call and public safety agency servicing the address on a video monitor at the appropriate public safety answering point.

5. "Enhanced 911 service area" means the geographic area to be serviced, or currently serviced under an enhanced 911 service plan, provided that an enhanced 911 service area must at minimum encompass one entire county. The enhanced 911 service area may encompass more than one county, and need not be restricted to county boundaries.

6. "Enhanced 911 service plan" means a plan that includes the following information:

a. A description of the enhanced 911 service area.

b. A list of all public and private safety agencies within the enhanced 911 service area.

c. The number of public safety answering points within the enhanced 911 service area.

d. Identification of the agency responsible for management and supervision of the enhanced 911 emergency telephone communication system.

e. A statement of estimated costs to be incurred by the joint E911 service board, including separate estimates of the following:

(1) Nonrecurring costs, including, but not limited to, public safety answering points, network equipment, software, database, addressing, initial training, and other capital and start-up expenditures, including the purchase or lease of subscriber names, addresses, and telephone information from the local exchange service provider.

(2) Recurring costs, including, but not limited to, network access fees and other telephone charges, software, equipment, and database management, and maintenance, including the purchase or lease of subscriber names, addresses, and telephone information from the local exchange service provider. Recurring costs shall not include personnel costs for a public safety answering point.

Costs are limited to nonrecurring and recurring costs directly attributable to the provision of 911 emergency telephone communication service and may include costs for portable and vehicle radios, communication towers, and other radios and equipment permanently located at the public safety answering point. Costs do not include expenditures for any other purpose, and specifically exclude costs attributable to other emergency services or expenditures for buildings or personnel, except for the costs of personnel for database management and personnel directly associated with addressing.

f. Current equipment operated by affected providers, and central office equipment and technology upgrades necessary for the provider to implement enhanced 911 service within the enhanced 911 service area on or before July 1, 1992.

g. A schedule for implementation of the plan throughout the E911 service area. The schedule may provide for phased implementation. However, a joint

911 service board may decide not to implement E911 service.

h. The number of telephone access lines in the enhanced 911 service area.

i. The total property valuation in the enhanced 911 service area.

7. "Enhanced 911 service surcharge" is a charge set by the E911 service area operating authority and assessed on each access line which physically terminates within the E911 service area.

8. "Local exchange service provider" means a person engaged in providing telecommunications service between points within an exchange.

9. "Provider" means a person who provides, or offers to provide, E911 equipment, installation, maintenance, or exchange access services within the enhanced 911 service area.

10. "Public or private safety agency" means a unit of state or local government, a special purpose district, or a private firm which provides or has the authority to provide fire fighting, police, ambulance, or emergency medical services.

11. "Public safety answering point" means a twenty-four hour local jurisdiction communications facility which receives enhanced 911 service calls and directly dispatches emergency response services or relays calls to the appropriate public or private safety agency.

93 Acts, ch 125, §1

Subsection 6, paragraph e amended

### 34A.3 Joint 911 service board — 911 service plan — implementation — waivers.

1. *Joint 911 service boards to submit plans.* The board of supervisors of each county shall establish a joint 911 service board not later than January 1, 1989. Each political subdivision of the state having a public safety agency serving territory within the county is entitled to voting membership on the joint 911 service board. Each private safety agency operating within the area is entitled to nonvoting membership on the board. A township which does not operate its own public safety agency, but contracts for the provision of public safety services, is not entitled to membership on the joint 911 service board, but its contractor is entitled to membership according to the contractor's status as a public or private safety agency. The joint 911 service board shall develop an enhanced 911 service plan encompassing at minimum the entire county, unless an exemption is granted by the administrator permitting a smaller E911 service area. The administrator may grant a discretionary exemption from the single county minimum service area requirement based upon an E911 joint service board's or other E911 service plan operating authority's presentation of evidence which supports the requested exemption if the administrator finds that local conditions make adherence to the minimum standard unreasonable or technically infeasible, and that the purposes of this chapter would be furthered by granting an exemption. The minimum size requirement is intended to prevent unnecessary duplication of public safety answering points

and minimize other administrative, personnel, and equipment expenses. An E911 service area must encompass a geographically contiguous area. No exemption shall be granted from the contiguous area requirement. The administrator may order the inclusion of a specific territory in an adjoining E911 service plan area to avoid the creation by exclusion of a territory smaller than a single county not serviced by surrounding E911 service plan areas upon request of the joint 911 service board representing the territory. The E911 service plan operating authority shall submit the plan on or before January 1, 1994, to all of the following:

- a. The division.
- b. Public and private safety agencies in the enhanced 911 service area.
- c. Providers affected by the enhanced 911 service plan.

An E911 joint service board that has a state-approved service plan in place prior to July 1, 1993, is exempt from the provisions of this section. The division shall establish, by July 1, 1994, E911 service plans for those E911 joint service boards which do not have a state-approved service plan in place on or before January 1, 1994.

The division shall prepare a summary of the plans submitted and present the summary to the legislature on or before August 1, 1994.

2. *Compliance waivers available in limited circumstances.* The administrator may extend, in whole or in part, the time for implementation of an enhanced 911 service plan beyond the scheduled plan of implementation, by issuance of a compliance waiver. The waiver shall be based upon a joint 911 service board's presentation of evidence which supports an extension if the administrator finds that local conditions make implementation financially unreasonable or technically infeasible by the originally scheduled plan of implementation. The compliance waiver shall be for a set period of time, and subject to review and renewal or denial of renewal upon its expiration. The waiver may cover all or a portion of a 911 service plan's enhanced 911 service area to facilitate phased implementation when possible. The granting of a compliance waiver does not create a presumption that the identical or similar waiver will be extended in the future. Consideration of compliance waivers shall be on a case-by-case basis.

3. *Chapter 28E agreement — alternative to joint*

*911 service board.* A legal entity created pursuant to chapter 28E by a county or counties, other political divisions, and public or private agencies to jointly plan, implement, and operate a countywide, or larger, enhanced 911 service system may be substituted for the joint 911 service board required under subsection 1.

An alternative legal entity created pursuant to chapter 28E as a substitute for a joint 911 service board, as permitted by this subsection, may be created by either:

- a. Agreement of the parties entitled to voting membership on a joint 911 service board.
- b. Agreement of the members of a joint 911 service board.

An alternative chapter 28E entity has all of the powers of a joint 911 service board and any additional powers granted by the agreement. As used in this chapter, "*joint 911 service board*" includes an alternative chapter 28E entity created for that purpose, except as specifically limited by the chapter 28E agreement or unless clearly provided otherwise in this chapter. A chapter 28E agreement related to E911 service shall permit the participation of a private safety agency or other persons allowed to participate in a joint 911 service board, but the terms, scope, and conditions of participation are subject to the chapter 28E agreement.

4. *Participation in joint E911 service board required.* A political subdivision or state agency having a public safety agency within its territory or jurisdiction shall participate in a joint E911 service board and cooperate in preparing the E911 service plan.

93 Acts, ch 125, §2  
Subsection 1 amended

### 34A.6A Alternative surcharge.

Notwithstanding section 34A.6, the board may request imposition of a surcharge in an amount up to two dollars and fifty cents per month on each telephone access line. The board shall submit the question of the surcharge to voters in the same manner as provided in section 34A.6. If approved, the surcharge may be collected for a period of twenty-four months. At the end of the twenty-four-month period, the rate of the surcharge shall revert to one dollar per month, per access line.

93 Acts, ch 125, §3  
NEW section

## CHAPTER 39

### ELECTIONS, ELECTORS, APPOINTMENTS, TERMS AND OFFICERS

#### 39.2 Special elections.

1. All special elections which are authorized or required by law, unless the applicable law otherwise requires, shall be held on Tuesday. A special election shall not be held on the first and second Tuesdays preceding and following the primary and the general elections.

A special election shall not be held in conjunction with the primary election. A special election shall not be held in conjunction with a school election unless the special election is for a school district or community college.

2. Except as otherwise provided in subsection 1, a special election may be held on the same day as a regularly scheduled election if the two elections are not in conflict within the meaning of section 47.6, subsection 2. A special election may be held on the same day as a regularly scheduled election with which it does so conflict if the commissioner who is responsible for conducting the elections concludes that to do so will cause no undue difficulties.

3. When voting is to occur on the same day in any one precinct for two or more elections, they shall be considered one election for purposes of administration including but not limited to publishing notice of the election, preparation of the precinct election register and completion of tally sheets after the polling place has closed.

If a special election to fill a vacancy is held in conjunction with a regularly scheduled election, the filing deadlines for the special election shall coincide with the filing deadlines for the regularly scheduled election. An election to fill a vacancy in a city office cannot be held in conjunction with a general election if the city election procedures provide for a primary election.

93 Acts, ch 143, §2

Subsection 3, NEW unnumbered paragraph 2

#### 39.3 Definitions.

The definitions established by this section shall apply wherever the terms so defined appear in this chapter and in chapters 43, 44, 45 and 47 to 53 and 56 unless the context in which any such term is used clearly requires otherwise.

1. "Absentee ballot" means any ballot authorized by chapter 53.

2. "City" means a municipal corporation not including a county, township, school district, or any special purpose district or authority. When used in relation to land area, "city" includes only the land area within the city limits.

3. "City election" means any election held in a city for nomination or election of the officers thereof including a city primary or runoff election.

4. "Commissioner" means the county commissioner of elections as defined in section 47.2.

5. "Election" means a general election, primary election, city election, school election or special election.

6. "Eligible elector" means a person who possesses all of the qualifications necessary to entitle the person to be registered to vote, whether or not the person is in fact so registered.

7. "General election" means the biennial election for national or state officers, members of Congress and of the general assembly, county and township officers, and for the choice of other officers or the decision of questions as provided by law.

8. "Primary election" means that election by the members of various political parties for the purpose of placing in nomination candidates for public office held as required by chapter 43.

9. "Public measure" means any question authorized or required by law to be submitted to the voters at an election.

10. "Qualified elector" means a person who is registered to vote pursuant to chapter 48.

11. "Registrar" means the state registrar of voters designated by section 47.7.

12. "Registration commission" means the state voter registration commission established by section 47.8.

13. "School election" means that election held pursuant to section 277.1.

14. "Special election" means any other election held for any purpose authorized or required by law.

15. "State commissioner" means the state commissioner of elections as defined in section 47.1.

93 Acts, ch 143, §3

NEW subsection 9 and former subsections 9 through 14 renumbered as 10 through 15

#### 39.11 More than one office prohibited.

Statewide elected officials and members of the general assembly shall not hold more than one elective office at a time. All other elected officials shall not hold more than one elective office at the same level of government at a time. This section does not apply to the following offices: county agricultural extension council, soil and water conservation district commission, or regional library board of trustees.

93 Acts, ch 143, §4

NEW section

#### 39.12 Failure to vacate.

An elected official who has been elected to another elective office to which section 39.11 applies shall choose only one office in which to serve. The official shall resign from all but one of the offices to which section 39.11 applies before the beginning of the

term of the office to which the person was most recently elected. Failure to submit the required resignation will result in a vacancy in all elective offices to which the person was elected.

93 Acts, ch 143, §5  
NEW section

**39.21 Nonpartisan offices.**

There shall be elected at each general election, on a nonpartisan basis, the following officers:

1. Regional library trustees as required by section 256.63.
2. County public hospital trustees as required by section 347.25.
3. Soil and water conservation district commissioners as required by section 161A.5.
4. County agricultural extension council members as provided in section 176A.6.

93 Acts, ch 48, §10  
Subsection 1 amended

**CHAPTER 43**

**PARTISAN NOMINATIONS — PRIMARY ELECTION**

**43.59 Number of voters certified.**

The commissioner shall certify to the state commissioner the total number of people who voted in

the primary election in each political party.

93 Acts, ch 143, §6  
NEW section

**CHAPTER 44**

**NOMINATIONS BY NONPARTY POLITICAL ORGANIZATIONS**

**44.16 Return of papers — additions not allowed.**

After a nomination petition or certificate has been filed, it shall not be returned to the candidate or person who has filed the document, and no signature or

other information shall be added to the nomination petition or certificate.

93 Acts, ch 143, §7  
Section stricken and rewritten

**CHAPTER 45**

**NOMINATIONS BY PETITION**

**45.1 Nominations by petition.**

1. Nominations for candidates for president and vice president, governor and lieutenant governor, and for other statewide elected offices may be made by nomination petitions signed by not less than one thousand five hundred eligible electors residing in not less than ten counties of the state.

2. Nominations for candidates for a representative in the United States house of representatives may be made by nomination petitions signed by not less than the number of eligible electors equal to the

number of signatures required in subsection 1 divided by the number of congressional districts.

3. Nominations for candidates for the state senate may be made by nomination petitions signed by not less than one hundred eligible electors of the senate district.

4. Nominations for candidates for the state house of representatives may be made by nomination petitions signed by not less than fifty eligible electors of the representative district.

5. Nominations for candidates for offices filled

by the voters of a whole county may be made by nomination petitions signed by eligible electors of the county equal in number to at least one percent of the number of registered voters in the county on July 1 in the year preceding the year in which the office will appear on the ballot, or by at least two hundred fifty eligible electors of the county, whichever is less.

6. Nominations for candidates for the office of county supervisor elected by the voters of a supervisor district may be made by nomination petitions signed by eligible electors of the supervisor district equal in number to at least one percent of the number of registered voters in the supervisor district on July 1 in the year preceding the year in which the office will appear on the ballot, or by at least one hundred fifty eligible electors of the supervisor district, whichever is less.

7. Nomination papers for the offices of president and vice president shall include the names of the candidates for both offices on each page of the petition. A certificate listing the names of the candidates for presidential electors, one from each congressional district and two from the state at large, shall be filed in the state commissioner's office at the same time the nomination papers are filed.

Nomination papers for the offices of governor and lieutenant governor shall include the names of candidates for both offices on each page of the petition. Nomination papers for other statewide elected offices and all other offices shall include the name of the candidate on each page of the petition.

8. Nominations for candidates for elective offices in cities where the council has adopted nominations under this chapter may be submitted as follows:

a. Except as otherwise provided in subsection 9, in cities having a population of three thousand five hundred or greater according to the most recent federal decennial census, nominations may be made by nomination papers signed by not less than twenty-five eligible electors who are residents of the city or ward.

b. In cities having a population of one hundred or greater, but less than three thousand five hundred, according to the most recent federal decennial census, nominations may be made by nomination papers signed by not less than ten eligible electors who are residents of the city or ward.

c. In cities having a population less than one hundred according to the most recent federal decennial census, nominations may be made by nomination papers signed by not less than five eligible electors who are residents of the city.

9. Nominations for candidates, other than partisan candidates, for elective offices in special charter cities subject to section 43.112 may be submitted as follows:

a. For the office of mayor and alderman at large, nominations may be made by nomination papers signed by eligible electors residing in the city equal in number to at least two percent of the total vote received by all candidates for mayor at the last preceding city election.

b. For the office of ward alderman, nominations may be made by nomination papers signed by eligible electors residing in the ward equal in number to at least two percent of the total vote received by all candidates for ward alderman in that ward at the last preceding city election.

93 Acts, ch 143, §8  
Section amended

## 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 as-

sign a number to each proposed constitutional amendment and statewide public measure for identification 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 or other 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.

93 Acts, ch 143, §9  
Unnumbered paragraph 2 amended

#### **47.6 Election dates — conflicts — public measures.**

1. The governing body of any political subdivision which has authorized a special election to which section 39.2 is applicable shall by written notice inform the commissioner who will be responsible for conducting the election of the proposed date of the special election. If a public measure will appear on the ballot at the special election the governing body shall submit the complete text of the public measure to the commissioner with the notice of the proposed date of the special election.

If the proposed date of the special election coincides with the date of a regularly scheduled election, the notice shall be given no later than five p.m. on the last day on which nomination papers may be filed for the regularly scheduled election. Otherwise, the notice shall be given at least thirty-two days in advance of the date of the proposed special election. Upon receiving the notice, the commissioner shall promptly give written approval of the proposed date unless it appears that the special election, if held on that date, would conflict with a regular election or with another special election previously scheduled for that date.

A public measure shall not be withdrawn from the ballot at any election if the public measure was placed on the ballot by a petition, or if the election is a special election called specifically for the purpose of deciding one or more public measures for a single political subdivision. However, a public measure which was submitted to the county commissioner of elections by the governing body of a political subdivision may be withdrawn by the governing body which submitted the public measure if the public measure was to be placed on the ballot of a regularly scheduled election. The notice of withdrawal must be made by resolution of the governing body and must be filed with the commissioner no later than the last day upon which a candidate may withdraw from the ballot.

2. For the purpose of this section, a conflict between two elections exists only when one of the elections would require use of precinct boundaries which differ from those to be used for the other election, or when some but not all of the qualified electors of any precinct would be entitled to vote in one of the elections and all of the qualified electors of the same pre-

cinct would be entitled to vote in the other election. Nothing in this subsection shall deny a commissioner discretionary authority to approve holding a special election on the same date as another election, even though the two elections may be defined as being in conflict, if the commissioner concludes that to do so will cause no undue difficulties.

93 Acts, ch 143, §10  
Subsection 1, NEW unnumbered paragraph 3

#### **47.8 Voter registration commission — composition — duties.**

1. There is established a state voter registration commission which shall meet at least quarterly to make and review policy, adopt rules, and establish procedures to be followed by the registrar in discharging the duties of that office. The commission shall consist of the state commissioner of elections or the state commissioner's designee and the state chairpersons of the two political parties whose candidates for president of the United States or governor, as the case may be, received the greatest and next greatest number of votes in the most recent general election, or their respective designees, who shall serve without additional salary or reimbursement.

2. The registration commission shall prescribe the forms required for voter registration by rules promulgated pursuant to chapter 17A.

3. The registrar shall provide staff services to the commission and shall make available to it all information relative to the activities of the registrar's office in connection with the registration of voters in this state which may be requested by any commission member. The commission may authorize the registrar to employ such additional staff personnel as it deems necessary to permit the duties of the registrar's office to be adequately and promptly discharged. Such personnel shall be employed pursuant to chapter 19A.

4. The registration commission shall annually adopt a set of standard charges to be made for the services the registrar is required to offer to the several commissioners, and for furnishing of voter registration records which are requested by persons other than the registrar, the state commissioner or any commissioner pursuant to section 48.5, subsection 2. These charges shall be sufficient to reimburse the state for the actual cost of furnishing such services or information, and shall be specified by unit wherever possible. The standard charges shall be adopted by the commission by January 15 of each calendar year.

93 Acts, ch 143, §11  
Subsection 1 amended

## CHAPTER 48

### PERMANENT REGISTRATION

#### 48.16 Penalties.

Any officer or employee, or any person who has contracted with a commissioner to perform services in the implementation of this chapter, who shall willfully fail to perform or enforce any of the provisions of this chapter, or who shall unlawfully or fraudulently remove any registration card or record from its proper compartment in the registration records, or who shall willfully destroy any record provided by this chapter, or any person who shall willfully or fraudulently register more than once, or register under any but the person's true name, or votes or attempts to vote by impersonating another who is registered, or who willfully or fraudulently registers in any election precinct where the person is not a resident at the time of registering, or who adds a name or names to a page or pages, or who violates any of the provisions of this chapter, shall be guilty of an aggravated misdemeanor. For the purposes of this section, the alteration or destruction of any machine readable compilation of voter registration records which has not been replaced by a more recent revision of the same record shall constitute destruction of a record provided by this chapter.

Any person designated by the commissioner, or by the registrant, to deliver the completed registration form, who willfully fails to deliver the registration form to the commissioner or the commissioner's designee, is guilty of a serious misdemeanor.

93 Acts, ch 143, §12  
NEW unnumbered paragraph 2

#### 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 state registrar of voters sends notification of an elector's conviction of a felony, as defined in section 701.7. The clerk of district court shall send notice of a felony conviction to the state registrar of voters. The registrar shall determine in which county the felon is registered to vote, if any. The registration shall be canceled where the felon is registered, even if it is not in the same county where the conviction was obtained.

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.

93 Acts, ch 143, §13  
Subsection 4 amended



## CHAPTER 49

### METHOD OF CONDUCTING ELECTIONS

#### 49.5 City precincts.

The council of a city where establishment of more than one precinct is necessary or deemed advisable shall at the time required by law, by ordinance definitely fixing the boundaries, divide the city into such number of election precincts as will best serve the convenience of the voters. As used in this section, the term "the convenience of the voters" refers to, but is not necessarily limited to, the use of precinct boundaries which can be readily described to and identified by voters and ease of access by voters to their respective precinct polling places by reasonably direct routes of travel. Before final adoption of any change in election precinct boundaries pursuant to this section or section 49.6, the council shall permit the commissioner not more than ten days time to offer comments on the proposed reprecincting.

1. Election precincts within the same city shall be so drawn that their total populations shall be reasonably equal on the basis of the most recent federal decennial census, but equality of population among precincts shall not take precedence over consideration of the convenience of voters as defined in this section. The boundaries of each precinct shall follow the boundaries of areas for which official population figures are available from the most recent federal decennial census, however, in cities for which block-by-block data from that census are not available and where all or some of the areas for which data from that census are available are not suitable for forming precincts, the city council may use other reliable and documented indicators of population distribution in forming precincts in the city or any portion of it.

2. Each city of over twenty-five thousand population shall enter into the necessary arrangements with the United States bureau of the census or its successor agency for the next succeeding federal decennial census to be taken in the city on a block-by-block basis. Any charge therefor imposed on the city by the federal government, which the city would not otherwise be liable to pay, may be reported to the state commissioner, who shall forward the report to the next regular session of the general assembly. The city shall preserve data on the composition and population of each area within its boundaries defined as a city block for the most recent federal decennial census. Precincts in the city shall to the greatest extent practicable follow the boundaries of such areas.

3. Cities using any form of city government authorized by law in which some or all members of the city council are elected from wards shall be apportioned into wards on the basis of population. The ward boundaries shall follow the boundaries of election precincts. However, a special charter city with a population of three thousand five hundred or less

which is divided into council wards may, for any election, direct the county commissioner of elections to consolidate two or more precincts.

93 Acts, ch 143, §14  
Subsection 3 amended

#### 49.10 Polling places for certain precincts.

1. Polling places for precincts outside the limits of a city, but within the township, or originally within and set off as a separate township from the township in which the city is in whole or in part situated, and a polling place for a township which entirely surrounds another township containing a city, may be fixed at some room or rooms in the courthouse or in some other building within the limits of the city as the commissioner may provide.

2. If the commissioner determines, or if a petition be filed with the commissioner ninety days before any primary, general or special election stating that there is no suitable or adequate polling place within a township constituting a voting precinct and that it is desirable and to the interest of the voters of that township voting precinct that a voting place be designated for it outside its territorial limits, the commissioner shall fix a polling place for that precinct, outside its territorial limits, which the commissioner deems convenient to the electors of the township precinct. A petition submitted under this subsection must be signed by eligible electors of the precinct exceeding in number one-half the total number of votes cast in the township precinct for the office of president of the United States or governor, as the case may be, at the last preceding general election. When the commissioner has fixed such a polling place it shall remain the polling place at all subsequent primary, general and special elections, until such time as the commissioner shall fix a different polling place for the precinct.

3. In any city in which precinct lines have been changed to comply with section 49.5, the commissioner may fix the polling place for any precinct outside the boundaries of the precinct if there is no building or facility within the precinct suitable and available for use as a polling place. In so doing, the commissioner shall fix the polling place at the point nearest the precinct which is suitable and available for use as a polling place and is reasonably accessible to voters of the precinct.

4. No single room or area of any building or facility shall be fixed as the polling place for more than one precinct unless there are separate entrances each clearly marked on the days on which elections are held as the entrance to the polling place of a particular precinct, and suitable arrangements are made within the room or area to prevent direct access from

the polling place of any precinct to the polling place of any other precinct. When the commissioner has fixed such a polling place for any precinct it shall remain the polling place at all subsequent elections, except elections for which the precinct is merged with another precinct as permitted by section 49.11, until the boundaries of the precinct are changed or the commissioner fixes a new polling place, except that the polling place shall be changed to a point within the boundaries of the precinct at any time not less than sixty days before the next succeeding election that a building or facility suitable for such use becomes available within the precinct.

5. If two or more contiguous townships have been combined into one election precinct by the board of supervisors, the commissioner shall provide a polling place which is convenient to all of the electors in the precinct.

93 Acts, ch 143, §15

Subsections 3 and 4 amended and renumbered as 3-5

#### **49.11 Notice of boundaries of precincts — merger or division.**

The board of supervisors or council shall number or name the several precincts established, and cause the boundaries of each to be recorded in the records of said board of supervisors or council, as the case may be, and publish notice thereof in some newspaper of general circulation, published in such county or city, once each week for three consecutive weeks, the last to be made at least thirty days before the next general election. The precincts thus established shall continue until changed in the manner provided by law, except that for any election other than the primary or general election or any special election held under section 69.14, the county commissioner of elections may:

1. Consolidate two or more precincts into one. However, the commissioner shall not do so if there is filed with the commissioner at least twenty days before the election a petition signed by twenty-five or more eligible electors of any precinct requesting that it not be merged with any other precinct. There shall be attached to the petition the affidavit of an eligible elector of the precinct that the signatures on the petition are genuine and that all of the signers are to the best of the affiant's knowledge and belief eligible electors of the precinct.

If a special election is to be held in which only those qualified electors residing in a specified portion of any established precinct are entitled to vote, that portion of the precinct may be merged by the commissioner with one or more other established precincts or portions of established precincts for the special election, and the right to petition against merger of a precinct shall not apply.

2. Divide any precinct permanently established under this section which contains all or any parts of two or more mutually exclusive political subdivisions, each of which is independently electing one or more officers on the same date, into two or more temporary precincts and designate a polling place for each.

3. Notwithstanding the provisions of the first unnumbered paragraph of this section the commissioner may consolidate precincts for any election including a primary and general election under either of the following circumstances:

a. One of the precincts involved consists entirely of dormitories that are closed at the time the election is held.

b. The consolidated precincts, if established as a permanent precinct, would meet all requirements of section 49.3, and a combined total of no more than three hundred fifty voters voted in the consolidated precincts at the last preceding similar election.

c. The city council of a special charter city with a population of three thousand five hundred or less which is divided into council wards requests the commissioner to consolidate two or more precincts for any election.

93 Acts, ch 143, §16

Subsection 3, NEW paragraph c

#### **49.51 Commissioner to control printing.**

The commissioner shall have charge of the printing of the ballots to be used for any election held in the county, unless the commissioner delegates that authority as permitted by this section. The commissioner may delegate this authority only to another commissioner who is responsible under section 47.2 for conducting the elections held for a political subdivision which lies in more than one county, and only with respect to printing of ballots containing only public questions or the names of candidates to be voted upon by the qualified electors of that political subdivision. Only one facsimile signature, that of the commissioner under whose direction the ballot is printed, shall appear on the ballot. It is the duty of the commissioner to insure that the arrangement of any ballots printed under the commissioner's direction conforms to all applicable requirements of this chapter.

A sample ballot of any election held in the county shall be forwarded as soon as available to the ethics and campaign disclosure board.

93 Acts, ch 163, §38

Unnumbered paragraph 2, name change applied

#### **49.53 Publication of ballot and notice.**

The commissioner shall not less than four nor more than twenty days before the day of each election, except those for which different publication requirements are prescribed by law, publish notice of the election. The notice shall contain a facsimile of the portion of the ballot containing the first rotation as prescribed by section 49.31, subsection 2, and shall show the names of all candidates or nominees and the office each seeks, and all public questions, to be voted upon at the election. The sample ballot published as a part of the notice may at the discretion of the commissioner be reduced in size relative to the actual ballot but such reduction shall not cause upper case letters appearing on the published sample ballot to be less than five thirty-sixths of an inch high in candidates' names or in summaries of public

measures. The notice shall also state the date of the election, the hours the polls will be open, the location of each polling place at which voting is to occur in the election, the location of the polling places designated as early ballot pick-up sites, and the names of the precincts voting at each polling place, but the statement need not set forth any fact which is apparent from the portion of the ballot appearing as a part of the same notice. The notice shall include the full text of all public measures to be voted upon at the election.

The notice shall be published in at least one newspaper, as defined in section 618.3, which is published in the county or other political subdivision in which the election is to occur or, if no newspaper is published there, in at least one newspaper of substantial circulation in the county or political subdivision. For the general election or the primary election the foregoing notice shall be published in at least two newspapers published in the county. However, if there is only one newspaper published in the county, publication in one newspaper shall be sufficient.

93 Acts, ch 143, §17  
 Unnumbered paragraph 1 amended

**49.73 Time of opening and closing polls.**

1. At all elections, except as otherwise permitted by this section, the polls shall be opened at seven o'clock a.m., or as soon thereafter as vacancies on the precinct election board have been filled. On the basis of voter turnout for recent similar elections and factors considered likely to so affect voter turnout for the forthcoming election as to justify shortened voting hours for that election, the commissioner may direct that the polls be opened at twelve o'clock noon for:

- a. Any school district election.
- b. Any election conducted for a city of three thousand five hundred or less population.
- c. Any election conducted for a city of more than three thousand five hundred population if there is no contest for any office on the ballot and no public question is being submitted to the voters at that election.

2. The commissioner shall not shorten voting hours for any election if there is filed in the commissioner's office, at least twenty-five days before the election, a petition signed by at least fifty eligible electors of the school district or city, as the case may be, requesting that the polls be opened not later than seven o'clock a.m. All polling places where the candidates of or any public question submitted by any one political subdivision are being voted upon shall be

opened at the same hour, except that this requirement shall not apply to merged areas established under chapter 260C. The hours at which the respective precinct polling places are to open shall not be changed after publication of the notice required by section 49.53. The polling places shall be closed at nine o'clock p.m. for state primary and general elections and other partisan elections, and for any other election held concurrently therewith, and at eight o'clock p.m. for all other elections.

Section not amended  
 Subsection 2, reference to transferred chapter corrected editorially

**49.107 Prohibited acts on election day.**

The following acts, except as specially authorized by law, are prohibited on any election day:

- 1. Loitering, congregating, electioneering, posting of signs, treating voters, or soliciting votes, during the receiving of the ballots, either on the premises of any polling place or within three hundred feet of any outside door of any building affording access to any room where the polls are held, or of any outside door of any building affording access to any hallway, corridor, stairway, or other means of reaching the room where the polls are held. This subsection shall not apply to the posting of signs on private property not a polling place, except that the placement of a sign on a motor vehicle, trailer, or semitrailer, or any attachment to a motor vehicle, trailer, or semitrailer parked on public property within three hundred feet of a polling place, which sign is more than ninety square inches in size, is prohibited.
- 2. Interrupting, hindering, or opposing any voter while in or approaching the polling place for the purpose of voting.
- 3. A voter allowing any person to see how the voter's ballot is marked.
- 4. A false statement by a voter as to the voter's ability to mark a ballot.
- 5. Interfering or attempting to interfere with a voter when inside the enclosed space, or when marking a ballot.
- 6. Endeavoring to induce a voter to show how the voter marks, or has marked a ballot.
- 7. Marking, or causing in any manner to be marked, on any ballot, any character for the purpose of identifying such ballot.
- 8. Serving as a member of a challenging committee or observer under section 49.104, subsection 2, 5, or 6, by a precinct election official serving at the polls or by an incumbent officeholder of, or a candidate for, an office being voted for at the election in progress.

93 Acts, ch 143, §18  
 Subsection 1 amended

## CHAPTER 49A

### CONSTITUTIONAL AMENDMENTS AND PUBLIC MEASURES

#### 49A.8 Canvass — declaration of result — record.

The judges of election, county boards of canvassers, and other election officials shall canvass the vote on any constitutional amendment or public measure, and make return thereof, in the same manner as required by law for the canvass and return of the vote for public officers. The board of state canvassers shall canvass such returns, declare the result, and

enter the same of record, immediately following and in connection with the proofs of publication of such amendment or measure, in the book kept for that purpose by the secretary of state.

Upon completion of the canvass, the secretary of state shall certify to the Iowa Code editor the results of the election.

93 Acts, ch 143, §19  
NEW unnumbered paragraph 2

## CHAPTER 50

### CANVASS OF VOTES

#### 50.9 Return of ballots not voted.

Ballots not voted, or spoiled by voters while attempting to vote, shall be returned by the precinct election officials to the commissioner, and a receipt taken for the ballots. The ballots shall be preserved for twenty-two months following elections for federal offices and for six months following elections for all other offices.

93 Acts, ch 143, §20  
Section amended

#### 50.16 Tally list of board.

The tally list shall be prepared in writing by the election board, giving, in legibly printed numerals, the total number of people who cast ballots in the precinct, the total number of ballots cast for each officer, except those rejected, the name of each person voted for, and the number of votes given to each person for each different office. The tally list shall be signed by the precinct election officials, and be substantially as follows:

At an election at ..... in ..... township, or in ..... precinct of ..... city or township, in ..... county, state of Iowa, on the ..... day of ..... A.D. ...., there were ..... ballots cast for the office of ..... of which

A ..... B ..... had ..... votes.  
C ..... D ..... had ..... votes.  
(and in the same manner for any other officer).

A true tally list:

L ..... M ..... Election Board  
N ..... O ..... Members.  
P ..... Q .....

Attest:

R ..... S ..... Designated  
T ..... U ..... Tally Keepers.

93 Acts, ch 143, §21  
Unnumbered paragraph 1 amended

#### 50.24 Canvass by board of supervisors.

The county board of supervisors shall meet to canvass the vote on the first Monday or Tuesday after the day of each election to which this chapter is applicable, unless the law authorizing the election specifies another date for the canvass. If that Monday or Tuesday is a public holiday, section 4.1, subsection 34 controls. Upon convening, the board shall open and canvass the tally lists and shall prepare abstracts stating, in words written at length, the number of votes cast in the county, or in that portion of the county in which the election was held, for each office and on each question on the ballot for the election. The board shall contact the chairperson of the special precinct board before adjourning and include in the canvass any absentee ballots which were received after the polls closed in accordance with section 53.17 and which were canvassed by the special precinct board after election day. The abstract shall further indicate the name of each person who received votes for each office on the ballot, and the number of votes each person named received for that office, and the number of votes for and against each question submitted to the voters at the election.

The board shall also prepare a certificate showing the total number of people who cast ballots in the election. For general elections and elections held pursuant to section 69.14, a copy of the certificate shall be forwarded to the state commissioner.

Any obvious clerical errors in the tally lists from the precincts shall be corrected by the supervisors. Complete records of any changes shall be recorded in the minutes of the canvass.

93 Acts, ch 143, §22  
NEW unnumbered paragraph 2

### 50.33 Forwarding of envelopes.

The envelopes, including the one addressed to the speaker, after being prepared, sealed, and endorsed as required by this chapter, shall be placed in one package and forwarded to the state commissioner.

93 Acts, ch 143, §23  
Section amended

### 50.48 General recount provisions.

1. The county board of canvassers shall order a recount of the votes cast for a particular office or nomination in one or more specified election precincts in that county if a written request therefor is made not later than five o'clock p.m. on the third day following the county board's canvass of the election in question. The request shall be filed with the commissioner of that county, or with the commissioner responsible for conducting the election if section 47.2, subsection 2 is applicable, and shall be signed by either of the following:

a. A candidate for that office or nomination whose name was printed on the ballot of the precinct or precincts where the recount is requested.

b. Any other person who receives votes for that particular office or nomination in the precinct or precincts where the recount is requested and who is legally qualified to seek and to hold the office in question.

Immediately upon receipt of a request for a recount, the commissioner shall send a copy of the request to the apparent winner by certified mail. The commissioner shall also attempt to contact the apparent winner by telephone. If the apparent winner cannot be reached within four days, the chairperson of the political party or organization which nominated the apparent winner shall be contacted and shall act on behalf of the apparent winner, if necessary. For candidates for state or federal offices, the chairperson of the state party shall be contacted. For candidates for county offices, the county chairperson of the party shall be contacted.

2. The candidate requesting a recount under this section shall post a bond, unless the abstracts prepared pursuant to section 50.24, or section 43.49 in the case of a primary election, indicate that the difference between the total number of votes cast for the apparent winner and the total number of votes cast for the candidate requesting the recount is less than the greater of fifty votes or one percent of the total number of votes cast for the office or nomination in question. Where votes cast for that office or nomination were canvassed in more than one county, the abstracts prepared by the county boards in all of those counties shall be totaled for purposes of this subsection. If a bond is required, it shall be filed with the state commissioner for recounts involving a state office, including a seat in the general assembly, or a seat in the United States Congress, and with the commissioner responsible for conducting the election in all other cases, and shall be in the following amount:

a. For an office filled by the electors of the entire state, one thousand dollars.

b. For United States representative, five hundred dollars.

c. For senator in the general assembly, three hundred dollars.

d. For representative in the general assembly, one hundred fifty dollars.

e. For an office filled by the electors of an entire county having a population of fifty thousand or more, two hundred dollars.

f. For any elective office to which paragraphs "a" to "e" of this subsection are not applicable, one hundred dollars.

After all recount proceedings for a particular office are completed and the official canvass of votes cast for that office is corrected or completed pursuant to subsections 5 and 6, if necessary, any bond posted under this subsection shall be returned to the candidate who requested the recount if the apparent winner before the recount is not the winner as shown by the corrected or completed canvass. In all other cases, the bond shall be deposited in the general fund of the state if filed with the state commissioner or in the election fund of the county with whose commissioner it was filed.

3. The recount shall be conducted by a board which shall consist of:

a. A designee of the candidate requesting the recount, who shall be named in the written request when it is filed.

b. A designee of the apparent winning candidate, who shall be named by that candidate at or before the time the board is required to convene.

c. A person chosen jointly by the members designated under paragraphs "a" and "b" of this subsection.

The commissioner shall convene the persons designated under paragraphs "a" and "b" of this subsection not later than nine o'clock a.m. on the seventh day following the county board's canvass of the election in question. If those two members cannot agree on the third member by eight o'clock a.m. on the ninth day following the canvass, they shall immediately so notify the chief judge of the judicial district in which the canvass is occurring, who shall appoint the third member not later than five o'clock p.m. on the eleventh day following the canvass.

4. When all members of the recount board have been selected, the board shall undertake and complete the required recount as expeditiously as reasonably possible. The commissioner or the commissioner's designee shall supervise the handling of ballots or voting machine documents to ensure that the ballots and other documents are protected from alteration or damage. The board shall open only the sealed ballot containers from the precincts specified in the request to be recounted. The board shall recount only the ballots which were voted and counted for the office in question. If an electronic tabulating system was used to count the ballots, the recount board may request the commissioner to retabulate the ballots using the electronic tabulating system. Any member of the recount board may at any time

during the recount proceedings extend the recount of votes cast for the office or nomination in question to any other precinct or precincts in the same county, or from which the returns were reported to the commissioner responsible for conducting the election, without the necessity of posting additional bond.

The ballots or voting machine documents shall be resealed by the recount board before adjournment and shall be preserved as required by section 50.12. At the conclusion of the recount, the recount board shall make and file with the commissioner a written report of its findings, which shall be signed by at least two members of the recount board. The recount board shall complete the recount and file its report not later than the eighteenth day following the county board's canvass of the election in question.

5. If the recount board's report is that the abstracts prepared pursuant to the county board's canvass were incorrect as to the number of votes cast for the candidates for the office or nomination in question, in that county or district, the commissioner shall at once so notify the county board. The county board shall reconvene within three days after being so notified, and shall correct its previous proceedings.

6. The commissioner shall promptly notify the state commissioner of any recount of votes for an office to which section 50.30 or section 43.60 in the case of a primary election, is applicable. If necessary, the state canvass required by section 50.38, or by section 43.63, as the case may be, shall be delayed with respect to the office or the nomination to which the recount pertains. The commissioner shall subsequently inform the state commissioner at the earliest possible time whether any change in the outcome of the election in that county or district resulted from the recount.

7. If the election is an election held by a city which is not the final election for the office in question, the recount shall progress according to the times provided by this subsection. If this subsection applies the canvass shall be held by the second day after the election, the request for a recount must be made by the third day after the election, the board shall convene to conduct the recount by the sixth day after the election, and the report shall be filed by the eleventh day after the election.

93 Acts, ch 143, §24, 25  
Subsection 1, NEW unnumbered paragraph 2  
Subsection 4 amended

## CHAPTER 52

### ALTERNATIVE VOTING SYSTEMS

#### 52.23 Written statements of election — other papers.

After the total vote for each candidate has been ascertained, and before leaving the room or voting place, the precinct election officials shall make and sign the canvass forms referred to in section 52.21, which canvass shall serve as a written statement of election. Said canvass statement shall be in lieu of the tally list required in section 50.16.

The inspection sheets from each machine used in the election and one copy of the printed results from each machine shall be signed by all precinct election officials and, with any paper or papers upon which write-in votes were recorded by voters, shall be securely sealed in an envelope marked with the name and date of the election, the precinct, and the serial numbers of the machines from which the enclosed results were removed. This envelope shall be preserved, unopened, for twenty-two months following elections for federal offices and for six months following elections for all other offices unless a recount is requested pursuant to section 50.48 or an election contest is pending. The envelope shall be destroyed in the same manner as ballots pursuant to section 50.13. Additional copies of the results, if any, shall

be delivered to the commissioner with the other supplies from the election pursuant to section 50.17.

93 Acts, ch 143, §26  
Unnumbered paragraph 2 amended

#### 52.32 Procedure upon closing polls.

The provisions of this section apply, in lieu of sections 50.1 to 50.12, to any precinct for those elections at which voting is conducted by means of an electronic voting system and the ballots are to be counted at a counting center.

1. At the time for closing the polls, or as soon thereafter as all persons entitled under section 49.74 to do so have cast their votes, the precinct election officials in each precinct where an electronic voting system or an electronic tabulating system is in use shall secure the system against further voting. The precinct election officials shall certify the number of declarations of eligibility signed as required by section 49.77, and record that number on the tally sheet with the number of special, unused, spoiled, and unvoted ballots cast, with each number recorded separately. The numbers shall be used to determine whether the number of ballots cast as recorded in the electronic precinct reports varies from the number

of declarations of eligibility. If so, that fact shall be reported in writing to the commissioner by the counting center officials, together with the number of ballots varying from the number of declarations of eligibility and the reason for the variance, if known.

2. The precinct election officials shall affix a seal upon the ballot container. The precinct election officials shall then each affix their signatures to a statement attesting that the requirements of this section have been met and the time the ballot container is removed from the precinct polling location for delivery to the counting center pursuant to section 52.37. The statement shall be returned to the commissioner at the counting center with the ballot container and shall accompany the ballots through the counting process.

93 Acts, ch 143, §27  
Subsection 2 amended

### **52.36 Commissioner in charge of counting center — appointment of resolution board.**

All proceedings at the counting center shall be under the direction of the commissioner and open to the public. The proceedings shall be under the observation of at least one member of each of the political parties referred to in section 49.13, designated by the county chairperson or, if the chairperson fails to make a designation, by the commissioner. No person except those employed and authorized by the commissioner for the purpose shall touch any ballot or ballot container.

The commissioner shall appoint from the lists provided by the county political party chairpersons a resolution board to tabulate write-in votes and to decide questions regarding damaged, defective, or other ballots which cannot be tabulated by machine. The commissioner shall appoint as many people to the resolution board as the commissioner believes are necessary. The resolution board shall be divided into three-person teams. Each team shall consist of no more than two people who are members of the same political party.

93 Acts, ch 143, §28  
NEW unnumbered paragraph 2

### **52.37 Counting center tabulation procedure.**

The tabulation of ballots cast by means of an electronic voting system, at a counting center established pursuant to this chapter, shall be conducted as follows:

1. The sealed ballot container from each precinct shall be delivered to the counting center by two of the election officials of that precinct, not members of the same political party, who shall travel together in the same vehicle and shall have the container under their immediate joint control until they surrender it to the commissioner or the commissioner's designee in charge of the counting center. The commissioner or designee shall, in the presence of the two precinct election officials who delivered the container, enter on a record kept for the purpose that the container was received, the time the container was received, and the condition of the seal upon receipt.

2. After the record required by subsection 1 has been made, the ballot container shall be opened. If any ballot is found damaged or defective, so that it cannot be counted properly by the automatic tabulating equipment, a true duplicate shall be made by the resolution board team and substituted for the damaged or defective ballot, or, as an alternative, the valid votes on a defective ballot may be manually counted at the counting center by the resolution board, whichever method is best suited to the system being used. All duplicate ballots shall be clearly labeled as such, and shall bear a serial number which shall also be recorded on the damaged or defective ballot.

The resolution board shall also tabulate any write-in votes which were cast. Write-in votes cast for a candidate whose name appears on the ballot for the same office shall be counted as a vote for the candidate indicated, if the vote is otherwise properly cast. Ballots which are rejected by the tabulating equipment as blank because they have been marked with an unreadable marker shall be duplicated or tabulated as required by this subsection for damaged or defective ballots.

3. The record printed by the automatic tabulating equipment, with the addition of a record of any write-in or other votes manually counted pursuant to this chapter, shall constitute the official return of the precinct. Upon completion of the tabulation of the votes from each individual precinct, the result shall be announced and reported in substantially the manner required by section 50.11.

4. If for any reason it becomes impracticable to count all or any part of the ballots with the automatic tabulation equipment, the commissioner may direct that they be counted manually, in accordance with chapter 50 so far as applicable.

93 Acts, ch 143, §29  
Subsection 2 amended

### **52.39 Reserved.**

### **52.40 Early pick-up sites established — procedure.**

1. In counties where counting centers have been established under section 52.34, the commissioner may, for general elections only, designate certain polling places as early ballot pick-up sites. At these sites, between the hours of one p.m. and four p.m. on the day of the election, early pick-up officers shall receive the sealed ballot container containing the ballots which have been voted throughout the day along with a signed statement of the precinct attesting to the number of declarations of eligibility signed up to that time, excluding those declarations signed by voters who have not yet placed their ballots in the ballot container. The officers shall replace the ballot container containing the voted ballots with an empty ballot container, to be sealed in the presence of a precinct election official.

2. Early pick-up officers shall be appointed in two-person teams, one from each of the political parties referred to in section 49.13, who shall be ap-

pointed by the commissioner from the election board panel drawn up as provided by section 49.15. The early pick-up officers shall be sworn in the manner provided by section 49.75 for election board members, and shall receive compensation as provided in section 49.20.

3. Each two-person team of early pick-up officers shall travel together in the same vehicle and shall have the container under their immediate joint control until they surrender it to the commissioner or the commissioner's designee. If persons designated as early pick-up officers fail to appear at the time the duties set forth in this section are to be performed, the commissioner shall at once appoint some other person or persons, giving preference to persons designated by the respective county chairpersons of the political parties described in section 49.13, to carry out the requirements of this section.

4. The tabulation of ballots received from early pick-up sites shall be conducted at the counting center during the hours the polls are open, in the manner provided in sections 52.36 and 52.37, except that the room in which the ballots are being counted shall

not be open to the public during the hours in which the polls are open and the room shall be policed so as to prevent any person other than those whose presence is authorized by this section and sections 52.36 and 52.37 from obtaining information about the progress of the count. The only persons who may be admitted to that room, as long as admission does not impede the progress of the count, are the members of the board, one challenger representing each political party, one observer representing any non-party political organization or any candidate nominated by petition pursuant to chapter 45, and the commissioner or the commissioner's designee. No compilation of vote subtotals shall be made while the polls are open. Any person who makes a compilation of vote subtotals before the polls are closed commits a simple misdemeanor. It shall be unlawful for any person to communicate or attempt to communicate, directly or indirectly, information regarding the progress of the count at any time before the polls are closed.

93 Acts, ch 143, §30  
NEW section

## CHAPTER 53

### ABSENT VOTERS

#### 53.1 Right to vote — conditions.

Any qualified elector may, subject to the provisions of this chapter, vote at any election:

1. When the elector expects to be absent on election day during the time the polls are open from the precinct in which the elector is a qualified elector.

2. When, through illness or physical disability, the elector expects to be prevented from going to the polls and voting on election day.

3. When the elector expects to be unable to go to the polls and vote on election day.

A person who has been designated to have power of attorney by a qualified elector does not have authority to request or to cast an absentee ballot on behalf of the qualified elector.

93 Acts, ch 143, §31  
NEW unnumbered paragraph 2

#### 53.11 Personal delivery of absentee ballot — satellite absentee voting stations.

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.

Satellite absentee voting stations shall be established throughout the cities and county at the direction of the commissioner or upon receipt of a petition signed by not less than one hundred eligible electors requesting that a satellite absentee voting station be established at a location to be described on the petition. A petition requesting a satellite absentee voting station must be filed no later than five p.m. on the eleventh day before the election. A satellite absentee voting station established by petition must be open at least one day from eight a.m. until five p.m. A satellite absentee voting station established at the direction of the commissioner or by petition may remain open until five p.m. on the day before the election.

93 Acts, ch 143, §32  
NEW unnumbered paragraph 2

#### 53.21 Replacement of lost or spoiled absentee ballots.

A voter who has requested an absentee ballot may obtain a replacement ballot if the voter declares that



the original ballot was lost or did not arrive. The commissioner upon receipt of a written or oral request for a replacement ballot shall provide a duplicate ballot. The same serial number that was assigned to the records of the original absentee ballot request shall be used on the envelopes and records of the replacement ballot.

The commissioner shall include with the replacement ballot two copies of a statement in substantiality the following form:

The absentee ballot which I requested on .....  
.....(date) has been lost or was never received.  
If I find this absentee ballot I will return it, unvoted,  
to the commissioner.

.....  
(Signature of voter)  
.....  
(Date)

The voter shall enclose one copy of the above statement in the return carrier envelope with the ballot envelope and retain a copy for the voter's records.

A voter who spoils an absentee ballot may return it to the commissioner. The outside of the return envelope shall be marked "SPOILED BALLOT". The commissioner shall replace the ballot in the manner provided in this section for lost ballots.

An absentee ballot returned to the commissioner without a designation that the ballot was spoiled shall not be replaced.

93 Acts, ch 143, §33  
NEW unnumbered paragraphs at end of section

**53.22 Balloting by confined persons.**

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

If materials are prepared for the two special precinct election officials, a list shall be made of all electors to whom ballots are to be delivered. The list shall be sent with the officials who deliver the ballots and shall include spaces to indicate whether the person was present at the hospital or health care facility when the officials arrived, whether the person requested assistance from the officials, whether the

person was assisted by another person of the elector's choice, the time that the ballot was returned to the officials, and any other notes the officials deem necessary.

The officials shall also be issued a supply of extra ballots to replace spoiled ballots. Receipts shall be issued in substantially the same form as receipts issued to precinct election officials pursuant to section 49.65. All ballots shall be accounted for and shall be returned to the commissioner. Separate envelopes shall be provided for the return of spoiled ballots and unused ballots.

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

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

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

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

4. The commissioner shall mail an absentee ballot to a qualified elector who has applied for an absentee ballot and who is a patient or resident of a hospital or health care facility outside the county in which the elector is qualified to vote.

5. If the qualified elector becomes a patient or resident of a hospital or health care facility outside the county where the elector is registered to vote within three days before the date of any election, the elector may designate a person to deliver and return the absentee ballot. The designee may be any person the elector chooses except that no candidate for any office to be voted upon for the election for which the ballot is requested may deliver a ballot under this subsection. The request for an absentee ballot may be made by telephone to the office of the commissioner not later than four hours before the close of the polls. If the requester is found to be a qualified elector of that county, the ballot shall be delivered by mail or by the person designated by the elector. An application form shall be included with the absentee ballot and shall be signed by the voter and returned with the ballot.

Absentee ballots voted under this subsection shall be delivered to the commissioner no later than the time the polls are closed on election day. If the ballot is returned by mail the carrier envelope must be clearly postmarked by an officially authorized postal service not later than the day before the election and received by the commissioner no later than the time established for the canvass by the board of supervisors for that election.

93 Acts, ch 143, §34

Subsection 1, paragraph a, NEW unnumbered paragraphs 2 and 3

### 53.31 Challenges.

Any person qualified to vote at the election in

progress may challenge the qualifications of a person casting an absentee ballot by submitting a written challenge to the commissioner no later than five p.m. on the day before the election. It is the duty of the special precinct officials to challenge the absentee ballot of any person whom the official knows or suspects is not duly qualified. Challenges by members of the special precinct election board or observers present pursuant to section 53.23 may be made at any time before the close of the polls on election day. The challenge shall state the reasons for which the challenge is being submitted and shall be signed by the challenger. When a challenge is received the absentee ballot shall be set aside for consideration by the special precinct election board when it meets as required by section 50.22.

The commissioner shall immediately send a written notice to the elector whose qualifications have been challenged. The notice shall be sent to the address at which the challenged elector is registered to vote. If the ballot was mailed to the challenged elector, the notice shall also be sent to the address to which the ballot was mailed if it is different from the elector's registration address. The notice shall advise the elector of the reason for the challenge, the date and time that the special precinct election board will reconvene to determine challenges, and that the elector has the right to submit written evidence of the elector's qualifications. The notice shall include the telephone number of the commissioner's office. If the commissioner has access to a facsimile machine, the notice shall include the telephone number of the facsimile machine. As far as possible, other procedures for considering special ballots shall be followed.

93 Acts, ch 143, §35

Section stricken and rewritten

### 53.35A Failure to return ballot — penalty.

Any person designated by the commissioner, or by the elector casting the absentee ballot, to deliver the sealed envelope containing the absentee ballot, who willfully fails to return the ballot to the commissioner or the commissioner's designee, is guilty of a serious misdemeanor.

93 Acts, ch 143, §36

NEW section

## CHAPTER 56

### CAMPAIGN FINANCE

See also §68B 32 et seq for establishment and duties of ethics and campaign disclosure board which replaced campaign finance disclosure commission

#### 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.

1A. *“Board”* means the Iowa ethics and campaign disclosure board established under section 68B.32.

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 and shall also include any judge standing for retention in a judicial election.

4. *“Candidate’s committee”* means the committee designated by the candidate for a state, county, city, or school office to receive contributions in excess of five hundred dollars in the aggregate, expend funds in excess of five hundred dollars in the aggregate, or incur indebtedness on behalf of the candidate in excess of five hundred dollars in the aggregate in any calendar year.

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 associa-

tion. *“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 adopted by the board 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 in excess of two hundred fifty dollars in the aggregate, makes expenditures in excess of two hundred fifty dollars in the aggregate, or incurs indebtedness in excess of two hundred fifty dollars in the aggregate 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 in excess of two hundred fifty dollars in the aggregate, makes expenditures in excess of two

hundred fifty dollars in the aggregate, or incurs indebtedness in excess of two hundred fifty dollars in the aggregate 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. “*Political purpose*” or “*political purposes*” means the support or opposition of a candidate or ballot issue.

17. “*Public office*” means any state, county, city, or school office filled by election.

18. “*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.

19. “*State statutory political committee*” means a committee as defined in section 43.111.

93 Acts, ch 142, §1-3, 93 Acts, ch 163, §28-30, 38

\*Section 56.9 was repealed in 1993 and the ethics and campaign disclosure board replaced the commission, see subsection 1A and §68B.32, 93 Acts, ch 163, §36, 38, corrective legislation is pending

See Code editor's note to §6A.10

NEW subsection 1A and name change applied

Subsections 4, 11, and 15 amended

NEW subsection 16 and former subsections 16-18 renumbered as 17-19

### 56.3 Committee treasurer — duties.

1. Every committee shall appoint a treasurer who shall be an Iowa resident who has reached the age of majority. 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. An individual who receives contributions for a committee without the prior authorization of the chairperson of the committee or the candidate shall be responsible for either rendering the contributions to the treasurer within fifteen days of the date of receipt of the contributions, or depositing the contributions in the account maintained by the committee within seven days of the date of receipt of the contributions. 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 located in Iowa. 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 and candidate in the case of a candidate's committee, and the treasurer and chairperson in the case of a political committee, shall preserve all records required to be kept by this section for a period of three years from the date of the election in which the committee is involved, or the certified date of dissolution of the committee, whichever is applicable.

93 Acts, ch 142, §4

Subsections 1, 2, and 4 amended

### 56.4 Reports filed with board.

All statements and reports required to be filed under this chapter for a state office shall be filed with the board. All statements and reports required to be filed under this chapter for a county, city, or school office shall be filed with the commissioner. Statements and reports on a ballot issue shall be filed with the commissioner responsible under section 47.2 for conducting the election at which the issue is voted upon, except that statements and reports on a statewide ballot issue shall be filed with the board. Copies of any reports filed with a commissioner shall be provided by the commissioner to the board on its request. State statutory political committees shall file all statements and reports with the board. All other statutory political committees shall file the statements and reports with the commissioner with a copy sent to the board.

Political committees supporting or opposing candidates for both federal office and any elected office

created by law or the Constitution of the state of Iowa shall file statements and reports with the board in addition to any federal reports required to be filed with the secretary of state.

Political committees supporting or opposing candidates or ballot issues for statewide elections and for county, municipal or school elections may file all activity on one report with the board and shall send a copy to the commissioner responsible under section 47.2 for conducting the election.

93 Acts, ch 163, §33  
Name change applied

### **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. If, however, the committee is supporting several candidates who are not identified by name or are not of the same political affiliation, the committee may provide a statement of purpose in lieu of candidate names or political party affiliation.

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 and the candidate, in the case of a candidate's committee, or by the treasurer of the committee and the chairperson, in the case of a political committee, which shall verify that they are aware of the requirement to file disclosure reports if the committee, the committee officers, the candidate, or both the committee officers and the candidate receive contributions in excess of five hundred dollars in the aggregate, make expenditures in excess of five hundred dollars in the aggregate, or incur indebtedness in excess of five hundred dollars in the aggregate in a calendar year for the purpose of supporting or opposing any candidate for public office. In the case of statements relating to ballot issues, a two hundred fifty dollar aggregate threshold level shall apply instead of the five hundred dollar threshold level.

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 board 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 board not more than ten days after the last day for filing nomination papers.

5. A committee or organization 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 board. A committee or organization 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 board pursuant to this chapter, shall appoint an eligible Iowa elector as committee or organization treasurer, and shall maintain an account in a financial institution located in Iowa. 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 board 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 board. 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, address, and signature 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.

93 Acts, ch 142, §5, 93 Acts, ch 163, §31, 38  
See Code editor's note to §6A 10  
Subsection 2, paragraphs c and f amended  
Subsections 3 and 5 amended  
Subsection 4, name change applied

### **56.5A Candidate's committee.**

Each candidate for federal, state, county, city, or school office shall organize one, and only one, candidate's committee for a specific office sought when the candidate receives contributions in excess of five hundred dollars in the aggregate, makes expenditures in excess of five hundred dollars in the aggregate, or incurs indebtedness in excess of two hundred fifty dollars\* in the aggregate in a calendar year.

93 Acts, ch 142, §6

\*Five hundred dollars probably intended, corrective legislation is pending  
Section amended

### **56.6 Disclosure reports.**

1. a. Each treasurer of a committee shall file with the board 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 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.

d. 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.

e. 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 board 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 board 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 board or the commissioner within thirty days following such dissolution by filing a dissolution report on forms prescribed by the board. 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 fundraising event. Contributions and sales at fundraising 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 designated 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 subsection 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 board.

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 board. 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.

**56.9 Campaign finance disclosure commission — created.** Repealed by 93 Acts, ch 163, § 36. See § 68B.32.

**56.10 Duties of commission.** Repealed by 93 Acts, ch 163, § 36. See § 68B.32A.

See Code editor's note to §6A 10

**56.11 Complaints — procedure.** Repealed by 93 Acts, ch 142, § 13 and 93 Acts, ch 163, § 36. See § 68B.32B through 68B.32D.

**56.12A Use of public moneys for political purposes.**

The state and 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 officials or employees of the state or of officials or employees of a governing body of a county, city, or other political subdivision of the state. This section also shall not be construed to prohibit the state or a governing body of a political subdivision of the state from expressing an opinion on a ballot issue through the passage of a resolution or proclamation.

93 Acts, ch 142, § 8  
Section amended

**56.13 Action of committee imputed to candidate.**

Action involving a contribution or expenditure which must be reported under this chapter and which is taken by any person, candidate's committee or political committee on behalf of a candidate, if known and approved by the candidate, shall be deemed action by the candidate and reported by the candidate's committee. It shall be presumed that a candidate approves the action if the candidate had knowledge of it and failed to file a statement of disavowal with the commissioner or board and take corrective action within seventy-two hours of the action. A person, candidate's committee or political committee taking such action independently of that candidate's committee shall notify that candidate's committee in writing within twenty-four hours of taking the action. The notification shall provide that candidate's committee with the cost of the promotion at fair market value. A copy of the notification shall be sent to the board.

Any person who makes expenditures or incurs indebtedness, other than incidental expenses incurred in performing volunteer work, in support or opposition of a candidate for public office shall notify the appropriate committee and provide necessary information for disclosure reports.

However, this section shall not be construed to require duplicate reporting of anything reported under this chapter, by a political committee, or of action by any person which does not constitute a contribution.

93 Acts, ch 163, § 33  
Name change applied

**56.15 Financial institution, insurance company, and corporation restrictions.**

1. Except as provided in subsections 3 and 4, it is unlawful for an insurance company, savings and loan association, bank, credit union, or corporation organized pursuant to the laws of this state or any other state, territory, or foreign country, whether for profit or not, or an officer, agent or representative acting for such insurance company, savings and loan association, bank, credit union, or corporation, to contribute any money, property, labor, or thing of value, directly or indirectly, to a committee, or for the purpose of influencing the vote of an elector, except that such resources may be so expended in connection with a utility franchise election held pursuant to section 364.2, subsection 4, or a ballot issue. All such expenditures are subject to the disclosure requirements of this chapter.

2. Except as provided in subsection 3, it is unlawful for a member of a committee, or its employee or representative, except a ballot issue committee, or for a candidate for office or the representative of the candidate, to solicit, request, or knowingly receive from an insurance company, savings and loan association, bank, credit union, or corporation organized pursuant to the laws of this state or any other state, territory, or foreign country, whether for profit or not, or its officer, agent, or representative, any money, property, or thing of value belonging to the insurance company, savings and loan association, bank, or corporation for campaign expenses, or for the purpose of influencing the vote of an elector. This section does not restrain or abridge the freedom of the press or prohibit the consideration and discussion in the press of candidacies, nominations, public officers, or public questions.

3. It is lawful for an insurance company, savings and loan association, bank, credit union, and corporation organized pursuant to the laws of this state or any other state or territory, whether or not for profit, and for their officers, agents and representatives, to use the money, property, labor, or any other thing of value of the entity for the purposes of soliciting its stockholders, administrative officers and members for contributions to a committee sponsored by that entity and of financing the administration of a committee sponsored by that entity. The entity's employees to whom the foregoing authority does not extend may voluntarily contribute to such a committee but shall not be solicited for contributions. All contributions made under this subsection are subject to the disclosure requirements of this chapter. A committee member, committee employee, committee representative, candidate or representative referred to in subsection 2 lawfully may solicit, request, and receive money, property and other things of value from a committee sponsored by an insurance company, savings and loan association, bank, credit union, or corporation as permitted by this subsection.

4. The restrictions imposed by this section relative to making, soliciting or receiving contributions shall not apply to a nonprofit corporation or organi-



zation which uses those contributions to encourage registration of voters and participation in the political process, or to publicize public issues, or both, but does not use any part of those contributions to endorse or oppose any candidate for public office. A nonprofit corporation or organization may use contributions solicited or received to support or oppose ballot issues but the expenditures shall be disclosed by the nonprofit corporation or organization in the manner provided for a permanent organization temporarily engaged in a political activity under section 56.6.

5. Any person convicted of a violation of any of the provisions of this section shall be guilty of a serious misdemeanor.

93 Acts, ch 142, §9  
Subsections 1 and 4 amended

**56.15A Prohibiting contributions during the legislative session.**

A lobbyist or political committee, other than a state statutory political committee, county statutory political committee, or a national political party, shall not contribute to, act as an agent or intermediary for contributions to, or arrange for the making of monetary or in-kind contributions to the campaign of an elected state official, member of the general assembly, or candidate for state office on any day during the regular legislative session and, in the case of the governor or a gubernatorial candidate, during the thirty days following the adjournment of a regular legislative session allowed for the signing of bills. This section shall not apply to the receipt of contributions by an elected state official, member of the general assembly, or other state official who has taken affirmative action to seek nomination or election to a federal elective office.

This section shall not apply to a candidate for state office who filed nomination papers for an office for which a special election is called or held during the regular legislative session, if the candidate receives the contribution at any time during the period commencing on the date on which at least two candidates have been nominated for the office and ending on the date on which the election is held. A person who is an elected state official shall not, however, solicit contributions during a legislative session from any lobbyist or political committee, other than a state statutory political committee, county statutory political committee, or a national political party, for another candidate for a state office for which a special election is held.

93 Acts, ch 129, §1  
Section amended

**56.20 Rules promulgated.**

The director of revenue and finance, in cooperation with the director of the department of management and the ethics and campaign disclosure board, shall administer the provisions of sections 56.18 to 56.26 and they shall promulgate all necessary rules in accordance with chapter 17A.

93 Acts, ch 163, §33  
Name change applied

**56.23 Funds — campaign expenses only.**

The chairperson of the state statutory political committee shall produce evidence to the director of revenue and finance and the ethics and campaign disclosure board not later than the twenty-fifth day of January each year, that all income tax checkoff funds expended for campaign expenses have been utilized exclusively for campaign expenses.

The ethics and campaign disclosure board shall issue, prior to the payment of any money, guidelines which explain which expenses and evidence thereof qualify as acceptable campaign expenses.

Should the ethics and campaign disclosure board and the director of revenue and finance determine that any part of the funds have been used for non-campaign or improper expenses, they may order the political party or the candidate to return all or any part of the total funds paid to that political party for that election. When such funds are returned, they shall be deposited in the general fund of the state.

93 Acts, ch 163, §33  
Name change applied

**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. A candidate’s committee shall not accept contributions from any other candidate’s committee including candidate’s committees from other states or for federal office, unless the candidate for whom each committee is established is the same person. For purposes of this section, “*contributions*” does not mean travel costs incurred by a candidate in attending a campaign event of another candidate. This section shall not be construed to prohibit a candidate or candidate’s committee from using campaign funds or accepting contributions for tickets to meals if the candidate attends solely for the purpose of enhancing the person’s candidacy or the candidacy of another person.

93 Acts, ch 142, §10  
Section amended

**56.41 Uses of campaign funds.**

1. A candidate and the candidate’s committee shall use campaign funds only for campaign purposes, educational and other expenses associated with the duties of office, or constituency services, and shall not use campaign funds for personal expenses or personal benefit.

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.

3. The board shall adopt rules which list items that represent proper campaign expenses.

93 Acts, ch 142, §11, 93 Acts, ch 163, §38  
Subsection 1 amended  
Subsection 3, name change applied

#### 56.42 Transfer of campaign funds.

1. In addition to the uses permitted under section 56.41, a candidate's committee may only 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.

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.

e. Contributions to another candidate's committee when the candidate for whom both committees are formed is the same person.

2. If an unexpended balance of campaign funds

remains when a 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, candidate's committee, or any other person shall not directly or indirectly receive or transfer campaign funds with the intent of circumventing the requirements of this section. A candidate for statewide or legislative office shall not establish, direct, or maintain a political committee.

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 board shall notify candidates of the prohibition of such transfers and contributions under this subsection.

93 Acts, ch 163, §34, 38  
Subsection 1, NEW paragraph e  
Subsection 6, name change applied

#### 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 board. 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.

93 Acts, ch 163, §38  
Subsection 2, name change applied

## CHAPTER 59

### CONTESTING ELECTIONS FOR SEATS IN THE GENERAL ASSEMBLY

#### 59.1 Statement served.

The contestant for a seat in either branch of the general assembly shall, prior to twenty days before the first day of the next session, serve on the incumbent in the manner provided by the rules of civil procedure for service of an original notice a statement of notice of contest which shall allege a fact or facts, believed true by the contestant which, if true, would alter the outcome of the election.

A copy of the statement of notice of contest shall be filed with the secretary of state within five days

of service of the notice upon the incumbent. The secretary of state shall notify the presiding officer of the house in which the contest will be tried.

93 Acts, ch 143, §37  
NEW unnumbered paragraph 2

#### 59.7 Notice of result.

The presiding officer of the house in which the contest was tried shall certify to the secretary of state the results of the contest.

93 Acts, ch 143, §38  
NEW section

## CHAPTER 62

### CONTESTING ELECTIONS OF COUNTY OFFICERS

#### 62.7 When auditor is party.

When the auditor is a party, the county treasurer shall receive such statement and approve such bond.

93 Acts, ch 70, §1  
Section amended

#### 62.11 Subpoenas.

Subpoenas for witnesses may be issued at any time after the notice of trial is served, either by the county treasurer or by the county auditor, and shall command the witnesses to appear at ....., on ....., to testify in relation to a contested election, wherein A ..... B ..... is contestant and C ..... D ..... is incumbent.

93 Acts, ch 70, §2  
Section amended

#### 62.23 Compensation.

The judges shall be entitled to receive one hundred dollars a day for the time occupied by the trial.

93 Acts, ch 143, §39  
Section amended

#### 62.24 Costs.

The contestant and the incumbent are responsible for the expenses of the witnesses called by them, respectively. If the results of the election are upheld by the contest, if the statement is dismissed, or if the prosecution fails, the costs of the contest shall be paid by the contestant. If the court or tribunal trying the contest determines that the contestant won the election, or if the election is set aside, the costs of the contest shall be paid by the county.

93 Acts, ch 143, §40  
Section stricken and rewritten

## CHAPTER 64

### OFFICIAL AND PRIVATE BONDS

#### 64.19 Approval of bonds.

Bonds shall be approved:

1. By the governor, in case of state and district officers, elective or appointive.
2. By the board of supervisors, in case of county officers, township clerks, and assessors.
3. By a judge of the district court for the county in question, in case of members of the board of supervisors.
4. By the township clerk, in case of other township officers.
5. By the council, or as provided by ordinance in case of city officers.
6. By the state court administrator in case of district court clerks and first deputy clerks.

93 Acts, ch 70, §3  
Subsection 3 amended

#### 64.23 Custody of bond.

The bonds and official oaths of public officers shall, after approval and proper record, be filed:

1. For all state officers, elective or appointive, except those of the secretary of state and judicial magistrates, with the secretary of state. Bonds and official oaths of judicial magistrates and court personnel shall be filed in the office of the state court administrator.
2. For the secretary of state, with the state auditor.
3. For county and township officers, except those of the county auditor, with the county auditor.
4. For county auditor, with the county treasurer.
5. For members of the board of supervisors, with the county auditor.
6. For officers of cities, and officers not otherwise provided for, in the office of the officer or clerk of the body approving the bond, or in cities, as otherwise provided by ordinance.

93 Acts, ch 70, §4  
Subsection 5 amended

## CHAPTER 68B

### CONFLICTS OF INTEREST OF PUBLIC OFFICERS AND EMPLOYEES

#### 68B.2 Definitions.

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

1. "Agency" means a department, division, board, commission, bureau, or office of the executive or legislative branch of state government, the office of attorney general, the state board of regents, community colleges, and the office of the governor, including a regulatory agency, or any political subdivision of the state, but does not include any agricultural commodity promotional board, which is subject to a producer referendum.
2. "Agency of state government" or "state agency" means a department, division, board, commission, bureau, or office of the executive or legislative branch of state government, the office of attorney general, the state board of regents, community colleges, and the office of the governor, including a regulatory agency, but does not include any agricultural commodity promotional board, which is subject to a producer referendum.
3. "Board" means the Iowa ethics and campaign disclosure board.
4. "Candidate" means a candidate under chapter

56 but does not include any judge standing for retention in a judicial election.

5. "Candidate's committee" means the committee designated by a candidate for a state, county, city, or school office, as provided under chapter 56, to receive contributions in excess of five hundred dollars in the aggregate, expend funds in excess of five hundred dollars in the aggregate, or incur indebtedness on behalf of the candidate in excess of five hundred dollars in the aggregate in any calendar year.

6. "Client" means a private person or a state, federal, or local government entity that pays compensation to or designates an individual to be a lobbyist.

7. "Compensation" means any money, thing of value, or financial benefit conferred in return for services rendered or to be rendered.

8. "Contribution" means a loan, advance, deposit, rebate, refund, transfer of money, an in-kind transfer, or the payment of compensation for the personal services of another person.

9. "Gift" means a rendering of anything of value in return for which legal consideration of equal or greater value is not given and received.

10. "*Honorarium*" means anything of value that is accepted or given as consideration for an appearance, speech, or article.

11. "*Immediate family members*" means the spouse and dependent children of a public official or public employee.

12. "*Legislative employee*" means a permanent full-time employee of the general assembly but does not include members of the general assembly.

13. a. "*Lobbyist*" means an individual who, by acting directly, does any of the following:

(1) Receives compensation to encourage the passage, defeat, approval, veto, or modification of legislation, a rule, or an executive order by the members of the general assembly, a state agency, or any statewide elected official.

(2) Is a designated representative of an organization which has as one of its purposes the encouragement of the passage, defeat, approval, veto, or modification of legislation, a rule, or an executive order before the general assembly, a state agency, or any statewide elected official.

(3) Represents the position of a federal, state, or local government agency, in which the person serves or is employed as the designated representative, for purposes of encouraging the passage, defeat, approval, veto, or modification of legislation, a rule, or an executive order by members of the general assembly, a state agency, or any statewide elected official.

(4) Makes expenditures of more than one thousand dollars in a calendar year, other than to pay compensation to an individual who provides the services specified under subparagraph (1) or to communicate with only the members of the general assembly who represent the district in which the individual resides, to communicate in person with members of the general assembly, a state agency, or any statewide elected official for purposes of encouraging the passage, defeat, approval, veto, or modification of legislation, a rule, or an executive order.

b. "*Lobbyist*" does not mean:

(1) Officials and employees of a political party organized in the state of Iowa representing more than two percent of the total votes cast for governor in the last preceding general election, but only when representing the political party in an official capacity.

(2) Representatives of the news media only when engaged in the reporting and dissemination of news and editorials.

(3) All federal, state, and local elected officials, while performing the duties and responsibilities of office.

(4) Persons whose activities are limited to appearances to give testimony or provide information or assistance at sessions of committees of the general assembly or at public hearings of state agencies or who are giving testimony or providing information or assistance at the request of public officials or employees.

(5) Members of the staff of the United States congress or the Iowa general assembly.

(6) Agency officials and employees while they are engaged in activities within the agency in which they serve or are employed or with another agency with which the official's or employee's agency is involved in a collaborative project.

(7) An individual who is a member, director, trustee, officer, or committee member of a business, trade, labor, farm, professional, religious, education, or charitable association, foundation, or organization who either is not paid compensation or is not specifically designated as provided in paragraph "a", subparagraph (1) or (2).

(8) Persons whose activities are limited to submitting data, views, or arguments in writing, or requesting an opportunity to make an oral presentation under section 17A.4, subsection 1.

14. "*Local employee*" means a person employed by a political subdivision of this state.

15. "*Local official*" means an officeholder of a political subdivision of this state.

16. "*Member of the general assembly*" means an individual duly elected to the senate or the house of representatives of the state of Iowa.

17. "*Official*" means all statewide elected officials, the executive or administrative head or heads of an agency of state government, the deputy executive or administrative head or heads of an agency of state government, members of boards or commissions as defined under section 7E.4, and heads of the major subunits of departments or independent state agencies whose positions involve a substantial exercise of administrative discretion or the expenditure of public funds as defined under rules of the board adopted in consultation with the department or agency and pursuant to chapter 17A. "*Official*" does not include officers or employees of political subdivisions of the state, members of the general assembly, legislative employees, officers or employees of the judicial branch of government who are not members or employees of the office of attorney general, members of state government entities which are or exercise the same type of authority that is exercised by councils or committees as defined under section 7E.4, or members of any agricultural commodity promotional board, if the board is subject to a producer referendum.

18. "*Person*" means, without limitation, any individual, corporation, business trust, estate, trust, partnership or association, labor union, or any other legal entity.

19. "*Public disclosure*" means a written report filed by a person as required by this chapter or required by rules adopted and issued pursuant to this chapter.

20. "*Public employee*" means state employees, legislative employees, and local employees.

21. "*Public office*" means any state, county, city, or school office or any other office of a political subdivision of the state that is filled by election.

22. "*Public official*" means officials, local officials, and members of the general assembly.

23. "*Regulatory agency*" means the department

of agriculture and land stewardship, department of employment services, department of commerce, Iowa department of public health, department of public safety, department of education, state board of regents, department of human services, department of revenue and finance, department of inspections and appeals, department of personnel, public employment relations board, state department of transportation, civil rights commission, department of public defense, and department of natural resources.

24. “*Restricted donor*” means a person who is in any of the following categories:

a. Is or is seeking to be a party to any one or any combination of sales, purchases, leases, or contracts to, from, or with the agency in which the donee holds office or is employed.

b. Will personally be, or is the agent of a person who will be, directly and substantially affected financially by the performance or nonperformance of the donee’s official duty in a way that is greater than the effect on the public generally or on a substantial class of persons to which the person belongs as a member of a profession, occupation, industry, or region.

c. Is personally, or is the agent of a person who is, the subject of or party to a matter which is pending before a subunit of a regulatory agency and over which the donee has discretionary authority as part of the donee’s official duties or employment within the regulatory agency subunit.

d. Is a lobbyist or a client of a lobbyist with respect to matters within the donee’s jurisdiction.

25. “*State employee*” means a person who is not an official and is a paid employee of the state of Iowa and does not include an independent contractor, an employee of the judicial department who is not an employee of the office of attorney general, a legislative employee, an employee of a political subdivision of the state, or an employee of any agricultural commodity promotional board, if the board is subject to a producer referendum.

26. “*Statewide elected official*” means the governor, lieutenant governor, secretary of state, auditor of state, treasurer of state, secretary of agriculture, and attorney general of the state of Iowa.

93 Acts, ch 163, §1

1993 amendment excluding members of councils or committees from definition of “official” in subsection 17 is retroactive to January 1, 1993, special provision for reappointment of resigned members, 93 Acts, ch 163, §35

Section amended

### 68B.2A Conflicts of interest.

1. Any person who serves or is employed by the state or a political subdivision of the state shall not engage in any outside employment or activity which is in conflict with the person’s official duties and responsibilities. In determining whether particular outside employment or activity creates an unacceptable conflict of interest, situations in which an unacceptable conflict shall be deemed to exist shall include, but not be limited to, any of the following:

a. The outside employment or activity involves the use of the state’s or the political subdivision’s time, facilities, equipment, and supplies or the use of

the state or political subdivision badge, uniform, business card, or other evidences of office or employment to give the person or member of the person’s immediate family an advantage or pecuniary benefit that is not available to other similarly situated members or classes of members of the general public. This paragraph does not apply to off-duty peace officers who provide private duty security or fire fighters or basic or advanced emergency medical care providers certified under chapter 147 or 147A who provide private duty fire safety or emergency medical services while carrying their badge or wearing their official uniform, provided that the person has secured the prior approval of the agency or political subdivision in which the person is regularly employed to engage in the activity. For purposes of this subsection, a person is not “*similarly situated*” merely by being or being related to a person who serves or is employed by the state or a political subdivision of the state.

b. The outside employment or activity involves the receipt of, promise of, or acceptance of money or other consideration by the person, or a member of the person’s immediate family, from anyone other than the state or the political subdivision for the performance of any act that the person would be required or expected to perform as a part of the person’s regular duties or during the hours during which the person performs service or work for the state or political subdivision of the state.

c. The outside employment or activity is subject to the official control, inspection, review, audit, or enforcement authority of the person, during the performance of the person’s duties of office or employment.

2. If the outside employment or activity is employment or activity described in subsection 1, paragraph “a” or “b”, the person shall immediately cease the employment or activity. If the outside employment or activity is employment or activity described in subsection 1, paragraph “c”, or constitutes any other unacceptable conflict of interest, unless otherwise provided by law, the person shall take one of the following courses of action:

a. Cease the outside employment or activity.

b. Publicly disclose the existence of the conflict and refrain from taking any official action or performing any official duty that would detrimentally affect or create a benefit for the outside employment or activity. For purposes of this paragraph, “*official action*” or “*official duty*” includes, but is not limited to, participating in any vote, taking affirmative action to influence any vote, granting any license or permit, determining the facts or law in a contested case or rulemaking proceeding, conducting any inspection, or providing any other official service or thing that is not available generally to members of the public in order to further the interests of the outside employment or activity.

3. Unless otherwise specifically provided the requirements of this section shall be in addition to, and shall not supersede, any other rights or remedies provided by law.

93 Acts, ch 163, §2

NEW section

**68B.3 When public bids required — disclosure of income from other sales.**

1. An official, a state employee, a member of the general assembly, or a legislative employee shall not sell, in any one occurrence, any goods or services having a value in excess of two thousand dollars to any state agency unless the sale is made pursuant to an award or contract let after public notice and competitive bidding. This subsection shall not apply to the publication of resolutions, advertisements, or other legal propositions or notices in newspapers designated pursuant to law for the publication of legal propositions or notices and for which rates are fixed pursuant to law. This subsection shall also not apply to sales of services by persons subject to the requirements of this section to state executive branch agencies or subunits of departments or independent agencies as defined under section 7E.4 that are not the subunit of the department or independent agency in which the person serves or is employed or are not a subunit of a department or independent agency with which the person has substantial and regular contact as part of the person's duties.

For purposes of this section, "services" does not include instruction at an accredited education institution if the person providing the instruction meets the minimum education and licensing requirements established for instructors at the education institution.

2. An official or member of the general assembly who sells goods or services to a political subdivision of the state shall disclose whether income has been received from commissions from the sales in the manner provided under section 68B.35.

93 Acts, ch 163, §3  
Subsection 1 amended

**68B.5A Ban on certain lobbying activities.**

1. A person who serves as a statewide elected official, the executive or administrative head of an agency of state government, the deputy executive or administrative head of an agency of state government, or a member of the general assembly shall not act as a lobbyist during the time in which the person serves or is employed by the state unless the person is designated, by the agency in which the person serves or is employed, to represent the official position of the agency.

2. The head of a major subunit of a department or independent state agency, full-time employee of an office of a statewide elected official, or a legislative employee whose position involves a substantial exercise of administrative discretion or the expenditure of public funds, shall not, during the time in which the person serves or is employed by the state, act as a lobbyist before the agency in which the person is employed or before state agencies, officials, or employees with whom the person has substantial or regular contact as part of the person's duties, unless the person is designated, by the agency in which the person serves or is employed, to represent the official position of the agency.

3. A state or legislative employee who is not sub-

ject to the requirements of subsection 2 shall not act as a lobbyist in relation to any particular case, proceeding, or application with respect to which the person is directly concerned and personally participates as part of the person's employment, unless the person is designated, by the agency in which the person is employed, to represent the official position of the agency.

4. A person who is subject to the requirements of subsection 1 shall not within two years after the termination of service or employment become a lobbyist.

5. The head of a major subunit of a department or independent state agency, full-time employee of an office of a statewide elected official, or a legislative employee whose position involves a substantial exercise of administrative discretion or the expenditure of public funds, shall not, within two years after termination of employment, become a lobbyist before the agency in which the person was employed or before state agencies or officials or employees with whom the person had substantial and regular contact as part of the person's former duties.

6. A state or legislative employee who is not subject to the requirements of subsection 2 shall not, within two years after termination of employment, act as a lobbyist in relation to any particular case, proceeding, or application with respect to which the person was directly concerned and personally participated as part of the person's employment.

7. This section shall not apply to a person who, within two years of leaving service or employment with the state, is elected to, appointed to, or employed by another office of the state, an office of a political subdivision of the state, or the federal government and appears or communicates on behalf or as part of the duties of that office or employment.

93 Acts, ch 163, §4

Certain lobbyists whose positions are in violation of subsection 1 may remain in those positions until July 1, 1994, 93 Acts, ch 163, § 35

1993 amendment to § 68B 2 excluding members of councils or committees from definition of "official" is retroactive to January 1, 1993, special provision for reappointment of resigned members, 93 Acts, ch 163, § 35

Section amended

**68B.6 Services against state prohibited.**

1. All statewide elected officials, the executive or administrative head or heads of an agency of state government, the deputy executive or administrative head or heads of an agency of state government, the heads of the major subunits of departments or independent state agencies whose positions involve a substantial exercise of administrative discretion or the expenditure of public funds as defined under rules of the board, in consultation with the department or agency, under chapter 17A, state employees, or legislative employees shall not receive, directly or indirectly, or enter into any express or implied agreement for, any compensation, in whatever form, for the appearance or rendition of services by that person or another against the interest of the state in relation to any case, proceeding, application, or other matter before any state agency, any court of the state of Iowa, any federal court, or any federal bureau, agency, commission or department.

2. A person who is an official, but who is not subject to the requirements of subsection 1, shall not receive, directly or indirectly, or enter into any agreement, express or implied, for any compensation, in whatever form, for the appearance or rendition of services by that person or another against the interest of the state in relation to any case, proceeding, application, or other matter before the subunit of a department or independent agency in which the person serves, is employed, or with which the person has substantial and regular contact as part of the person's duties.

93 Acts, ch 163, §5  
Section amended

### 68B.22 Gifts accepted or received.

1. Except as otherwise provided in this section, a public official, public employee, or candidate, or that person's immediate family member shall not, directly or indirectly, accept or receive any gift or series of gifts from a restricted donor. A public official, public employee, candidate, or the person's immediate family member shall not solicit any gift or series of gifts from a restricted donor at any time.

2. Except as otherwise provided in this section, a restricted donor shall not, directly or indirectly, offer or make a gift or a series of gifts to a public official, public employee, or candidate. Except as otherwise provided in this section, a restricted donor shall not, directly or indirectly, join with one or more other restricted donors to offer or make a gift or a series of gifts to a public official, public employee, or candidate.

3. A restricted donor may give, and a public official, public employee, or candidate, or the person's immediate family member, may accept an otherwise prohibited nonmonetary gift or a series of otherwise prohibited nonmonetary gifts and not be in violation of this section if the nonmonetary gift or series of nonmonetary gifts is donated within thirty days to a public body, the department of general services, or a bona fide educational or charitable organization, if no part of the net earnings of the educational or charitable organization inures to the benefit of any private stockholder or other individual. All such items donated to the department of general services shall be disposed of by assignment to state agencies for official use or by public sale.

4. Notwithstanding subsections 1 and 2, the following gifts may be received by public officials, public employees, candidates, or members of the immediate family of public officials, public employees, or candidates:

a. Contributions to a candidate or a candidate's committee.

b. Informational material relevant to a public official's or public employee's official functions, such as books, pamphlets, reports, documents, periodicals, or other information that is recorded in a written, audio, or visual format.

c. Anything received from anyone related within the fourth degree by kinship or marriage, unless the donor is acting as an agent or intermediary for another person not so related.

d. An inheritance.

e. Anything available or distributed free of charge to members of the general public without regard to the official status of the recipient.

f. Items received from a bona fide charitable, professional, educational, or business organization to which the donee belongs as a dues paying member, if the items are given to all members of the organization without regard to individual members' status or positions held outside of the organization and if the dues paid are not inconsequential when compared to the items received.

g. Actual expenses of a donee for food, beverages, registration, travel, and lodging for a meeting, which is given in return for participation in a panel or speaking engagement at the meeting when the expenses relate directly to the day or days on which the donee has participation or presentation responsibilities.

h. Plaques or items of negligible resale value which are given as recognition for the public services of the recipient.

i. Nonmonetary items with a value of three dollars or less that are received from any one donor during one calendar day.

j. Items or services solicited by or given to, for purposes of a business or educational conference, seminar, or other meeting, a state, national, or regional government organization in which the state of Iowa or a political subdivision of the state is a member, or solicited by or given for the same purposes to state, national, or regional government organizations whose memberships and officers are primarily composed of state or local government officials or employees.

k. Items or services received by members or representatives of members at a regularly scheduled event that is part of a business or educational conference, seminar, or other meeting that is sponsored and directed by any state, national, or regional government organization in which the state of Iowa or a political subdivision of the state is a member, or received at such an event by members or representatives of members of state, national, or regional government organizations whose memberships and officers are primarily composed of state or local government officials or employees.

l. Funeral flowers or memorials to a church or nonprofit organization.

m. Gifts which are given to a public official or public employee for the public official's or public employee's wedding or twenty-fifth or fiftieth wedding anniversary.

n. Payment of salary or expenses by a person's employer or the firm in which the person is a member for the cost of attending a meeting of a subunit of an agency when the person whose expenses are being paid serves on a board, commission, committee, council, or other subunit of the agency and the person is not entitled to receive compensation or reimbursement of expenses from the state or a political subdivision of the state for attending the meeting.



o. Gifts of food, beverages, travel, or lodging received by a public official or public employee if all of the following apply:

(1) The public official or public employee is officially representing an agency in a delegation whose sole purpose is to attract a specific new business to locate in the state, encourage expansion or retention of an existing business already established in the state, or to develop markets for Iowa businesses or products.

(2) The donor of the gift is not the business or businesses being contacted. However, food or beverages provided by the business or businesses being contacted which are consumed during the meeting are not a gift under section 68B.2, subsection 9, or this section.

(3) The public official or public employee plays a significant role in the presentation to the business or businesses on behalf of the public official's or public employee's agency.

p. Gifts other than food, beverages, travel, and lodging received by a public official or public employee which are received from a person who is a citizen of a country other than the United States and is given during a ceremonial presentation or as a result of a custom of the other country and is of personal value only to the donee.

5. For purposes of determining the value of an item given or received, an individual who gives an item on behalf of more than one person shall not divide the value of the item by the number of persons on whose behalf the item is given and the value of an item received shall be the value actually received by the donee.

6. A gift shall not be considered to be received by a public official or public employee if the state is the donee of the gift and the public official or public employee is required to receive the gift on behalf of the state as part of the performance of the person's duties of office or employment.

7. A person shall not request, and a member of the general assembly shall not agree, that a member of the general assembly sell tickets for a community-related social event that is to be held for members of the general assembly in Polk county during the legislative session. This section shall not apply to Polk county or city of Des Moines events that are open to the public generally or are held only for Polk county or city of Des Moines legislators.

8. An organization or association which has as one of its purposes the encouragement of the passage, defeat, introduction, or modification of legislation shall not give and a member of the general assembly shall not receive food, beverages, registration, or scheduled entertainment with a per person value in excess of three dollars.

93 Acts, ch 163, §6  
Section stricken and rewritten

#### **68B.23 Honoraria — banned.**

1. Except as provided in subsection 2, a public official or public employee shall not seek or accept an honorarium from a restricted donor.

2. A public official or public employee may accept an honorarium from any person under the following circumstances:

a. The honorarium consists of payment of actual expenses of a donee for registration, food, beverages, travel, and lodging paid in return for participation in a panel or speaking engagement at a meeting when the expenses relate directly to the day or days on which the recipient has participation or presentation responsibilities.

b. The honorarium consists of a nonmonetary item or series of nonmonetary items that the public official or public employee donates within thirty days to a public body, a bona fide educational or charitable organization, or the department of general services as provided in section 68B.22, subsection 3.

c. The honorarium consists of a payment made to a public official or public employee for services rendered as part of a bona fide private business, trade, or profession in which the public official or public employee is engaged if the payment is commensurate with the actual services rendered and is not being made because of the person's status as a public official or public employee, but, rather, because of some special expertise or other qualification.

93 Acts, ch 163, §7  
Section stricken and rewritten

#### **68B.24 Loans — receipt from lobbyists prohibited.**

1. An official, member of the general assembly, state employee, legislative employee, or candidate for state office shall not, directly or indirectly, seek or accept a loan or series of loans from a person who is a lobbyist.

2. A lobbyist shall not, directly or indirectly, offer or make a loan or series of loans to an official, member of the general assembly, state employee, legislative employee, or candidate for state office. A lobbyist shall also not, directly or indirectly, join with one or more persons to offer or make a loan or series of loans to an official, member of the general assembly, state employee, legislative employee, or candidate for state office.

3. This section shall not apply to loans made in the ordinary course of business. For purposes of this section, a loan is "made in the ordinary course of business" when it is made by a person who is regularly engaged in a business that makes loans to members of the general public and the finance charges and other terms of the loan are the same or substantially similar to the finance charges and loan terms that are available to members of the general public.

93 Acts, ch 163, §8  
1993 amendment applies retroactively to loans made on or after January 1, 1993, 93 Acts, ch 163, §35  
Section amended

#### **68B.25 Additional penalty.**

In addition to any penalty contained in any other provision of law, a person who knowingly and intentionally violates a provision of sections 68B.2A through 68B.7, sections 68B.22 through 68B.24, or

sections 68B.35 through 68B.38 is guilty of a serious misdemeanor and may be reprimanded, suspended, or dismissed from the person's position or otherwise sanctioned.

93 Acts, ch 163, §9  
Section stricken and rewritten

#### **68B.26 Actions commenced.**

Actions against public officials or public employees to enforce the provisions of this chapter may be commenced by the filing of a complaint with the county attorney by any legal resident of the state of Iowa who is eighteen years of age or more at the time of commencing the action or by the attorney general. Complaints regarding conduct of local officials or local employees which violates this chapter shall be filed with the county attorney in the county where the accused resides.

93 Acts, ch 163, §10  
Section amended

#### **68B.31 Legislative ethics committee.**

1. There shall be an ethics committee in the senate and an ethics committee in the house, each to consist of six members; three members to be appointed by the majority leader in each house, and three members by the minority leader in each house. A member of the ethics committee may disqualify himself or herself from participating in any proceeding upon submission of a written statement that the member cannot render an impartial and unbiased decision in a case. A member is ineligible to participate in committee meetings, as a member of the committee, in any proceeding relating to the member's own conduct. A member may be disqualified by a unanimous vote of the remaining eligible members of the committee. If a member of the ethics committee is disqualified from or is ineligible to participate in any committee proceedings, the authority responsible for the original appointment of the disqualified or ineligible member shall appoint a replacement member who shall serve during the period of the original member's disqualification or ineligibility.

2. Members shall receive a per diem and travel expenses at the same rate as paid members of interim committees for attending meetings held when the general assembly is not in session. The per diem and expenses shall be paid from funds appropriated by section 2.12.

3. The majority leader of each house shall designate the chairperson and vice chairperson, and the minority leader of each house shall designate the ranking member, of each committee. The chairperson of each committee shall have the following powers, duties and functions:

- a. Preside over meetings of the committee.
- b. Call meetings of the committee upon receipt of findings from the independent special counsel that there is probable cause to believe that a member of the general assembly or a lobbyist has committed a violation of a provision of this chapter or of the rules relating to ethical conduct that are adopted pursuant to this chapter.

4. The ethics committee of each house shall have the following powers, duties, and functions:

- a. Prepare a code of ethics within thirty days after the commencement of each general assembly.
- b. Prepare rules relating to lobbyists and lobbying activities in the general assembly.

c. Issue advisory opinions interpreting the intent of constitutional and statutory provisions relating to legislators and lobbyists as well as interpreting the code of ethics and rules issued pursuant to this section. Opinions shall be issued when approved by a majority of the six members and may be issued upon the written request of a member of the general assembly or upon the committee's initiation. Opinions are not binding on the legislator or lobbyist.

d. Receive and hear complaints and charges against members of its house alleging a violation of the code of ethics, rules governing lobbyists, this chapter, or other matters referred to it by its house or the independent special counsel. The committee shall recommend rules for the receipt and processing of findings of probable cause relating to ethical violations of members of the general assembly or lobbyists during the legislative session and those received after the general assembly adjourns.

e. Recommend legislation relating to legislative ethics and lobbying activities.

The ethics committee may employ independent legal counsel to assist the committee in carrying out the committee's duties under this chapter. Payment of costs for the independent legal counsel shall be made from funds appropriated pursuant to section 2.12.

5. Any person may file a complaint with the ethics committee of either house alleging that a member of the general assembly or a lobbyist before the general assembly has committed a violation of this chapter. The ethics committee shall prescribe and provide forms for this purpose. The complaint shall include the name and address of the complainant and a statement of the facts believed to be true that form the basis of the complaint, including the sources of information and approximate dates of the acts alleged and a certification by the complainant under penalty of perjury that the facts stated to be true are true to the best of the complainant's knowledge.

6. The ethics committee shall promptly notify any party alleged to have committed a violation of the code of ethics, rules governing lobbyists, or this chapter of the filing of a complaint by causing a copy of the complaint to be served or personally delivered to the party charged, unless service is waived by the party charged, and shall review the complaint to determine if the complaint meets the requirements for formal sufficiency. If the complaint is deficient as to form, the complaint shall be returned to the complainant with a statement of the nature of the deficiency and the party charged in the complaint shall be notified that the complaint has been returned. If a complaint, previously found to be deficient as to form, is refiled in different form, the party charged

in the complaint shall be provided with a copy of the new document in the same manner as provided for service of the initial complaint. Any amendments to a complaint that are filed with the committee shall also be served or personally delivered, unless service is waived, to the party charged in the complaint. If the complaint is sufficient as to form, the ethics committee shall review the complaint to determine whether the complaint states a valid charge which may be investigated. A valid complaint must allege all of the following:

a. Facts, that if true, establish a violation of a provision of this chapter, the rules governing lobbyists, or the code of ethics for which penalties or other remedies are provided.

b. That the conduct providing the basis for the complaint occurred within three years of the filing of the complaint.

c. That the party charged with a violation is a party subject to the jurisdiction of the ethics committee.

7. If the ethics committee determines that a complaint is not valid, the complaint shall be dismissed and returned to the complainant with a notice of dismissal stating the reason or reasons for the dismissal. If the ethics committee determines that a complaint is valid, the ethics committee shall request that the chief justice of the supreme court appoint an independent special counsel to investigate the allegations contained in the complaint to determine whether there is probable cause to believe that a violation of this chapter has occurred and whether an evidentiary hearing on the complaint should be held. Payment of costs for the independent special counsel shall be made from section 2.12.

8. If a hearing on the complaint is ordered the ethics committee shall receive all admissible evidence, determine any factual or legal issues presented during the hearing, and make findings of fact based upon evidence received. Hearings shall be conducted in the manner prescribed in section 17A.12. The rules of evidence applicable under section 17A.14 shall also apply in hearings before the ethics committee. Clear and convincing evidence shall be required to support a finding that the member of the general assembly or lobbyist before the general assembly has committed a violation of this chapter. Parties to a complaint may, subject to the approval of the ethics committee, negotiate for settlement of disputes that are before the ethics committee. Terms of any negotiated settlements shall be publicly recorded. If a complaint is filed or initiated less than ninety days before the election for a state office, for which the person named in the complaint is the incumbent officeholder, the ethics committee shall, if possible, set the hearing at the earliest available date so as to allow the issue to be resolved before the election. An extension of time for a hearing may be granted when both parties mutually agree on an alternate date for the hearing. The ethics committee shall make every effort to hear all ethics complaints within three months of the date that the complaints

are filed. However, after three months from the date of the filing of the complaint, extensions of time for purposes of preparing for hearing may only be granted by the ethics committee when the party charged in the complaint with the ethics violation consents to an extension. If the party charged does not consent to an extension, the ethics committee shall not grant any extensions of time for preparation prior to hearing. All complaints alleging a violation of this chapter or the code of ethics shall be heard within nine months of the filing of the complaint. Final dispositions of violations, which the ethics committee has found to have been established by clear and convincing evidence, shall be made within thirty days of the conclusion of the hearing on the complaint.

9. The ethics committee of each house shall recommend rules for adoption by the respective house relating to the confidentiality of a complaint or information which has been filed or provided to the committee. Rules adopted shall provide for initial confidentiality of a complaint, unless the complaint has been publicly disclosed, and shall permit the ethics committee to treat some or all of the contents of a complaint or other information as confidential if the committee finds that the criteria established under section 22.7, subsection 18, for keeping certain information confidential, are met. If the existence of a complaint or a preliminary investigation is made public, the ethics committee shall publicly confirm the existence of the complaint or preliminary inquiry and, in the ethics committee's discretion, make public the complaint or investigation and any documents which were issued to any party to the complaint or investigation. However, this subsection shall not prevent the committee from furnishing the complaint or other information to the appropriate law enforcement authorities at any time. Upon commencement of a hearing on a complaint, all investigative material shall be made available to the subject of the hearing and any material that is introduced at the hearing shall be public information.

10. The code of ethics and rules relating to lobbyists and lobbying activities shall not become effective until approved by the members of the house to which the proposed code and rules apply. The code or rules may be amended either upon the recommendation of the ethics committee or by members of the general assembly.

11. Violation of a provision of this chapter or rules adopted relating to ethical conduct may result in censure, reprimand, or other sanctions as determined by a majority of the member's house. However, a member may be suspended or expelled and the member's salary forfeited only if directed by a two-thirds vote of the member's house. A suspension, expulsion, or forfeiture of salary shall be for the duration specified in the directing resolution. Violation of a rule relating to lobbyists and lobbying activities may result in censure, reprimand, or other sanctions as determined by a majority of the members of the house in which the violation occurred. However, a lobbyist may be suspended from lobbying activities

for the duration provided in the directing resolution only if directed by a two-thirds vote of the house in which the violation occurred.

93 Acts, ch 163, §11 13  
 Subsection 4, NEW unnumbered paragraph 2  
 Subsections 6 8, 9 and 11 amended

### **68B.32 Independent ethics and campaign disclosure board — established.**

1. An Iowa ethics and campaign disclosure board is established as an independent agency. Effective January 1, 1994, the board shall administer this chapter and set standards for, investigate complaints relating to, and monitor the ethics of officials, employees, lobbyists, and candidates for office in the executive branch of state government. The board shall also administer and set standards for, investigate complaints relating to, and monitor the campaign finance practices of candidates for public office. The board shall consist of six members and shall be balanced as to political affiliation as provided in section 69.16. The members shall be appointed by the governor, subject to confirmation by the senate.

2. Members shall serve staggered six-year terms beginning and ending as provided in section 69.19. Any vacancy on the board shall be filled by appointment for the unexpired portion of the term, within ninety days of the vacancy and in accordance with the procedures for regular appointments. A member of the board may be reappointed to serve additional terms on the board. Members may be removed in the manner provided in chapter 69.

3. The board shall annually elect one member to serve as the chairperson of the board and one member to serve as vice chairperson. The vice chairperson shall act as the chairperson in the absence or disability of the chairperson or in the event of a vacancy in that office.

4. Members of the board shall receive a per diem as specified in section 7E.6 while conducting business of the board, and payment of actual and necessary expenses incurred in the performance of their duties. Members of the board shall file statements of financial interest under section 68B.35.

5. The board shall employ a full-time executive secretary who shall be the board's chief administrative officer. The board shall employ or contract for the employment of legal counsel notwithstanding section 13.7, and any other personnel as may be necessary to carry out the duties of the board. The board's legal counsel shall be the chief legal officer of the board, and shall advise the board on all legal matters relating to the administration of this chapter and chapter 56. The state may be represented by the board's legal counsel in any civil action regarding the enforcement of this chapter or chapter 56, or, at the board's request, the state may be represented by the office of the attorney general. Notwithstanding section 19A.3, all of the board's employees, except for the executive secretary and legal counsel, shall be

employed subject to the merit system provisions of chapter 19A.

93 Acts, ch 163, §14  
 Confirmation, §2 32  
 Legislative intent regarding initial appointments, 93 Acts, ch 163, §35  
 Transition from campaign finance disclosure commission, members, employees, rules, and pending matters, 93 Acts, ch 163, §35  
 Section stricken and rewritten

### **68B.32A Duties of the board.**

The duties of the board shall include, but are not limited to, all of the following:

1. Adopt rules pursuant to chapter 17A and conduct hearings under sections 68B.32B and 68B.32C and chapter 17A, as necessary to carry out the purposes of this chapter and chapter 56.

2. Develop, prescribe, furnish, and distribute any forms necessary for the implementation of the procedures contained in this chapter and chapter 56 for the filing of reports and statements by persons required to file the reports and statements under this chapter and chapter 56.

3. Review the contents of all campaign finance disclosure reports and statements filed with the board and promptly advise each person or committee of errors found. The board may verify information contained in the reports with other parties to assure accurate disclosure. The board may also verify information by requesting that a candidate or committee produce copies of receipts, bills, logbooks, or other memoranda of reimbursements of expenses to a candidate for expenses incurred during a campaign. The board, upon its own motion, may initiate action and conduct a hearing relating to requirements under chapter 56. The board may require a county commissioner of elections to periodically file summary reports with the board.

4. Receive and file registration and reporting from lobbyists of the executive branch of state government, client disclosure from clients of lobbyists of the executive branch of state government, and personal financial disclosure information from officials and employees in the executive branch of state government who are required to file personal financial disclosure information under this chapter. The board, upon its own motion, may initiate action and conduct a hearing relating to reporting requirements under this chapter.

5. Prepare and publish a manual setting forth examples of approved uniform systems of accounts and approved methods of disclosure for use by persons required to file statements and reports under this chapter and chapter 56. The board shall also prepare and publish other educational materials, and any other reports or materials deemed appropriate by the board. The board shall annually provide all officials and state employees with notification of the contents of this chapter and chapter 56 by distributing copies of educational materials to associations that represent the interests of the various governmental entities for dissemination to their membership.

6. Assure that the statements and reports which have been filed in accordance with this chapter and chapter 56 are available for public inspection and copying during the regular office hours of the office in which they are filed and not later than by the end of the day during which a report or statement was received. Rules adopted relating to public inspection and copying of statements and reports may include a charge for any copying and mailing of the reports and statements, shall provide for the mailing of copies upon the request of any person and upon prior receipt of payment of the costs by the board, and shall prohibit the use of the information copied from reports and statements for soliciting contributions or for any commercial purpose by any person other than statutory political committees.

7. Require that the candidate of a candidate's committee, or the chairperson of a political committee, is responsible for filing disclosure reports under chapter 56, and shall receive notice from the board if the committee has failed to file a disclosure report at the time required under chapter 56. A candidate of a candidate's committee, or the chairperson of a political committee, may be subject to a civil penalty for failure to file a disclosure report required under section 56.6, subsection 1.

8. Establish and impose penalties, and recommendations for punishment of persons who are subject to penalties of or punishment by the board or by other bodies, for the failure to comply with the requirements of this chapter or chapter 56.

9. Determine, in case of dispute, at what time a person has become a candidate.

10. Preserve copies of reports and statements filed with the board for a period of five years from the date of receipt.

11. Establish a procedure for requesting and issuing formal and informal board opinions to local officials and employees and to persons subject to the authority of the board under this chapter or chapter 56. Advice contained in formal board opinions shall, if followed, constitute a defense to a complaint filed with the board alleging a violation of this chapter, chapter 56, or rules of the board that is based on the same facts and circumstances.

12. Establish rules relating to ethical conduct for persons holding a state office in the executive branch of state government, including candidates, and for employees of the executive branch of state government and regulations governing the conduct of lobbyists of the executive branch of state government, including but not limited to conflicts of interest, abuse of office, misuse of public property, use of confidential information, participation in matters in which an official or state employee has a financial interest, and rejection of improper offers.

13. Impose penalties upon, or refer matters relating to, persons who discharge any employee, or who otherwise discriminate in employment against any employee, for the filing of a complaint with, or the disclosure of information to, the board if the employee has filed the complaint or made the disclosure in good faith.

14. Establish fees, where necessary, to cover the costs associated with preparing, printing, and distributing materials to persons subject to the authority of the board.

93 Acts, ch 163, §15  
NEW section

### **68B.32B Complaint procedures.**

1. Any person may file a complaint alleging that a candidate, committee, person holding a state office in the executive branch of state government, employee of the executive branch of state government, or other person has committed a violation of this chapter or chapter 56 or rules adopted by the board. The board shall prescribe and provide forms for this purpose. A complaint must include the name and address of the complainant, a statement of the facts believed to be true that form the basis of the complaint, including the sources of information and approximate dates of the acts alleged, and a certification by the complainant under penalty of perjury that the facts stated to be true are true to the best of the complainant's knowledge.

2. The board staff shall review the complaint to determine if the complaint is sufficient as to form. If the complaint is deficient as to form, the complaint shall be returned to the complainant with a statement of the deficiency and an explanation describing how the deficiency may be cured. If the complaint is sufficient as to form, the complaint shall be referred for legal review.

3. Unless the chairperson of the board concludes that immediate notification would prejudice a preliminary investigation or subject the complainant to an unreasonable risk, the board shall mail a copy of the complaint to the subject of the complaint within three working days of the acceptance of the complaint. If a determination is made by the chairperson not to mail a copy of the complaint to the subject of the complaint within the three working days time period, the board shall approve and establish the time and conditions under which the subject will be informed of the filing and contents of the complaint.

4. Upon completion of legal review, the chairperson of the board shall be advised whether, in the opinion of the legal advisor, the complaint states an allegation which is legally sufficient. A legally sufficient allegation must allege all of the following:

a. Facts that would establish a violation of a provision of this chapter, chapter 56, or rules adopted by the board.

b. Facts that would establish that the conduct providing the basis for the complaint occurred within three years of the complaint.

c. Facts that would establish that the subject of the complaint is a party subject to the jurisdiction of the board.

5. After receiving an evaluation of the legal sufficiency of the complaint, the chairperson shall refer the complaint to the board for a formal determination by the board of the legal sufficiency of the allegations contained in the complaint.

6. If the board determines that none of the alle-

gations contained in the complaint are legally sufficient, the complaint shall be dismissed. The complainant shall be sent a notice of dismissal stating the reason or reasons for the dismissal. If a copy of the complaint was sent to the subject of the complaint, a copy of the notice shall be sent to the subject of the complaint. If the board determines that any allegation contained in the complaint is legally sufficient, the complaint shall be referred to the board staff for investigation of any legally sufficient allegations.

7. Notwithstanding subsections 1 through 6, the board may, on its own motion and without the filing of a complaint by another person, initiate investigations into matters that the board believes may be subject to the board's jurisdiction. This section does not preclude persons from providing information to the board for possible board-initiated investigation instead of filing a complaint.

8. The purpose of an investigation by the board's staff is to determine whether there is probable cause to believe that there has been a violation of this chapter or of rules adopted by the board. To facilitate the conduct of investigations, the board may issue and seek enforcement of subpoenas requiring the attendance and testimony of witnesses and subpoenas requiring the production of books, papers, records, and other real evidence relating to the matter under investigation. Upon the request of the board, an appropriate county attorney or the attorney general shall assist the staff of the board in its investigation.

9. If the board determines on the basis of an investigation by board staff that there is probable cause to believe the existence of facts that would establish a violation of this chapter, or of rules adopted by the board, the board may issue a statement of charges and notice of a contested case proceeding to the complainant and to the person who is the subject of the complaint, in the manner provided for the issuance of statements of charges under chapter 17A. If the board determines on the basis of an investigation by staff that there is no probable cause to believe that a violation has occurred, the board shall close the investigation, dismiss any related complaint, and the subject of the complaint shall be notified of the dismissal. If the investigation originated from a complaint filed by a person other than the board, the person making the complaint shall also be notified of the dismissal.

10. At any stage during the investigation or after the initiation of a contested case proceeding, the board may approve a settlement regarding an alleged violation. Terms of a settlement shall be reduced to writing and be available for public inspection. An informal settlement may provide for any remedy specified in section 68B.32D. However, the board shall not approve a settlement unless the board determines that the terms of the settlement are in the public interest and are consistent with the purposes of this chapter and rules of the board. In addition, the board may authorize board staff to seek informal

voluntary compliance in routine matters brought to the attention of the board or its staff.

11. A complaint shall be a public record, but some or all of the contents may be treated as confidential under section 22.7, subsection 18, to the extent necessary under subsection 3 of this section. Information informally reported to the board and board staff which results in a board-initiated investigation shall be a public record but may be treated as confidential information consistent with the provisions of section 22.7, subsection 18. If the complainant, the person who provides information to the board, or the person who is the subject of an investigation publicly discloses the existence of an investigation, the board may publicly confirm the existence of the disclosed formal complaint or investigation and, in the board's discretion, make the complaint or the informal referral public, as well as any other documents that were issued by the board to any party to the investigation. However, investigative materials may be furnished to the appropriate law enforcement authorities by the board at any time. Upon the commencement of a contested case proceeding by the board, all investigative material relating to that proceeding shall be made available to the subject of the proceeding. The entire record of any contested case proceeding initiated under this section shall be a public record.

12. Board records used to achieve voluntary compliance to resolve discrepancies and deficiencies shall not be confidential unless otherwise required by law.

93 Acts, ch 163, §16  
NEW section

### **68B.32C Contested case proceedings.**

1. Contested case proceedings initiated as a result of the issuance of a statement of charges pursuant to section 68B.32B, subsection 9, shall be conducted in accordance with the requirements of chapter 17A. Clear and convincing evidence shall be required to support a finding that a person has violated this chapter or any rules adopted by the board pursuant to this chapter. A preponderance of the evidence shall be required to support a finding that a person has violated chapter 56 or any rules adopted by the board pursuant to chapter 56. The case in support of the statement of charges shall be presented at the hearing by one of the board's attorneys or staff unless, upon the request of the board, the charges are prosecuted by another legal counsel designated by the attorney general. A person making a complaint under section 68B.32B, subsection 1, is not a party to contested case proceedings conducted relating to allegations contained in the complaint.

2. Hearings held pursuant to this chapter shall be heard by a quorum of the board, unless the board designates a board member or an administrative law judge to preside at the hearing. If a quorum of the board does not preside at the hearing, the board member or administrative law judge shall make a proposed decision. The board or presiding board member may be assisted by an administrative law

judge in the conduct of the hearing and the preparation of a decision.

3. Upon a finding by the board that the party charged has violated this chapter or rules adopted by the board, the board may impose any penalty provided for by section 68B.32D. Upon a final decision of the board finding that the party charged has not violated this chapter or the rules of the board, the complaint shall be dismissed and the party charged and the original complainant, if any, shall be notified.

4. The right of an appropriate county attorney or the attorney general to commence and maintain a district court prosecution for criminal violations of the law is unaffected by any proceedings under this section.

5. The board shall adopt rules, pursuant to chapter 17A, establishing procedures to implement this section.

93 Acts, ch 163, §17  
NEW section

#### **68B.32D Penalties — recommended actions.**

1. The board, after a hearing and upon a finding that a violation of this chapter, chapter 56, or rules adopted by the board has occurred, may do one or more of the following:

*a.* Issue an order requiring the violator to cease and desist from the violation found.

*b.* Issue an order requiring the violator to take any remedial action deemed appropriate by the board.

*c.* Issue an order requiring the violator to file any report, statement, or other information as required by this chapter, chapter 56, or rules adopted by the board.

*d.* Publicly reprimand the violator for violations of this chapter, chapter 56, or rules adopted by the board in writing and provide a copy of the reprimand to the violator's appointing authority.

*e.* Make a written recommendation to the violator's appointing authority that the violator be removed or suspended from office, and include in the recommendation the length of the suspension.

*f.* If the violation is a violation of this chapter or rules adopted by the board pursuant to this chapter and the violator is an elected official of the executive branch of state government, other than an official who can only be removed by impeachment, make a written recommendation to the attorney general or the appropriate county attorney that an action for removal from office be initiated pursuant to chapter 66.

*g.* If the violation is a violation of this chapter or rules adopted by the board pursuant to this chapter and the violator is a lobbyist of the executive branch of state government, censure, reprimand, or impose other sanctions deemed appropriate by the board. A lobbyist may also be suspended from lobbying activities if the board finds that suspension is an appropriate sanction for the violation committed.

*h.* Issue an order requiring the violator to pay a

civil penalty of not more than two thousand dollars for each violation of this chapter, chapter 56, or rules adopted by the board.

*i.* Refer the complaint and supporting information to the attorney general or appropriate county attorney with a recommendation for prosecution or enforcement of criminal penalties.

2. At any stage during an investigation or during the board's review of routine compliance matters, the board may resolve the matter by admonishment to the alleged violator or by any other means not specified in subsection 1 as a posthearing remedy.

3. If a person fails to comply with an order of the board under subsection 1, paragraph "a", "b", "c", or "h", the board may petition the district court having jurisdiction for an order for enforcement of the order of the board. The enforcement proceeding shall be conducted as provided in section 68B.33.

93 Acts, ch 163, §18  
NEW section

#### **68B.33 Judicial review — enforcement.**

Judicial review of the actions of the board may be sought in accordance with chapter 17A. Judicial enforcement of orders of the board may be sought in accordance with chapter 17A.

93 Acts, ch 163, §19  
Section amended

#### **68B.34 Investigation by independent special counsel — probable cause.**

The purpose of an investigation by the independent special counsel is to determine whether there is probable cause to proceed with an adjudicatory hearing on the matter. In conducting investigations and holding hearings, the independent special counsel may require by subpoena the attendance and testimony of witnesses and may subpoena books, papers, records, and any other real evidence relating to the matter before the independent special counsel. The independent special counsel shall have the additional authority provided in section 17A.13. If the independent special counsel determines at any stage in the proceedings that take place prior to hearing that the complaint is without merit, the independent special counsel shall report that determination to the appropriate ethics committee and the complaint shall be dismissed and the complainant and the party charged shall be notified. If, after investigation, the independent special counsel determines evidence exists which, if proven, would support a finding of a violation of this chapter, a finding of probable cause shall be made and reported to the ethics committee, and a hearing shall be ordered by the ethics committee as provided in section 68B.31. Independent special counsel investigations are not meetings of a governmental body within the meaning of chapter 21, and records and information obtained by independent special counsel during investigations are confidential until disclosed to a legislative ethics committee under section 68B.31.

93 Acts, ch 163, §20  
Section amended

**68B.35 Personal financial disclosure — certain officials, members of the general assembly, and candidates.**

1. The persons specified in subsection 2 shall file a financial statement at times and in the manner provided in this section that contains all of the following:

a. A list of each business, occupation, or profession in which the person is engaged and the nature of that business, occupation, or profession, unless already apparent.

b. A list of any other sources of income if the source produces more than one thousand dollars annually in gross income. Such sources of income listed pursuant to this paragraph may be listed under any of the following categories, or under any other categories as may be established by rule:

- (1) Securities.
- (2) Instruments of financial institutions.
- (3) Trusts.
- (4) Real estate.
- (5) Retirement systems.
- (6) Other income categories specified in state and federal income tax regulations.

2. The financial statement required by this section shall be filed by the following persons:

a. Any statewide elected official.

b. The executive or administrative head or heads of any agency of state government.

c. The deputy executive or administrative head or heads of an agency of state government.

d. The head of a major subunit of a department or independent state agency whose position involves a substantial exercise of administrative discretion or the expenditure of public funds as defined under rules adopted by the board, pursuant to chapter 17A, in consultation with the department or agency.

e. Members of the banking board, the ethics and campaign disclosure board, the credit union review board, the economic development board, the employment appeal board, the environmental protection commission, the health facilities council, the Iowa business investment corporation board of directors, the Iowa finance authority, the Iowa product development corporation, the Iowa public employees' retirement system investment board, the lottery board, the natural resource commission, the board of parole, the petroleum underground storage tank fund board, the public employment relations board, the state racing and gaming commission, the state board of regents, the tax review board, the transportation commission, the office of consumer advocate, the utilities board, and any full-time members of other boards and commissions as defined under section 7E.4 who receive an annual salary for their service on the board or commission.

f. Members of the general assembly.

g. Candidates for state office.

h. Legislative employees who are the head or deputy head of a legislative agency or whose position involves a substantial exercise of administrative discretion or the expenditure of public funds.

3. The board, in consultation with each executive department or independent agency, shall adopt rules pursuant to chapter 17A to implement the requirements of this section that provide for the time and manner for the filing of financial statements by persons in the department or independent agency.

4. The ethics committee of each house of the general assembly shall recommend rules for adoption by each house for the time and manner for the filing of financial statements by members or employees of the particular house. The legislative council shall adopt rules for the time and manner for the filing of financial statements by legislative employees of the central legislative staff agencies. The rules shall provide for the filing of the financial statements with either the chief clerk of the house, the secretary of the senate, or other appropriate person or body.

5. A candidate for statewide office shall file a financial statement with the ethics and campaign disclosure board, a candidate for the office of state representative shall file a financial statement with the chief clerk of the house of representatives, and a candidate for the office of state senator shall file a financial statement with the secretary of the senate concerning the year preceding the year in which the election is to be held and concerning so much of the year in which the election is to be held as has elapsed by the date specified in section 43.11 for the filing of nomination papers for state office. The statement shall be filed no later than thirty days after the date on which a person is required to file nomination papers for state office under section 43.11. The ethics and campaign disclosure board shall adopt rules pursuant to chapter 17A providing for the filing of the financial statements with the board and for the deposit, retention, and availability of the financial statements. The ethics committees of the house of representatives and the senate shall recommend rules for adoption by the respective houses providing for the filing of the financial statements with the chief clerk of the house or the secretary of the senate and for the deposit, retention, and availability of the financial statements.

93 Acts, ch 163, §21  
Transition provisions for 1993 amendment, filing requirements, 93 Acts, ch 163, §35

Certain former financial disclosure requirements are void retroactive to January 1, 1993, 93 Acts, ch 163, §35  
Section stricken and rewritten

**68B.35A Personal financial disclosure statements of state officials and employees — public access.**

Personal financial disclosure statements filed with the board, chief clerk of the house, and the secretary of the senate shall be forwarded to the secretary of state for the recording of the information through electronic means. The board and the general assembly shall execute agreements with the secretary of state which provide for public access to and copying of the information, and include a site in the board offices for public viewing and copying of information, contained in personal financial disclosure statements filed with the board, the chief clerk of the house, and the secretary of the senate.

93 Acts, ch 163, §22  
NEW section



### 68B.36 Applicability — lobbyist registration required.

1. All lobbyists shall, on or before the day their lobbying activity begins, register by filing a lobbyist's registration statement at times and in the manner provided in this section. Lobbyists engaged in lobbying activities before the general assembly shall file the statement with the chief clerk of the house of representatives or the secretary of the senate. Lobbyists engaged in lobbying activities before the office of the governor or any state agency shall file the statement with the board. The chief clerk of the house and the secretary of the senate shall provide appropriate registration forms to lobbyists before the general assembly. The board shall prescribe appropriate registration forms for lobbyists before the office of the governor and state agencies.

2. Registration shall be valid from the date of registration until the expiration of the registration period for the type of lobbying in which the person will be engaging. Any change in or addition to the information shall be registered within ten days after the change or addition is known to the lobbyist. Changes or additions for executive branch lobbyists may be filed either with the executive council or with the agency or office where the original registration was filed.\* Changes or additions for registrations of lobbyists of the general assembly shall be filed with either the chief clerk of the house or the secretary of the senate.

3. For persons registered to lobby before the general assembly, registration expires upon the commencement of the next regular session of the general assembly, except that the chief clerk of the house and the secretary of the senate may adopt and implement a reasonable preregistration procedure in advance of each regular session during which persons may register for that session and the following legislative interim. For persons registered to lobby before the office of the governor or a state agency, registration expires upon the commencement of a new calendar year. The board may adopt and implement a reasonable preregistration procedure in advance of each new calendar year during which persons may register for that year.

4. If a lobbyist's service on behalf of a particular employer, client, or cause is concluded prior to the end of the calendar year, the lobbyist may cancel the registration on appropriate forms supplied by the executive council,\* the chief clerk of the house, or the secretary of the senate. The cancellation forms shall be filed by the lobbyist in the place where the lobbyist filed the original registration. Persons within the executive branch receiving forms canceling a lobbyist's registration shall forward the forms to the executive council.\* Upon cancellation of registration, a lobbyist is prohibited from engaging in any lobbying activity on behalf of that particular employer, client, or cause until reregistering and complying with the rules of the executive council\* or the general assembly.

5. All federal, state, and local officials or employees representing the official positions of their departments, commissions, boards, or agencies shall, when lobbying the general assembly, present to the chief clerk of the house or the secretary of the senate a letter of authorization from their department or agency heads prior to the commencement of their lobbying. When lobbying a state agency or the office of the governor, the letter shall be presented to the agency or office.\* The lobbyist registration statement of these officials and employees shall not be deemed complete until the letter of authorization is attached. Federal, state, and local officials who wish to lobby in opposition to the official position of their departments, commissions, boards, or agencies must indicate this on their lobbyist registration statements.

93 Acts, ch 163, §23

\*References to the executive council or other agencies should be changed to "board", corrective legislation is pending

Certain former registration requirements void, 93 Acts, ch 163, §35  
Subsections 1 and 3 amended

### 68B.37 Lobbyist reporting.

1. A lobbyist before the general assembly shall file with the general assembly, on forms prescribed by each house of the general assembly, a report disclosing all of the following:

a. The lobbyist's clients.

b. Campaign contributions made by the lobbyist during calendar months during the reporting period when the general assembly is not in session.

c. The recipient of the campaign contributions.

d. Expenditures made by the lobbyist for the purposes of providing the services enumerated under section 68B.2, subsection 13, paragraph "a".

For purposes of this subsection, "expenditures" does not include expenditures made by any organization for publishing a newsletter or other informational release for its members.

2. A lobbyist before a state agency or the office of the governor shall file with the board, on forms prescribed by the board, a report disclosing the same items described in subsection 1.

3. The reports by lobbyists before the general assembly shall be filed not later than twenty-five days following any month in which the general assembly is in session and thereafter on or before July 31 and October 31. The monthly report filed by a lobbyist before the general assembly in January shall contain information for the preceding calendar quarter or parts thereof during which the person was engaged in lobbying. Reports filed by lobbyists before a state agency shall be filed on or before April 30, July 31, October 31, and January 31, for the preceding calendar quarter or parts thereof during which the person was engaged in lobbying. If a person cancels the person's lobbyist registration at any time during the calendar year, the reports required by this section are due on the dates required by this section or fifteen days after cancellation, whichever is earlier. The report due January 31 shall include all reportable items for the preceding calendar year in addition to containing the quarterly reportable items. A lobbyist who cancels the person's lobbyist registration before

January 1 of a year shall file a report listing all reportable items for the year in which the cancellation was filed. A lobbyist who cancels the person's lobbyist registration between January 1 and January 15 of a year shall file a report listing all reportable items for the preceding year and so much of the month of January as has expired at the time of cancellation. However, if a lobbyist is a person who is designated to represent the interest of an organization as defined in section 68B.2, subsection 13, paragraph "a", subparagraph (2), but is not paid compensation for that representation and does not expend more than one thousand dollars as provided in section 68B.2, subsection 13, paragraph "a", subparagraph (4), the lobbyist shall only be required to file the report specified in this section once annually, which shall be performed at the time of filing the person's lobbyist registration form or forms.

93 Acts, ch 163, §24  
Section stricken and rewritten

#### **68B.38 Lobbyist's client reporting.**

1. Beginning in 1994, no later than January 31 and July 31 of each year, unless no payments are made, a lobbyist's client shall file with the general assembly or board a report that contains information on all salaries, fees, and retainers paid by the lobbyist's client to the lobbyist for lobbying purposes during the preceding six calendar months. Reports by

lobbyists' clients shall be filed with the same entity with which the lobbyist filed the lobbyist's registration.

2. The report due January 31 shall include a cumulative total of all salaries, fees, retainers, and reimbursements of expenses paid to the lobbyist for lobbying activities during the preceding calendar year. The secretary of the senate, chief clerk of the house, and the board shall develop forms to implement this section.

93 Acts, ch 163, §25  
Section amended

#### **68B.39 Supreme court rules.**

The supreme court of this state shall prescribe rules by January 1, 1993, establishing a code of ethics for officials and employees of the judicial department of this state, and the immediate family members of the officials and employees. Rules prescribed under this paragraph shall include provisions relating to the receipt or acceptance of gifts and honoraria, interests in public contracts, services against the state, and financial disclosure which are substantially similar to the requirements of this chapter.

The supreme court of this state shall also prescribe rules which relate to activities by officials and employees of the judicial department which constitute conflicts of interest.

93 Acts, ch 163, §26  
Section amended

## CHAPTER 69

### VACANCIES — REMOVAL — TERMS

#### **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.

8. The incumbent simultaneously holding more than one elective office at the same level of government. This subsection does not apply to the following offices: county agricultural extension council, soil and water conservation district commission, or regional library board of trustees.

9. An incumbent statewide elected official or member of the general assembly simultaneously holding more than one elective office.

93 Acts, ch 143, §41  
Prohibitions concerning holding more than one office, §39 11 and 39 12  
NEW subsections 8 and 9

## CHAPTER 70A

### FINANCIAL PROVISIONS FOR PUBLIC OFFICERS AND EMPLOYEES

**70A.20 Employees disability program.**

A state employees disability insurance program is created, which shall be administered by the director of the department of personnel and which shall provide disability benefits in an amount and for the employees as provided in this section. The monthly disability benefits shall provide twenty percent of monthly earnings if employed less than one year, forty percent of monthly earnings if employed one year or more but less than two years, and sixty percent of monthly earnings thereafter, reduced by primary and family social security determined at the time social security disability payments commence, workers' compensation if applicable, and any other state sponsored sickness or disability benefits payable. However, the amount of benefits payable under the Iowa public employees' retirement system pursuant to chapter 97B shall not reduce the benefits payable pursuant to this section. Subsequent social security increases shall not be used to further reduce the insurance benefits payable. State employees shall receive credit for the time they were continuously employed prior to and on July 1, 1974. The following provisions apply to the employees disability insurance program:

1. Waiting period, ninety working days of continuous sickness or accident disability or the expiration of accrued sick leave, whichever is greater.

2. Maximum period benefits paid for both accident or sickness disability:

a. If the disability occurs prior to the time the employee attains the age of sixty-one years, the maximum benefit period shall end sixty months after continuous benefit payments begin or on the date on which the employee attains the age of sixty-five years, whichever is later.

b. If the disability occurs on or after the time the employee attains the age of sixty-one years but prior to age sixty-nine, the maximum benefit period shall end sixty months after continuous benefit payments begin or on the date on which the employee attains the age of seventy years, whichever is earlier.

c. If the disability occurs on or after the time the employee attains the age of sixty-nine years, the maximum benefit period shall end twelve months after continuous benefit payments begin.

3. Minimum and maximum benefits, not less than fifty dollars per month and not exceeding two thousand dollars per month.

4. All permanent full-time state employees shall be covered under the employees disability insurance program, except board members and members of commissions who are not full-time state employees, and state employees who on July 1, 1974, are under another disability program financed in whole or in part by the state. For purposes of this section, members of the general assembly serving on or after January 1, 1989, are eligible for the plan during their tenure in office, on the basis of enrollment rules established for full-time state employees excluded from collective bargaining as provided in chapter 20.

93 Acts, ch 7, § 1  
1993 amendment to unnumbered paragraph 1 retroactive to July 1, 1990; 93 Acts, ch 7, § 2  
Unnumbered paragraph 1 amended

## CHAPTER 76

### PROVISIONS RELATED TO PUBLIC BONDS AND DEBT OBLIGATIONS

**76.2 Mandatory levy — obligations in anticipation of levy.**

The governing authority of these political subdivisions before issuing bonds shall, by resolution, provide for the assessment of an annual levy upon all the taxable property in the political subdivision sufficient to pay the interest and principal of the bonds within a period named not exceeding twenty years. A certified copy of this resolution shall be filed with the county auditor or the auditors of the counties in which the political subdivision is located; and the filing shall make it a duty of the auditors to enter annu-

ally this levy for collection from the taxable property within the boundaries of the political subdivision until funds are realized to pay the bonds in full. The levy shall continue to be made against property that is severed from the political subdivision after the filing of the resolution until funds are realized to pay the bonds in full.

If the resolution is filed prior to April 1 or May 1, if the political subdivision is a school district, the annual levy shall begin with the tax levy for collection commencing July 1 of that year. If the resolution is filed after April 1 or May 1, in the case of a school

district, the annual levy shall begin with the tax levy for collection in the next succeeding fiscal year. However, the governing authority of a political subdivision may adjust a levy of taxes made under this section for the purpose of adjusting the annual levies and collections for property severed from the political subdivision, subject to the approval of the director of the department of management.

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

93 Acts, ch 1, §2  
Unnumbered paragraph 2 amended

#### **76.10 Registration — immobilization — standards — tax — records.**

Notwithstanding any other provision in the Code:

1. All public bonds or obligations issued before or after July 1, 1983 may be in registered form. An issuer of public bonds or obligations may designate for a term as agreed upon, one or more persons, corporations, partnerships or other associations located within or without the state to serve as trustee, transfer agent, registrar, depository or paying or other agent in connection with the public bonds or obligations and to carry out services and functions which are customary in such capacities or convenient or necessary to comply with the intent and provisions of this chapter.

2. An issuer of public bonds or obligations may provide for the immobilization of the bonds through the designation of a bond depository or through a book-entry system of registration.

3. Any designated trustee, transfer agent, registrar, depository or paying or other agent may serve in multiple capacities with respect to an issue of public bonds or obligations.

4. Public bonds or obligations or certificates of ownership of the public bonds or obligations may be

issued in any form or pursuant to any system necessary to be in compliance with standards issued from time to time by the municipal securities rule-making board of the United States, the American national standards institute, any other securities industry standard, or the requirements of section 103 of the Internal Revenue Code.

5. Registration or immobilization of a public bond or obligation does not disqualify it as a lawful investment for depository institutions, trustees, public bodies, or other investors regulated by law.

6. An issuer of public bonds or obligations may provide for the payment of the costs of registration of its public bonds or obligations by the levy of additional taxes for the payment from the fund for the payment of the principal and interest of general obligation bonds or from any revenue source from which the principal and interest of the public bonds or obligations are payable.

7. *a.* Records and documents pertaining to cancellation, transfer, redemption, or replacement of public bonds or obligations shall be preserved by the issuer or its agent for a period of not less than eleven years. Thereafter, the records and documents may be destroyed by the issuer or its agent, preserving confidentiality as necessary.

*b.* An action with respect to the cancellation, transfer, redemption, or replacement of public bonds or obligations shall not be brought against an issuer, trustee, transfer agent, registrar, depository, paying agent, or other agent unless it is commenced within eleven years of the cancellation, transfer, redemption, or replacement of the bonds or obligations.

93 Acts, ch 89, §1  
NEW subsection 7

#### **76.16 Debtor status prohibited.**

A city, county, or other political subdivision of this state shall not be a debtor under chapter 9 of the federal Bankruptcy Code, 11 U.S.C. § 901 et seq., except as otherwise specifically provided in this chapter.

92 Acts, ch 1002, §1, 3  
Section amended effective July 1, 1993, to strike the amendments enacted by 92 Acts, ch 1002, §1, 2

## CHAPTER 80B

### 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.

In-service training under this subsection shall include the requirement that by December 31, 1994, all law enforcement officers complete a course on investigation, identification, and reporting of public offenses based on the race, color, religion, ancestry, national origin, political affiliation, sex, sexual orientation, age, or disability of the victim. The director shall consult with the civil rights commission, the department of public safety, and the prosecuting attorneys training coordinator in developing the requirements for this course and may contract with outside providers for this course.

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 provide for the cognitive and psychological examinations and their administration 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.

A certified course of instruction provided for under this section which occurs at a location other than at the central training facility of the Iowa law enforcement academy shall not be eliminated by the Iowa law enforcement academy.

93 Acts, ch 169, §15  
NEW unnumbered paragraph 2

## CHAPTER 84A

### DEPARTMENT OF EMPLOYMENT SERVICES

#### **84A.2 Department and division responsibilities.**

1. The division of job service is responsible for the administration of unemployment compensation benefits and for the collection of employer contributions under chapter 96. The division is responsible for the administration of the free public employment offices established pursuant to chapter 96, other job placement and training programs established pursuant to section 84A.3, and the administration of the offices of the division located throughout the state and for the personnel attached to those offices. The

executive head of the division is the job service commissioner, appointed pursuant to section 96.10.

2. The division of labor services is responsible for the administration of the laws of this state relating to occupational health and safety, the inspection of amusement rides, the removal and encapsulation of asbestos, the inspection of boilers, wage payment collection, registration of construction contractors, the minimum wage, non-English speaking employees, child labor, employment agency licensing, boxing and wrestling, inspection of elevators, and hazardous chemical risks under chapters 88, 88A, 88B,

89, 89A, 89B, 90A, 91, 91A, 91C, 91D, 91E, 92, 94, and 95. The executive head of the division is the labor commissioner, appointed pursuant to section 91.2.

3. The division of industrial services is responsible for the administration of the laws of this state relating to workers' compensation under chapters 85, 85A, 85B, 86, and 87. The executive head of the division is the industrial commissioner, appointed pursuant to section 86.1.

4. The director shall form a coordinating committee composed of the job service commissioner, the labor commissioner, and the industrial commissioner. The committee shall monitor federal compliance issues relating to coordination of functions among the divisions.

93 Acts, ch 180, §53  
Subsection 2 amended

## CHAPTER 84B

### WORKFORCE DEVELOPMENT

#### 84B.1 Workforce development centers.

The departments of employment services and economic development, in consultation with the departments of education, elder affairs, human services, and human rights, shall establish guidelines for collocated state and federal employment and training programs in centers providing services at the local level. The centers shall be known as workforce development centers. The departments shall also jointly establish an integrated management information system for linking the programs within a local center to the same programs within other local centers and to the state. The guidelines shall provide for local design and operation within the guidelines. The core services available at a center shall include but are not limited to all of the following:

1. *Information.* Provision of information shall include labor exchange and labor market information as well as career guidance and occupational information. Training and education institutions which receive state or federal funding shall provide to the centers consumer-related information on their programs, graduation rates, wage scales for graduates, and training program prerequisites. Information from local employers, unions, training programs, and educators shall be collected in order to identify demand industries and occupations. Industry and occupation demand information should be

published as frequently as possible and be made available through centers.

2. *Assessment.* Individuals shall receive basic assessment regarding their own skills, interests, and related opportunities for employment and training. Assessments are intended to provide individuals with realistic information in order to guide them into training or employment situations. The basic assessment may be provided by the center or by existing service providers such as community colleges or by a combination of the two.

3. *Training accounts.* Training accounts may be established for both basic skill development and vocational or technical training. There shall be no training assistance or limited training assistance in those training areas a center has determined are oversupplied or are for general life improvement.

4. *Referral to training programs or jobs.* Based upon individual assessments, a center shall provide individuals with referrals to other community resources, training programs, and employment opportunities.

5. *Job development and job placement.* A center shall be responsible for job development activities and job placement services. A center shall seek to create a strong tie to the local job market by working with both business and union representatives.

93 Acts, ch 97, §12  
NEW section

## CHAPTER 85

### WORKERS' COMPENSATION

Second injury fund administrative costs and expenses;  
conditions for payment for 1993-1994 fiscal year; 93 Acts, ch 178, §22

#### 85.49 Trustees for incompetent.

When a minor or mentally incompetent dependent is entitled to weekly benefits under this chapter, or chapter 85A or 85B, payment shall be made to the parent, guardian, or conservator, who shall act as trustee, and the money coming into the trustee's hands shall be expended for the use and benefit of the person entitled to it under the direction and orders of a district judge. The trustee shall qualify and give bond in an amount as the district judge directs, which may be increased or diminished from time to time.

If the domicile or residence of such minor or mentally incompetent dependent be outside the state of Iowa the industrial commissioner may order and direct that benefits to such minors or incompetents be paid to a guardian, conservator, or legal representative duly qualified under the laws of the jurisdiction wherein the minors or incompetents shall be domiciled or reside. Proof of the identity and qualification of such guardian, conservator, or other legal representative shall be furnished to the industrial commissioner.

93 Acts, ch 70, §5  
Unnumbered paragraph 1 amended

#### 85.50 Report of trustee.

The trustee shall, on or before September 30 of each year, make reports, at such times as designated by the court, to the court of all money or property received or expended for the person for whom the parent, guardian, or conservator is acting as trustee.

93 Acts, ch 70, §6  
Section amended

#### 85.59 Benefits for inmates and offenders.

For the purposes of this section, the term "inmate" includes a person confined in a reformatory, state penitentiary, release center, or other state penal or correctional institution while that person works in connection with the maintenance of the institution, in an industry maintained in the institution, or in an industry referred to in section 904.809, or while on detail to perform services on a public works project.

For purposes of this section, "inmate" includes a person who is performing unpaid community service under the direction of the district court, board of parole, or judicial district department of correctional services, or an inmate providing services pursuant to a chapter 28E agreement entered into pursuant to section 904.703, or who is performing a work assignment of value to the state or to the public under chapter 232.

For purposes of this section, an inmate on a work assignment under section 904.703 working in construction or maintenance at a public or charitable facility, or under assignment to another agency of state, county, or local government, shall be considered an employee of the state.

If an inmate is permanently incapacitated by injury in the performance of the inmate's work in connection with the maintenance of the institution, in an industry maintained in the institution, or in an industry referred to in section 904.809, while on detail to perform services on a public works project, or while performing services authorized pursuant to section 904.809, or is permanently or temporarily incapacitated in connection with the performance of unpaid community service under the direction of the district court, board of parole, or judicial district department of correctional services, or in connection with the provision of services pursuant to a chapter 28E agreement entered into pursuant to section 904.703, or who is performing a work assignment of value to the state or to the public under chapter 232, that inmate shall be awarded only the benefits provided in section 85.27 and section 85.34, subsections 2 and 3. The weekly rate for such permanent disability is equal to sixty-six and two-thirds percent of the state average weekly wage paid employees as determined by the department of employment services under section 96.19, subsection 36, and in effect at the time of the injury.

Weekly compensation benefits under this section may be determined prior to the inmate's release from the institution, but payment of benefits to an inmate shall commence as of the time of the inmate's release from the institution either upon parole or final discharge. However, if the inmate is awarded benefits for an injury incurred in connection with the performance of unpaid community service under the direction of the district court, board of parole, or judicial district department of correctional services, or in connection with the provision of services pursuant to a chapter 28E agreement entered into pursuant to section 904.703, or who is performing a work assignment of value to the state or to the public under chapter 232, weekly compensation benefits under this section shall be determined and paid as in other workers' compensation cases.

If an inmate is receiving benefits under the provisions of this section and is recommitted to an institution covered by this section, the benefits shall immediately cease. If benefits cease because of the inmate's recommitment, the benefits shall resume upon subsequent release from the institution.

If death results from the injury, death benefits shall be awarded and paid to the dependents of the inmate as in other workers' compensation cases except that the weekly rate shall be equal to sixty-six and two-thirds percent of the state average weekly wage paid employees as determined by the department of employment services under section 96.19, subsection 36, and in effect at the time of the injury.

Payment under this section shall be made promptly out of appropriations which have been made for that purpose, if any. An amount or part thereof which cannot be paid promptly from the appropriation shall be paid promptly out of money in the state treasury not otherwise appropriated.

The time limit for commencing an original proceeding to determine entitlement to benefits under this section is the same as set forth in section 85.26. If an injury occurs to an inmate so as to qualify the inmate for benefits under this section, notwithstanding the fact that payments of weekly benefits are not commenced, an acknowledgment of compensability shall be filed with the industrial commissioner within thirty days of the time the responsible authority receives notice or knowledge of the injury as required by section 85.23.

If a dispute arises as to the extent of disability when an acknowledgment of compensability is on file or when an award determining liability has been made, an action to determine the extent of disability must be commenced within one year of the time of the release of the inmate from the institution. This does not bar the right to reopen the claim as provided by section 85.26, subsection 2.

Responsibility for the filings required by chapter 86 for injuries resulting in permanent disability or death and as modified by this section shall be made in the same manner as for other employees of the institution.

93 Acts, ch 46, §1  
Unnumbered paragraphs 1 and 4 amended

### 85.61 Definitions.

In this and chapters 86 and 87, unless the context otherwise requires, the following definitions of terms shall prevail:

1. 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 ir-

regular 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. “*Spendable 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, an advanced emergency medical care provider as defined in section 147A.1, a volunteer ambulance driver, or an emergency medical technician trainee, only if an agreement is reached between such worker or employee 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. “*Volunteer ambulance driver*” means a person performing services as a volunteer ambulance driver at the request of the person in charge of a fire department or ambulance service of a municipality. “*Emergency medical technician trainee*” means a person enrolled in and training for emergency medical technician certification.

“*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 include the singular and plural. Any reference to a worker or employee who has been injured shall, when such worker or employee is dead, include the worker’s or employee’s dependents as herein defined or the worker’s or employee’s legal representatives; and where the worker or employee is a minor or incompetent, it shall include the minor’s or incompetent’s guardian, next friend, or trustee. Notwithstanding any law prohibiting the employment of minors all minor employees shall be entitled to the benefits of this chapter and chapters 86 and 87 regardless of the age of such minor employee.

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 direc-

tors, 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.

93 Acts, ch 88, §1  
Subsection 11, unnumbered paragraph 3 amended

## CHAPTER 86

### INDUSTRIAL SERVICES DIVISION

#### **86.36 Notice and service — resident and nonresident employers.**

1. In addition to the manner provided in chapter 17A, whenever service or delivery of any notice is made on a nonresident employer under the provisions of section 85.3, subsection 2, the same shall be done in the following manner:

a. By filing a copy of said notice with the secretary of state.

b. By mailing to such employer within ten days after said filing with the secretary of state, by certified mail with return receipt requested addressed to the nonresident employer at the nonresident employer's last known residence or place of abode, a copy of said notice on which shall be noted the date of filing of the copy with the secretary of state.

2. In lieu of mailing said copy of notice to the nonresident employer in a foreign state, plaintiff may cause the same to be personally served or delivered in the foreign state on such employer by any adult person not a party to the proceedings, by delivering said copy of notice to the nonresident employer or by offering to make such delivery in case delivery is refused.

3. Proof of the filing of a copy of said notice with the secretary of state and proof of the mailing or personal delivery of the copy to said nonresident employer shall be made by affidavit of the party doing said acts. All affidavits of service or delivery shall be endorsed upon or attached to the original of the papers to which they relate and all such proofs of service or delivery, including the certified mail return receipt shall be forthwith filed with the original of the papers.

4. The secretary of state shall keep a record of all notices filed with the secretary of state pursuant to section 85.3 and this section and shall not permit said filed notices to be taken from the secretary's office except on an order of court but shall, on request and without fee, furnish any nonresident employer or nonresident employer's insurer with a certified copy of any notice in which the nonresident employer is named.

5. "*Nonresident employer*", as used in section 85.3 and this section does not mean foreign corporations lawfully qualified to transact business within the state of Iowa under chapter 490.

93 Acts, ch 126, §1  
Subsection 5 amended

## CHAPTER 87

### COMPENSATION LIABILITY INSURANCE

#### 87.24 Insurance trade practices covered.

A workers' compensation coverage plan regulated under this chapter shall be considered a person for

purposes of chapter 507B.

93 Acts, ch 88, §2  
NEW section

## CHAPTER 88

### OCCUPATIONAL SAFETY AND HEALTH

#### 88.5 Occupational safety and health standards.

##### 1. *Promulgation of rules.*

a. As soon as practicable following July 1, 1972, the commissioner shall by rule, adopt and promulgate those occupational safety and health standards, which would result in improved safety or health for employees; provided, that the commissioner shall adopt no such standard unless the same has been adopted and promulgated as a permanent standard by the secretary in accordance with the procedures set forth in the federal law. In the event that any such federal standard is subsequently amended, modified, repealed, or substituted by a new standard, the commissioner shall, within ninety days, review such amendment, modification, repeal or substitution, and take such action with respect to the state standards, including the repeal or substitution of the same, as will conform the state standards to those federal standards then in effect.

b. Before adopting, modifying, or revoking any standard by rule pursuant to this section, the commissioner shall hold a public hearing on the subject matter of the proposed adoption, modification, or revocation. An interested person may appear and be heard at the hearing, in person or by agent or counsel. The provisions of this section are in addition to the requirements of chapter 17A.

c. Notwithstanding other provisions of this section, upon or following July 1, 1972, the commissioner may adopt as interim standards those standards adopted by the secretary in conformance with section 6(a) of the federal law, provided that any such standard so adopted shall cease to be effective on April 28, 1973, unless the commissioner shall have initiated the procedures for adopting a permanent standard in conformance with and following the procedures set forth in this section, in which case the interim standard shall remain in effect pending the adoption of the permanent standard. In the event that any such federal interim standard is subse-

quently amended, modified, repealed, or substituted by a new interim standard, the commissioner shall, within thirty days, review such amendment, modification, repeal or substitution, and take such action with respect to the state interim standards, including the repeal or substitution of the same, as will conform the state interim standards to those federal interim standards then in effect.

2. *Toxic materials and other harmful physical agents.* The commissioner, in promulgating standards dealing with toxic materials or harmful physical agents under this subsection, shall set the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of the employee's working life. Development of standards under this subsection shall be based upon research, demonstrations, experiments, and such other information as may be appropriate, but in any event shall conform with the provisions of subsection 1 of this section. In addition to the attainment of the highest degree of health and safety protection for the employee, other considerations shall be the latest available scientific data in the field, the feasibility of the standards, and experience gained under this and other health and safety laws. Whenever practicable, a standard promulgated shall be expressed in terms of objective criteria and of the performance desired.

##### 3. *Temporary variances.*

a. Any employer may apply to the commissioner for a temporary order granting a variance from a standard or any provision thereof promulgated under this section. Such temporary order shall be granted only if the employer files an application which meets the requirements of paragraph "b" of this subsection and establishes that the employer is unable to comply with the standard by its effective date because of unavailability of professional or

technical personnel or of materials and equipment needed to come into compliance with the standards or because necessary construction or operation of the facilities cannot be completed by the effective date, that the employer is taking all available steps to safeguard the employer's employees against the hazards that are covered by the standard, and that the employer has an effective program for coming into compliance with this standard as quickly as practicable. Any temporary order issued under this paragraph shall prescribe the practices, means, methods, operations, and processes which the employer must adopt and use while the order is in effect and state in detail the employer's program for coming into compliance with the standard. Such a temporary order may be granted only after notice to employees and an opportunity for a hearing, provided that the commissioner may issue one interim order to be effective until a decision is made on the basis of the hearing. No temporary order may be in effect longer than the period needed by the employer to achieve compliance with the standard, or one year, whichever is shorter except that such an order may be renewed not more than twice so long as the requirements of this paragraph are met and an application for renewal is filed at least ninety days prior to the expiration date of the order. No interim renewal of an order may remain in effect for longer than one hundred and eighty days.

b. An application for a temporary order under this subsection shall contain:

(1) A specification of the standard or portion thereof from which the employer seeks a variance.

(2) A representation by the employer, supported by representations from qualified persons having firsthand knowledge of the fact represented, that the employer is unable to comply with the standard or portion thereof and a detailed statement of those reasons therefor.

(3) A statement of the steps the employer has taken and will take (with specific dates) to protect employees against the hazard covered by the standard.

(4) A statement of when the employer expects to be able to comply with the standard and what steps the employer has taken and what steps the employer will take (with dates specified) to come into compliance with the standard.

(5) A certification that the employer has informed the employer's employees of any application by giving a copy thereof to their authorized employee representative, posting a statement giving a summary of the application and specifying where a copy may be examined at the place or places where notices to employees are normally posted, and by other reasonably appropriate means as may be directed by the commissioner.

(6) A description of how employees have been informed shall be contained in the certification. The information to employees shall also inform them of their right to petition the commissioner for a hearing.

4. *Labels, warnings, protective equipment.* Any standard promulgated under this section shall prescribe the use of labels or other appropriate forms of warning as are necessary to insure that employees are apprised of all hazards to which they are exposed, relevant symptoms and appropriate emergency treatment, and proper conditions and precautions of safe use or exposure. Where appropriate, such standard shall also prescribe suitable protective equipment and control or technological procedures to be used in connection with such hazards and shall provide for monitoring or measuring employee exposure at such locations and intervals, and in such manner as may be necessary for the protection of employees. In addition, where appropriate, any such standard shall prescribe the type and frequency of medical examinations or other tests which shall be made available, by the employer or at the employer's cost, to employees exposed to such hazard in order to most effectively determine whether the health of such employee is adversely affected by such exposure. The results of such examinations or tests shall be furnished to the commissioner, and if released by the employee, shall be furnished to the employee's physician and the employer's physician.

5. *Emergency temporary standards.* The commissioner shall provide for an emergency temporary standard to take immediate effect if the commissioner determines that employees are exposed to grave danger from exposure from substances or agents determined to be toxic or physically harmful or from new hazards and if such emergency temporary standard is necessary to protect the employees from such danger. Such emergency standard shall cease to be effective and shall no longer be applicable after the lapse of six months following the effective date thereof unless the commissioner has initiated the procedures provided for under this chapter, for the purpose of promulgating a permanent standard as provided in subsection 1 of this section in which case the emergency temporary standard will remain in effect until the permanent standard is adopted and becomes effective. Abandonment of the procedure for such promulgation by the commissioner shall terminate the effectiveness and applicability of the emergency temporary standard.

6. *Permanent variance.* Any affected employer may apply to the commissioner for a rule or order for a permanent variance from a standard promulgated under this section. Affected employees shall be given notice of each such application and an opportunity to participate in a hearing. The commissioner shall issue such rule or order if the commissioner determines on the record, after opportunity for an inspection where appropriate and a hearing, that the proponent of the variance has demonstrated by a preponderance of the evidence that the conditions, practices, means, methods, operations, or processes used or proposed to be used by an employer will provide employment and places of employment to the employer's employees which are as safe and healthful as those which would prevail if the employer com-

plied with the standard. The rule or order so issued shall prescribe the conditions the employer must maintain, and the practices, means, methods, operations, and processes which the employer must adopt and utilize to the extent that they differ from the standard in question. Such a rule or order may be modified or revoked upon application by an employer, employees, or by the commissioner on the commissioner's own motion, in the manner prescribed for its issuance under this subsection at any time after six months from its issuance.

7. *Special variance.* Where there are conflicts with standards, rules or regulations promulgated by any federal agency other than the United States department of labor, special variances from standards, rules or regulations promulgated under this chapter may be granted to avoid such regulatory conflicts. Such variances shall take into consideration the safety of the employees involved. Notwithstanding any other provision of this chapter, and with respect to this paragraph, any employer seeking relief under this provision must file an application therefor with the commissioner and the commissioner shall forthwith hold a hearing at which employees or other interested persons, including representatives of the federal regulatory agencies involved, may appear and upon the showing that such a conflict indeed exists the commissioner may issue a special variance until the conflict is resolved.

8. *Priority for setting standards.* In determining the priorities for establishing standards under this section, the commissioner shall give due regard to the urgency of the need for mandatory safety and health standards for particular industries, trades, crafts, occupations, businesses, workplaces or work environments.

9. *Product safety.* Standards promulgated under this chapter shall not be different from federal standards applying to products distributed or used in interstate commerce unless such standards are required by compelling local conditions and do not unduly burden interstate commerce. This provision does not apply to customized products or parts not normally available on the open market, or to optional parts or additions to products which are ordinarily available with such optional parts or additions.

10. *Judicial review before enforcement.* The provisions of the Iowa administrative procedure Act shall apply to judicial review of standards issued under this section. Notwithstanding any provision of the Iowa administrative procedure Act to the contrary, a person who is aggrieved or adversely affected by a standard issued under this section must seek judicial review of such standard prior to the sixtieth day after such standard becomes effective. All determinations of the commissioner shall be conclusive if supported by substantial evidence in the record as a whole.

11. *Fire fighters clothing and equipment.* The commissioner shall establish standards and promulgate rules for protective helmets, boots, fire coats, trousers, gloves, work uniforms and may set stan-

dards for any other protective clothing or equipment which shall be worn or used by fire fighters within the state. In establishing these standards, the commissioner shall consider the standards of or proposed by the national fire protection association, the international association of fire fighters and any federal agency which may have such standards. The commissioner shall provide a copy of the standards, rules and any changes thereto to each fire department operating in this state. The standards established and the rules promulgated hereunder shall apply to protective clothing and equipment worn or used by every fire fighter in the state, provided that the standards and rules shall be advisory rather than mandatory for volunteer fire departments.

The standards promulgated by the commissioner under the provisions of this subsection shall be effective for all equipment purchased after January 1, 1979. All equipment for which standards are established under the provisions of this subsection shall meet the standards promulgated under the provisions of this subsection prior to January 1, 1981.

12. *Railway sanitation and shelter.* A railway corporation within the state shall provide adequate sanitation and shelter for all railway employees. The commissioner shall adopt rules requiring railway corporations within the state to provide a safe and healthy workplace. For purposes of this section, a locomotive engine includes all railway engines used in train or yard service. The commissioner shall enforce the requirements of this section upon the receipt of a written complaint.

93 Acts, ch 180, §54  
NEW subsection 12

### 88.8 Procedure for enforcement.

1. *Postinspection penalty notice.* If, after an inspection or an investigation, the commissioner issues a citation under section 88.7, the commissioner shall within a reasonable time after the termination of such inspection or investigation notify the employer by certified mail of the penalty, if any, proposed to be assessed under section 88.14 and that the employer has fifteen working days within which to notify the commissioner that the employer wishes to contest the citation or proposed assessment of penalties. If, within fifteen working days from the receipt of the notice issued by the commissioner, the employer fails to notify the commissioner that the employer intends to contest the citation or proposed assessment of penalty, and no notice is filed by any employees or authorized employee representative under subsection 3 of this section within such time, the citation and the assessment, as proposed, shall be deemed a final order of the appeal board and not subject to review by any court or agency.

2. *Noncompliance notice.* If the commissioner has reason to believe that an employer has failed to correct the violation for which a citation has been issued within the period permitted for its correction (which period shall not begin to run until the entry of a final order by the appeal board in the case of any review proceedings under this section initiated by

the employer in good faith and not solely for delay or avoidance of penalties), the commissioner shall notify the employer by certified mail of the failure and of the penalty proposed to be assessed under section 88.14 by reason of the failure, and that the employer has fifteen working days within which to notify the commissioner that the employer wishes to contest the commissioner's notification or the proposed assessment of penalty. If, within fifteen working days from the receipt of notification issued by the commissioner, the employer fails to notify the commissioner that the employer intends to contest the notification or proposed assessment of penalty, the notification and assessment, as proposed, shall be deemed the final order of the appeal board and not subject to review by any court or agency.

3. *Contested notice.* If an employer notifies the commissioner that the employer intends to contest a citation issued under section 88.7, or notification issued under subsection 1 or 2 of this section or if, within fifteen working days of the issuance of a citation under section 88.7, any employee or authorized employee representative files a notice with the commissioner alleging that the period of time fixed in the citation for the abatement of the violation is unreasonable, the commissioner shall immediately advise the appeal board of such notification, and the appeal board shall afford an opportunity for a hearing. At the hearing, the appeal board shall act as an adjudicatory body. The appeal board shall thereafter issue an order, based on findings of fact, affirming, modifying, or vacating the commissioner's citation or proposed penalty or directing other appropriate relief, and such order shall become final thirty days after its issuance. Upon a showing by an employer of a good faith effort to comply with the abatement requirements of a citation, and that abatement has not been completed because of factors beyond the employer's reasonable control, the commissioner, after an opportunity for a hearing shall issue an order affirming or modifying the abatement requirements in such citation. The rules of procedure prescribed by the appeal board shall provide affected employees or representatives of affected employees an opportunity to participate as parties to hearings under this subsection, and shall conform to rules of procedure adopted under the federal law by federal authorities insofar as the federal rules of procedure do not conflict with state law.

The commissioner has unreviewable discretion to withdraw a citation charging an employer with violating this chapter. If the parties enter into a settlement agreement prior to a hearing, the employment appeal board shall enter an order affirming the agreement.

93 Acts, ch 180, §55  
Subsection 3, unnumbered paragraph 1 amended

### 88.9 Judicial review.

1. *Aggrieved persons.* Judicial review of any order of the appeal board issued under section 88.8, subsection 3, may be sought in accordance with the terms of the Iowa administrative procedure Act.

Notwithstanding the terms of the Iowa administrative procedure Act, petitions for judicial review may be filed in the district court of the county in which the violation is alleged to have occurred or where the employer has its principal office and may be filed within sixty days following the issuance of such order. The appeal board's copy of the testimony shall be available to all parties for examination at all reasonable times, without cost, and for the purpose of judicial review of the appeal board's orders.

The commissioner may obtain judicial review or enforcement of any final order or decision of the appeal board by filing a petition in the district court of the county in which the alleged violation occurred or in which the employer has its principal office. The judicial review provisions of chapter 17A shall govern such proceedings to the extent applicable.

Notwithstanding section 10A.601, subsection 7, and chapter 17A, the commissioner has the exclusive right to represent the appeal board in any judicial review of an appeal board decision under this chapter in which the commissioner does not appeal the appeal board decision, except as provided by section 88.17.

2. *Uncontested appeal board orders.* If no petition for judicial review is filed within sixty days after service of the appeal board's order, the appeal board's findings of fact and order shall be conclusive in connection with any petition for enforcement which is filed by the commissioner after the expiration of such sixty-day period. In any such case, as well as in the case of a noncontested citation or notification by the commissioner which has become a final order of the appeal board under section 88.8, subsection 1 or 2, the clerk of the district court, unless otherwise ordered by the court, shall forthwith enter a decree enforcing the order and shall transmit a copy of such decree to the appeal board and the employer named in the petition. In any contempt proceeding brought to enforce a decree of a district court entered pursuant to this subsection or subsection 1, the district court may assess the penalties provided in section 88.14 in addition to invoking any other available remedies.

3. *Discrimination and discharge.* A person shall not discharge or in any manner discriminate against an employee because the employee has filed a complaint or instituted or caused to be instituted a proceeding under or related to this chapter or has testified or is about to testify in any such proceeding or because of the exercise by the employee on behalf of the employee or others of a right afforded by this chapter. A person shall not discharge or in any manner discriminate against an employee because the employee, who with no reasonable alternative, refuses in good faith to expose the employee's self to a dangerous condition of a nature that a reasonable person, under the circumstances then confronting the employee, would conclude that there is a real danger of death or serious injury; provided the employee, where possible, has first sought through resort to regular statutory enforcement channels, un-

less there has been insufficient time due to the urgency of the situation, or the employee has sought and been unable to obtain from the person, a correction of the dangerous condition.

An employee who believes that the employee has been discharged or otherwise discriminated against by a person in violation of this subsection may, within thirty days after the violation occurs, file a complaint with the commissioner alleging discrimination. Upon receipt of the complaint, the commissioner shall conduct an investigation as the commissioner deems appropriate. If, upon investigation, the commissioner determines that the provisions of this

subsection have been violated, the commissioner shall bring an action in the appropriate district court against the person. In any such action, the district court has jurisdiction to restrain violations of this subsection and order all appropriate relief including rehiring or reinstatement of the employee to the employee's former position with back pay. Within ninety days of the receipt of a complaint filed under this subsection, the commissioner shall notify the complainant of the commissioner's determination under this subsection.

93 Acts, ch 180, §56, 57  
 Subsection 1, NEW unnumbered paragraphs 2 and 3  
 Subsection 2 amended

## CHAPTER 89B

### HAZARDOUS CHEMICALS RISKS — RIGHT TO KNOW

#### 89B.6 Liability of state or political subdivision.

The state or any of its political subdivisions is not liable for damages in any claim pursuant to chapter 669 or chapter 670 based upon an act or omission of an employee of the state or political subdivision when the employee exercised due care in the execu-

tion of this chapter or a rule adopted under this chapter. Any duty created in this chapter is a duty to the public generally and not to any person or group of persons.

Section not amended  
 Reference to transferred chapter corrected editorially

## CHAPTER 90A

### BOXING AND WRESTLING

#### 90A.10 Maximum age for participants — amateur boxing.

1. A person age thirty-three years or older shall not participate as a contestant in an organized amateur boxing contest unless each contestant participating in the contest is age thirty-three years or older. A birth certificate, or other similar document, must be submitted at the time of the prefight physical examination in order to determine eligibility.

2. Subsection 1 does not apply to participants in regional, national, or international organized amateur boxing contests or to organized amateur boxing contests involving contestants who are serving in the military service.

93 Acts, ch 15, §1  
 Subsection 1 amended

## CHAPTER 91

### LABOR SERVICES DIVISION

#### 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, 91C, 91D, 91E, 92, 94, and 95, and the rec-

ommendations, 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.

8. Except as provided in chapter 91A, the commissioner may recover interest, court costs, and any attorney fees incurred in recovering any amounts due. The recovery shall only take place after final agency action is taken under chapter 17A, or upon judicial review, after final disposition of the case by the court. Attorney fees recovered in an action brought under the jurisdiction of the commissioner shall be deposited in the general fund of the state. The commissioner is exempt from the payment of any filing fee or other court costs including but not limited to fees paid to county sheriffs.

9. The commissioner may establish rules pursuant to chapter 17A to assess and collect interest on fees, penalties, and other amounts due the division.

93 Acts, ch 180, §58  
Subsection 5 amended

## CHAPTER 96

### JOB SERVICE DIVISION — EMPLOYMENT SECURITY — UNEMPLOYMENT COMPENSATION

#### 96.3 Payment — determination — duration — child support intercept — health insurance.

1. *Payment.* Twenty-four months after the date when contributions first accrue under this chapter, benefits shall become payable from the fund; provided, that wages earned for services defined in section 96.19, subsection 18, paragraph "g" (3), irrespective of when performed, shall not be included for purposes of determining eligibility, under section 96.4 or full-time weekly wages, under subsection 4 of this section, for the purposes of any benefit year commencing on or after July 1, 1939, nor shall any benefits with respect to unemployment occurring on and after July 1, 1939, be payable under sub-

section 5 of this section on the basis of such wages. All benefits shall be paid through employment offices in accordance with such regulations as the division of job service of the department of employment services may prescribe.

2. *Total unemployment.* Each eligible individual who is totally unemployed in any week shall be paid with respect to such week benefits in an amount which shall be equal to the individual's weekly benefit amount.

3. *Partial unemployment.* An individual who is partially unemployed in any week as defined in section 96.19, subsection 38, paragraph "b", and who meets the conditions of eligibility for benefits shall



be paid with respect to that week an amount equal to the individual's weekly benefit amount less that part of wages payable to the individual with respect to that week in excess of one-fourth of the individual's weekly benefit amount. The benefits shall be rounded to the lower multiple of one dollar.

4. *Determination of benefits.* With respect to benefit years beginning on or after July 1, 1983, an eligible individual's weekly benefit amount for a week of total unemployment shall be an amount equal to the following fractions of the individual's total wages in insured work paid during that quarter of the individual's base period in which such total wages were highest; the commissioner shall determine annually a maximum weekly benefit amount equal to the following percentages, to vary with the number of dependents, of the statewide average weekly wage paid to employees in insured work which shall be effective the first day of the first full week in July:

If the number of dependents is:	The weekly benefit amount shall equal the following fraction of high quarter wages:	Subject to the following maximum percentage of the statewide average weekly wage:
0	1/23	53%
1	1/22	55%
2	1/21	57%
3	1/20	60%
4 or more	1/19	65%

The maximum weekly benefit amount, if not a multiple of one dollar shall be rounded to the lower multiple of one dollar. However, until such time as sixty-five percent of the statewide average weekly wage exceeds one hundred ninety dollars, the maximum weekly benefit amounts shall be determined using the statewide average weekly wage computed on the basis of wages reported for calendar year 1981. As used in this section "*dependent*" means dependent as defined in section 422.12, subsection 1, paragraph "c", as if the individual claimant was a taxpayer, except that an individual claimant's non-working spouse shall be deemed to be a dependent under this section. "*Nonworking spouse*" means a spouse who does not earn more than one hundred twenty dollars in gross wages in one week.

5. *Duration of benefits.* The maximum total amount of benefits payable to an eligible individual during a benefit year shall not exceed the total of the wage credits accrued to the individual's account during the individual's base period, or twenty-six times the individual's weekly benefit amount, whichever is the lesser. The commissioner shall maintain a separate account for each individual who earns wages in insured work. The commissioner shall compute wage credits for each individual by crediting the individual's account with one-third of the wages for insured work paid to the individual during the individual's

base period. However, the commissioner shall recompute wage credits for an individual who is laid off due to the individual's employer going out of business at the factory, establishment, or other premises at which the individual was last employed, by crediting the individual's account with one-half, instead of one-third, of the wages for insured work paid to the individual during the individual's base period. Benefits paid to an eligible individual shall be charged against the base period wage credits in the individual's account which have not been previously charged, in the inverse chronological order as the wages on which the wage credits are based were paid. However if the state "off indicator" is in effect and if the individual is laid off due to the individual's employer going out of business at the factory, establishment, or other premises at which the individual was last employed, the maximum benefits payable shall be extended to thirty-nine times the individual's weekly benefit amount, but not to exceed the total of the wage credits accrued to the individual's account.

6. *Part-time workers.*

a. As used in this subsection the term "*part-time worker*" means an individual whose normal work is in an occupation in which the individual's services are not required for the customary scheduled full-time hours prevailing in the establishment in which the individual is employed, or who, owing to personal circumstances, does not customarily work the customary scheduled full-time hours prevailing in the establishment in which the individual is employed.

b. The commissioner shall prescribe fair and reasonable general rules applicable to part-time workers, for determining their full-time weekly wage, and the total wages in employment by employers required to qualify such workers for benefits.

7. *Recovery of overpayment of benefits.* If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The division of job service in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the division a sum equal to the overpayment.

If the division determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund.

8. *Back pay.* If an individual receives benefits for a period of unemployment and subsequently receives a payment for the same period from the individual's employer in the form of or in lieu of back pay, the benefits shall be recovered. The division of job service, in its discretion, may reach an agreement with the individual and the employer to allow the employer to deduct the amount of the benefits from the back pay and remit a sum equal to that amount

to the unemployment compensation fund and the balance to the individual, or may recover the amount of the benefits either by having a sum equal to that amount deducted from any future benefits payable to the individual or by having the individual pay to the division a sum equal to that amount. If an agreement is reached to allow the employer to deduct the amount of benefits from the back pay and remit that amount to the fund, the division shall not charge that amount to the employer's account under section 96.7.

9. *Child support intercept.*

a. An individual filing a claim for benefits under section 96.6, subsection 1 shall, at the time of filing, disclose whether the individual owes a child support obligation which is being enforced by the child support recovery unit established in section 252B.2. If an individual discloses that such a child support obligation is owed and the individual is determined to be eligible for benefits under this chapter, the division of job service shall notify the child support recovery unit of the individual's disclosure and deduct and withhold from benefits payable to the individual the amount specified by the individual.

b. However, if the child support recovery unit and an individual owing a child support obligation reach an agreement to have specified amounts deducted and withheld from the individual's benefits and the child support recovery unit submits a copy of the agreement to the division, the division shall deduct and withhold the specified amounts.

c. However, if the division is notified of an assignment of income by the child support recovery unit under chapter 252D or section 598.22 or 598.23 or is garnished by the child support recovery unit under chapter 642 and an individual's benefits are condemned to the satisfaction of the child support obligation being enforced by the child support recovery unit, the division shall deduct and withhold from the individual's benefits that amount required through legal process.

Notwithstanding section 642.2, subsections 2, 3, 6, and 7 which restrict garnishments under chapter 642 to wages of public employees, the division may be garnished under chapter 642 by the child support recovery unit established in section 252B.2, pursuant to a judgment for child support against an individual eligible for benefits under this chapter.

Notwithstanding section 96.15, benefits under this chapter are not exempt from income assignment, garnishment, attachment, or execution if assigned to or garnished by the child support recovery unit, established in section 252B.2, or if an assignment under section 598.22 or 598.23 is being enforced by the child support recovery unit to satisfy the child support obligation of an individual who is eligible for benefits under this chapter.

d. An amount deducted and withheld under paragraph "a", "b", or "c" shall be paid by the division to the child support recovery unit, and shall be treated as if it were paid to the individual as benefits under this chapter and as if it were paid by the indi-

vidual to the child support recovery unit in satisfaction of the individual's child support obligations.

e. If an agreement for reimbursement has been made, the division shall be reimbursed by the child support recovery unit for the administrative costs incurred by the division under this section which are attributable to the enforcement of child support obligations by the child support recovery unit.

10. *Health insurance.* The division shall establish a program of health insurance or health care coverage under a group policy or contract provided pursuant to chapter 509, 514, or 514B by an underwriter for individuals receiving benefits under this chapter. The individual may elect to be covered by having the amount of the premium or payment deducted from benefits and remitted to the underwriter. The division shall adopt rules pursuant to chapter 17A to implement this program.

93 Acts, ch 158, §1  
NEW subsection 10

## 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 indi-

vidual 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 ben-

efits 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 16, 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 pre-

ceding 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; however, the highest benefit cost ratio shall not be less than .02.

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%	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
3	14.3%	0.1	0.1	0.1	0.1	0.1	0.0	0.0	0.0
4	19.0%	0.4	0.3	0.3	0.2	0.1	0.1	0.1	0.1
5	23.8%	0.6	0.5	0.4	0.3	0.3	0.2	0.1	0.1
6	28.6%	0.9	0.8	0.6	0.5	0.4	0.3	0.2	0.1
7	33.3%	1.2	1.0	0.8	0.6	0.5	0.4	0.3	0.2
8	38.1%	1.5	1.3	1.0	0.8	0.6	0.5	0.3	0.2
9	42.8%	1.9	1.5	1.2	0.9	0.7	0.6	0.4	0.3
10	47.6%	2.1	1.8	1.4	1.1	0.8	0.6	0.5	0.3
11	52.4%	2.5	2.0	1.6	1.3	1.0	0.7	0.5	0.3
12	57.1%	3.0	2.4	1.9	1.5	1.1	0.9	0.6	0.4
13	61.9%	3.6	2.9	2.4	1.8	1.4	1.1	0.8	0.5
14	66.6%	4.4	3.6	2.9	2.2	1.7	1.3	1.0	0.6
15	71.4%	5.3	4.3	3.5	2.7	2.0	1.6	1.1	0.7
16	76.2%	6.3	5.2	4.1	3.2	2.4	1.9	1.4	0.9
17	80.9%	7.0	6.4	5.2	4.0	3.0	2.3	1.7	1.1
18	85.7%	7.5	7.5	7.0	5.4	4.1	3.1	2.3	1.5
19	90.4%	8.0	8.0	8.0	7.3	5.6	4.2	3.1	2.0
20	95.2%	8.5	8.5	8.5	8.0	7.6	5.8	4.3	2.8
21	100.0%	9.0	9.0	9.0	9.0	8.5	8.0	7.5	7.0

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 appeal, 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 contri-

bution 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 organization, 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 37, paragraph "b". The division shall recompute the amount as a percentage of taxable wages, as defined in section 96.19, subsection 37, 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, 1998, and the repeal is applicable to contribution rates for calendar year 1999 and subsequent calendar years.

93 Acts, ch 23, §1-3

Subsection 2, paragraph d, subparagraph (2) amended

Subsection 2, paragraph d, contribution rate tables stricken and rewritten

Subsection 12, paragraph d amended

### 96.29 Extended benefits.

Except when the result would be inconsistent with the other provisions of this chapter, as provided in rules of the division of job service, the provisions of the law which apply to claims for or the payment of regular benefits shall apply to claims for, and the payment of, extended benefits.

1. *Eligibility requirements for extended benefits.* An individual is eligible to receive extended benefits with respect to a week of unemployment in the individual's eligibility period only if the division finds that all of the following conditions are met:

a. The individual is an "exhaustee" as defined in this chapter.

b. The individual has satisfied the requirements of this chapter for the receipt of regular benefits that are applicable to individuals claiming extended ben-

efits, including not being subject to a disqualification for the receipt of benefits.

c. The individual has been paid wages for insured work during the individual's base period in an amount at least one and one-half times the wages paid to the individual during that quarter of the individual's base period in which the individual's wages were highest.

2. *Disqualification for extended benefits.* If an individual claiming extended benefits furnishes satisfactory evidence to the division of job service that the individual's prospects for obtaining work in the individual's customary occupation within a reasonably short period are good, section 96.5, subsection 3 applies. If the division determines that an individual is claiming extended benefits and the individual's prospects for obtaining work in the individual's customary occupation are poor, the following paragraphs apply:

a. An individual shall be disqualified for extended benefits if the individual fails to apply for or refuses to accept an offer of suitable work to which the individual was referred by the division or the individual fails to actively seek work, unless the individual has been employed during at least four weeks, which need not be consecutive, subsequent to the disqualification and has earned at least four times the individual's weekly extended benefit amount. In order to be considered suitable work under this subsection, the gross weekly wage for the suitable work shall be in excess of the individual's weekly extended benefit amount plus any weekly supplemental unemployment compensation benefits which the individual is receiving.

b. An individual shall not be disqualified for extended benefits for failing to apply for or refusing to accept an offer of suitable work, unless the suitable work was offered to the individual in writing or was listed with the division.

c. This subsection shall not apply to claims for extended benefits for weeks of unemployment beginning March 6, 1993, and ending before January 1, 1995, or if otherwise prohibited by federal law.

3. *Weekly extended benefit amount.* The weekly extended benefit amount payable to an individual for a week of total unemployment in the individual's eligibility period is an amount equal to the weekly

benefit amount payable to the individual during the individual's applicable benefit year.

4. *Total extended benefit amount.* The total extended benefit amount payable to an eligible individual with respect to the individual's applicable benefit year is the least of the following amounts.

a. Fifty percent of the total amount of regular benefits which were payable to the individual under this chapter in the individual's applicable benefit year.

b. Thirteen times the individual's weekly benefit amount which was payable to the individual under this chapter for a week of total unemployment in the applicable benefit year.

Except for the first two weeks of an interstate claim for extended benefits filed in any state under the interstate benefit payment plan and payable from an individual's extended benefit account, the individual is not eligible for extended benefits payable under the interstate claim if an extended benefit period is not in effect in that state.

5. *Beginning and termination of extended benefit period.* If an extended benefit period is to become effective in Iowa as a result of the state "on" indicator, or an extended benefit period is to be terminated in Iowa as a result of the state "off" indicator, the division of job service shall make an appropriate public announcement. Computations required by this subsection shall be made by the division in accordance with regulations prescribed by the United States secretary of labor.

6. Notwithstanding any other provisions of this section, if the benefit year of an individual ends within an eligibility period for extended benefits, the remaining extended benefits which the individual would, but for this section, be entitled to receive in that portion of the eligibility period which extends beyond the end of the individual's benefit year, shall be reduced, but not below zero, by the number of weeks for which the individual received federal trade readjustment allowances, under 19 U.S.C. sec. 2101 et seq., as amended by the Omnibus Budget Reconciliation Act of 1981, within the individual's benefit year multiplied by the individual's weekly extended benefit amount.

93 Acts, ch 10, §1

Subsection 2, paragraph c retroactive to March 6, 1993, 93 Acts, ch 10, §2  
Subsection 2, NEW paragraph c

## CHAPTER 97A

### PUBLIC SAFETY PEACE OFFICERS' RETIREMENT, ACCIDENT AND DISABILITY SYSTEM

#### 97A.5 Administration.

1. *Board of trustees.* A board of trustees of the Iowa department of public safety peace officers' retirement, accident, and disability system is created. The general responsibility for the proper operation of the system is vested in the board of trustees. The board of trustees is constituted as follows: The commissioner of public safety, who is chairperson of the board, the treasurer of state, and an actively engaged member of the system, to be chosen by secret ballot by the members of the system for a term of two years.

2. *Voting.* Each trustee shall be entitled to one vote on said board and two concurring votes shall be necessary for a decision by the trustees on any question at any meeting of said board.

3. *Compensation.* The trustees shall serve as such without compensation, but they shall be reimbursed from the expense fund for all necessary expenses which they may incur through service on the board.

4. *Rules.* The board of trustees shall, from time to time, establish such rules not inconsistent with this chapter, for the administration of funds created by this chapter and as may be necessary or appropriate for the transaction of its business.

5. *Staff.* The department of personnel shall provide administrative services to the board of trustees. Investments shall be administered through the office of the treasurer of state.

6. *Data — records — reports.*

a. The department of personnel shall keep in convenient form the data necessary for actuarial valuation of the various funds of the system and for checking the expense of the system. The director of the department of personnel shall keep a record of all the acts and proceedings of the board, which records shall be open to public inspection. The board of trustees shall biennially make a report to the general assembly showing the fiscal transactions of the system for the preceding biennium, the amount of the accumulated cash and securities of the system, and the last balance sheet showing the financial condition of the system by means of an actuarial valuation of the assets and liabilities of the system.

b. The director of the department of personnel shall maintain records, including but not limited to names, addresses, ages, and lengths of service, salaries and wages, contributions, designated beneficiaries, benefit amounts, if applicable, and other information pertaining to members as necessary in the administration of this chapter, as well as the names, addresses, and benefit amounts of beneficiaries. For the purpose of obtaining these facts, the director of

personnel shall have access to the records of the various departments of the state and the departments shall provide such information upon request. Member and beneficiary records containing personal information are not public records for the purposes of chapter 22. However, summary information concerning the demographics of the members and general statistical information concerning the system is subject to chapter 22, as well as aggregate information by category.

7. *Legal advisor.* The attorney general of the state of Iowa shall be the legal advisor for the board of trustees.

8. *Medical board.* The board of trustees shall designate a medical board to be composed of three physicians who shall arrange for and pass upon the medical examinations required under the provisions of this chapter and shall report in writing to the board of trustees, its conclusions and recommendations upon all matters duly referred to it. Each report of a medical examination under section 97A.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 commissioner of insurance.* The state commissioner of insurance shall be the technical advisor of the board of trustees on matters regarding the operation of the funds created by the provisions of this chapter and shall perform such other duties as are required in connection therewith.

10. *Tables — rates.* Immediately after the establishment of this system, the state commissioner of insurance 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 shall recommend and the board of trustees shall authorize, and on the basis of such investigation the actuary shall recommend for adoption by the board of trustees such tables and such rates as are required in subsection 11 of this section. The board of trustees shall adopt the rate of interest and tables, and certify rates of contributions to be used by the system.

11. *Actuarial investigation.* In the year 1952, and at least once in each two-year period thereafter, the state commissioner of insurance shall make an actuarial investigation in the mortality, service and compensation experience of the members and beneficiaries of the system, and the interest and other earnings on the moneys and other assets of the system, and shall make a valuation of the assets and liabilities of the funds of the system, and taking into account the results of such investigation and valuation, the board of trustees shall:

a. Adopt for the system such interest rate, mortality and other tables as shall be deemed necessary;

b. Certify the rates of contribution payable by the state of Iowa in accordance with section 97A.8.

12. *Valuation.* On the basis of such rate of interest and such tables as the board of trustees shall adopt, the state commissioner of insurance shall make an annual valuation of the assets and liabilities of the funds of the system created by this chapter.

93 Acts, ch 44, §1  
Subsection 6 amended

#### **97A.16 Withdrawal of contributions — repayment.**

1. Commencing July 1, 1990, if an active member, in service on or after that date, terminates service, other than by death or disability, the member may elect to withdraw the member's contributions under section 97A.8, subsection 1, paragraphs "f" and "h", together with interest thereon at a rate determined by the board of trustees. If a member withdraws contributions as provided in this section, the member shall be deemed to have waived all claims

for other benefits from the system for the period of membership service for which the contributions are withdrawn.

2. A layoff for an indefinite period of time shall be deemed to be a termination of service for the purposes of this section. A member who withdraws the member's contributions as provided in this section following a layoff for an indefinite period of time and who is subsequently recalled to service may repay the contributions. The contributions repaid by the member for such service shall be equal to the amount of contributions withdrawn, plus interest computed based upon the investment interest rate assumption established by the board of trustees as of the time the contributions are repaid. However, the member must make the contributions within two years of the date of the member's return to service. The period of membership service for which contributions are repaid shall be treated as though the contributions were never withdrawn.

93 Acts, ch 44, §2  
1993 amendment retroactive to January 1, 1992, 93 Acts, ch 44, § 21  
Section amended

## CHAPTER 97B

### IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM (IPERS)

#### **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.

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 an industrial corporation located within the state of Iowa, and three shall be members of the system, one of whom is an active member who

is an employee of a school district, area education agency, or merged area, one of whom is 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. Five voting members of the board shall constitute a quorum.

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.

93 Acts, ch 44, §3  
Unnumbered paragraph 2 amended

#### 97B.41 Definitions.

When used in this chapter:

1. *"Abolished system"* means the Iowa old-age and survivors' insurance system repealed by sections 97.50 to 97.53.

2. *"Accumulated contributions"* means the total obtained as of any date, by accumulating each individual contribution by the member at 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 such contribution was made to the first day of the month of such date.

3. *"Active member"* during a calendar year means a member who made contributions to the system at any time during the calendar year and who:

a. Had not received or applied for a refund of the member's accumulated contributions for withdrawal or death, and

b. Had not commenced receiving a retirement allowance.

4. *"Actuarial equivalent"* means a benefit of equal value when computed upon the basis of such actuarial tables as are adopted by the department.

5. *"Beneficiary"* means the person or persons who are entitled to receive any benefits payable under this chapter at the death of a member, if the person or persons have been designated on a form provided by the department and filed with the department. If no such designation is in effect at the time of death of the member or if no person so designated is living at that time, then the beneficiary is the estate of the member.

6. *"Bona fide retirement"* means a retirement by a vested member which meets the requirements of section 97B.52A, subsection 1, and in which the

member is eligible to receive benefits under this chapter.

7. *"Contributions"* means the payments to the fund required herein, by the employer and by the members, to provide the benefits of the system.

8. a. *"Employer"* means the state of Iowa, the counties, municipalities, agencies, public school districts, all political subdivisions, and all of their departments and instrumentalities, including joint planning commissions created under chapter 28I.

If an interstate agency is established under chapter 28E and similar enabling legislation in an adjoining state, and an employer had made contributions to the system for employees performing functions which are transferred to the interstate agency, the employees of the interstate agency who perform those functions shall be considered to be employees of the employer for the sole purpose of membership in the system, although the employer contributions for those employees are made by the interstate agency.

b. *"Employee"* means an individual who is employed as defined in this chapter, except:

(1) Elective officials in positions for which the compensation is on a fee basis, elective officials of school districts, elective officials of townships, and elective officials of other political subdivisions who are in part-time positions, unless the elective official makes an application to the department to be covered under this chapter. An elective official who made an application to the department to be covered under this chapter may terminate membership under this chapter by informing the department in writing of the expiration of the member's term of office. A county attorney is an employee for purposes of this chapter whether that county attorney is employed on a full-time or part-time basis.

(2) Individuals who are enrolled as students and whose primary occupations are as students who are incidentally employed by employers.

(3) Graduate medical students while serving as interns or resident doctors in training at any hospital, or county medical examiners and deputy county medical examiners under chapter 331, division V, part 8.

(4) Members of the general assembly of Iowa and temporary employees of the general assembly of Iowa, unless such members or employees make an application to the department to be covered under this chapter. A member of the general assembly who made an application to the department to be covered under this chapter may terminate membership under this chapter by informing the department in writing of the member's intent to terminate.

Temporary employees of the general assembly who have elected coverage under this chapter may terminate membership by sending written notification to the department of their separation from service.

(5) Nonvested employees of drainage and levee districts, unless those employees make an applica-

tion to the department to be covered under this chapter.

(6) Employees hired for temporary employment of less than six months or one thousand and forty hours in a calendar year. An employee who works for an employer for six or more months in a calendar year or who works for an employer for more than one thousand forty hours in a calendar year is not a temporary employee under this subparagraph. Adjunct instructors are temporary employees for the purposes of this chapter. As used in this section, unless the context otherwise requires, "*adjunct instructors*" means instructors employed by a community college without a continuing contract, whose teaching load does not exceed one-half time for two full semesters or three full quarters per calendar year.

(7) Employees of a community action program, determined to be an instrumentality of the state or a political subdivision, unless the employees elect by filing an application with the department to be covered under this chapter and the department has approved the election. Coverage will begin when the election has been approved by the department.

(8) Magistrates other than those who elect by filing an application with the department to be covered under this chapter.

(9) Persons employed under the federal Job Training Partnership Act of 1982, Pub. L. No. 97-300, unless these employees make an application to the department to be covered under this chapter and the department has approved the election. Coverage will begin when the election has been approved by the department.

(10) Foreign exchange teachers and visitors including alien scholars, trainees, professors, teachers, research assistants, and specialists in their field of specialized knowledge or skill.

(11) Members of the ministry, rabbinate, or other religious order who have taken the vow of poverty unless, within one year of commencing employment or no later than July 1, 1985 for individuals who are members of the system on July 1, 1984, a member makes an application to the department to be covered under this chapter.

(12) Persons employed as city managers, or as city administrators performing the duties of city managers, under a form of city government listed in chapter 372 or chapter 420 unless such employees shall make an application to the department to be covered under the provisions of this chapter.

(13) Members of the state transportation commission, the board of parole, and the state health facilities council unless a member elects by filing an application with the department to be covered under this chapter.

(14) Employees of the Iowa dairy industry commission established under chapter 179, the Iowa beef cattle producers association established under chapter 181, the Iowa pork producers council established under chapter 183A, the Iowa turkey marketing council established under chapter 184A, the Iowa soybean promotion board established under chapter

185, the Iowa corn promotion board established under chapter 185C, and the Iowa egg council established under chapter 196A.

(15) Judicial hospitalization referees appointed under section 229.21.

(16) Employees of the Iowa peace institute, established in chapter 38, unless an employee files an application with the department to be covered under this chapter.

(17) Employees appointed by the state board of regents who, at the discretion of the state board of regents, elect coverage in a retirement system qualified by the state board of regents that meets the criteria of section 97B.2.

(18) Persons employed by the board of trustees for the statewide fire and police retirement system established in section 411.36, unless these employees make an application to the department to be covered under this chapter and the department has approved the election. Coverage will begin when the election has been approved by the department.

9. "*Employment for any calendar quarter*" means any service performed under an employer-employee relationship under this chapter for which wages are reported in the calendar quarter. For the purposes of this chapter, elected officials are deemed to be in employment for all quarters of the elected officials' respective terms of office, even if the elected officials have selected a method of payment of wages which results in the elected officials not being credited with wages every quarter of a year.

10. "*Inactive member*" with respect to future service means a member who at the end of a year had not made any contributions during the current year and who has not received a refund of the member's accumulated contributions.

11. "*Member*" means an employee or a former employee who maintains the employee's or former employee's accumulated contributions in the system. The former employee is not a member if the former employee has received a refund of the former employee's accumulated contributions.

12. "*Membership service*" means service rendered by a member after July 4, 1953. Years of membership service shall be counted to the complete quarter calendar year. However, membership service for a calendar year shall not include more than four quarters.

13. "*Prior service*" means any service by an employee rendered at any time prior to July 4, 1953.

14. "*Retired member*" means a member who has applied for and commenced receiving the member's retirement allowance.

15. "*Service*" means uninterrupted service under this chapter by an employee, except an elected official, from the date the employee last entered employment of the employer until the date the employee's employment shall be terminated by death, retirement, resignation or discharge; provided, however, the service of any employee shall not be deemed to be interrupted by:

a. Service in the armed forces of the United

States during a period of war or national emergency, if the employee was employed by the employer immediately prior to entry into the armed forces, and if the employee was released from service and returns to employment with the employer within twelve months of the date on which the employee has the right of release from service or within a longer period as provided by the applicable laws of the United States.

b. Leave of absence or vacation authorized by the employer for a period not exceeding twelve months.

c. The termination at the end of the school year of the contract of employment of an employee in the public schools of the state of Iowa, provided the employee enters into a further contract of employment in the public schools of the state of Iowa for the next succeeding school year.

d. Temporary or seasonal interruptions in service such as service of school bus drivers, school-teachers under regular contract, interim teachers or substitute teachers, instructors at Iowa State University of science and technology, the state University of Iowa, or University of Northern Iowa, employees in state schools or hospital dormitories, other positions when the temporary suspension of service does not terminate the period of employment of the employee, or temporary employees of the general assembly.

16. "Service" for an elected official means the period of membership service for which contributions are made beginning on the date an elected official assumes office and ending on the expiration date of the last term the elected official serves, excluding all the intervening periods during which the elected official is not an elected official.

17. "System" means the retirement plan as contained herein or as duly amended.

18. "Three-year average covered wage" means a member's covered wages averaged for the highest three years of the member's service, except as otherwise provided in this subsection. The highest three years of a member's covered wages shall be determined using calendar years. However, if a member's final quarter of a year of employment does not occur at the end of a calendar year, the department may determine the wages for the third year by combining the wages from the highest quarter or quarters not being used in the selection of the two highest years with the final quarter or quarters of the member's service to create a full year. However, the department shall not use the member's final quarter of wages if using that quarter would reduce the member's three-year average covered wage. If the three-year average covered wage of a member exceeds the highest maximum covered wages in effect for a calendar year during the member's period of service, the three-year average covered wage of the member shall be reduced to the highest maximum covered wages in effect during the member's period of service.

19. a. "Vested member" means a member who has attained through age or sufficient years of service

eligibility to receive monthly retirement benefits upon the member's retirement. A vested member must meet one of the following requirements:

(1) Prior to July 1, 1965, had attained the age of forty-eight and completed at least eight years of service.

(2) Between July 1, 1965 and June 30, 1973, had completed at least eight years of service.

(3) On or after July 1, 1973, has completed at least four years of service.

(4) Has attained the age of fifty-five.

(5) On or after July 1, 1988, an inactive member who had accumulated, as of the date of the member's last termination of employment, years of membership service equal to or exceeding the years of membership service specified in this subsection for qualifying as a vested member on that date of termination.

b. "Active vested member" means an active member who has attained sufficient membership service to achieve vested status.

c. "Inactive vested member" means an inactive member who was a vested member at the time of termination of employment.

20. a. "Wages" means all remuneration for employment, including the cash value of remuneration paid in a medium other than cash, but not including the cash value of remuneration paid in a medium other than cash as necessitated by the convenience of the employer. The amount agreed upon by the employer and employee for remuneration paid in a medium other than cash shall be reported to the department by the employer and is conclusive of the value of the remuneration. "Wages" does not include special lump sum payments made as payment for accrued sick leave or accrued vacation or payments made as an incentive for early retirement or as payments made upon dismissal, severance, or a special bonus payment. Wages for an elected official means the salary received by an elected official, exclusive of expense and travel allowances.

Wages for a member of the general assembly means the total compensation received by a member of the general assembly, whether paid in the form of per diem or annual salary, exclusive of expense and travel allowances paid to a member of the general assembly except as otherwise provided in this paragraph. Wages includes per diem payments paid to members of the general assembly during interim periods between sessions of the general assembly. Wages also includes daily allowances to members of the general assembly for nontravel expenses of office during a session of the general assembly, but does not include the portion of the daily allowance which exceeds the maximum established by law for members from Polk county.

b. "Covered wages" means wages of a member during the periods of membership service as follows:

(1) For the period from July 4, 1953, through December 31, 1953, and each calendar year from January 1, 1954, through December 31, 1963, wages not in excess of four thousand dollars.

(2) For each calendar year from January 1, 1964, through December 31, 1967, wages not in excess of four thousand eight hundred dollars.

(3) For each calendar year from January 1, 1968, through December 31, 1970, wages not in excess of seven thousand dollars, for each calendar year from January 1, 1971 through December 31, 1972, wages not in excess of seven thousand eight hundred dollars, and for each calendar year from January 1, 1973 through December 31, 1975, wages not in excess of ten thousand eight hundred dollars.

(4) For each calendar year from January 1, 1976, through December 31, 1983, wages not in excess of twenty thousand dollars.

(5) For each calendar year from January 1, 1984, through December 31, 1985, wages not in excess of twenty-one thousand dollars per year.

(6) For the calendar year from January 1, 1986, through December 31, 1986, wages not in excess of twenty-two thousand dollars.

(7) For the calendar year from January 1, 1987, through December 31, 1987, wages not in excess of twenty-three thousand dollars.

(8) For the calendar year beginning January 1, 1988, and ending December 31, 1988, wages not in excess of twenty-four thousand dollars.

(9) For the calendar year beginning January 1, 1989, and ending December 31, 1989, wages not in excess of twenty-six thousand dollars.

(10) For the calendar year beginning January 1, 1990, and ending December 31, 1990, wages not in excess of twenty-eight thousand dollars.

(11) Commencing January 1, 1991, for each calendar year, the department shall increase the covered wages limitation from the previous calendar year by three thousand dollars if the annual actuarial valuation of the assets and liabilities of the retirement system indicates that the cost of the increase in covered wages can be absorbed within the employer and employee contribution rates in effect under section 97B.11. However, covered wages shall not exceed fifty-five thousand dollars for a calendar year.

If the annual actuarial valuation of the retirement system in any year indicates that the cost of the increase provided under this subparagraph and the increase in the monthly benefit formula provided in section 97B.49, subsection 5, paragraph "b", cannot be absorbed within the employer and employee contribution rates in effect under section 97B.11, the department shall reduce the increase provided in this subparagraph by an amount sufficient to pay for the increase in the benefit percent.

Notwithstanding any other provision of this chapter providing for the payment of the benefits provided in section 97B.49, subsection 16, the department shall establish the covered wages limitation which applies to members covered under section 97B.49, subsection 16, at the same level as is established under this subparagraph for other members of the system.

(12) Effective July 1, 1992, covered wages does not include wages to a member on or after the effective

date of the member's retirement unless the member is reemployed, as provided under section 97B.48A.

(13) If a member is employed by more than one employer during a calendar year, the total amount of wages paid to the member by the several employers shall be included in determining the limitation on covered wages as provided in this paragraph. If the amount of wages paid to a member by the member's several employers during a calendar year exceeds the covered wage limit, the amount of such excess shall not be subject to the contributions required by section 97B.11.

21. "Years of prior service" means the total of all periods of prior service of a member. In computing credit for prior service, service of less than a full quarter shall be rounded up to a full quarter. Where a member had prior service as a teacher, a full year of service shall be granted that member if the member had three quarters of service and a contract for employment for the following school year.

93 Acts, ch 44, §4  
Subsection 20, paragraph b, subparagraph (11), NEW unnumbered paragraph 3

#### **97B.49 Monthly payments of allowance.**

Each member, upon retirement on or after the member's normal retirement date, is entitled to receive a monthly retirement allowance determined under this section. For an inactive vested member the monthly retirement allowance shall be determined on the basis of this section and section 97B.50 as they are in effect on the date of the member's retirement.

1. For each active member employed before January 1, 1976, and retiring on or after January 1, 1976, and for each member who was a vested member before January 1, 1976, with four or more complete years of service, a formula benefit shall be determined equal to the larger of the benefit determined under this subsection and subsection 3 of this section as applicable, or the benefit determined under subsection 5 of this section. The amount of the monthly formula benefit for each such active or vested member who retired on or after January 1, 1976, shall be equal to one-twelfth of one and fifty-seven hundredths percent per year of membership service multiplied by the member's average annual covered wages; but in no case shall the amount of monthly formula benefit accrued for membership service prior to July 1, 1967, be less than the monthly annuity at the normal retirement date determined by applying the sum of the member's accumulated contributions, the member's employer's accumulated contributions on or before June 30, 1967, and any retirement dividends standing to the member's credit on or before December 31, 1966, to the annuity tables in use by the department with due regard to the benefits payable from such accumulated contributions under sections 97B.52 and 97B.53.

2. For each active and vested member retiring with less than four complete years of service and who therefore cannot have a benefit determined under



the formula benefit of subsection 1 or subsection 5 of this section a monthly annuity for membership service shall be determined by applying the member's accumulated contributions and the employer's matching accumulated contributions as of the effective retirement date and any retirement dividends standing to the member's credit on or before December 31, 1966, to the annuity tables in use by the department according to the member's age.

3. For each member employed before January 1, 1976, who has qualified for prior service credit in accordance with the first paragraph of section 97B.43, there shall be determined a benefit of eight-tenths of one percent per year of prior service credit multiplied by the monthly rate of the member's total remuneration not in excess of three thousand dollars annually during the twelve consecutive months of the member's prior service for which that total remuneration was the highest. An additional three-tenths of one percent of the remuneration not in excess of three thousand dollars annually shall be payable for prior service during each year in which the accrued liability for benefit payments created by the abolished system is funded by appropriation from the Iowa public employees' retirement fund.

4. For each active member retiring on or after June 30, 1973, and who has completed ten or more years of membership service, the total amount of monthly benefit payable at the normal retirement date for prior service and membership service shall not be less than fifty dollars per month. If benefits commence on an early retirement date, the amount of benefit shall be reduced in accordance with section 97B.50. If an optional allowance is selected under section 97B.51, the amount payable shall be the actuarial equivalent of the minimum benefit. An employee who is in employment on a school year or academic year basis, will be considered to be an active member as of June 30, 1973, if the employee completes the 1972-1973 school year or academic year.

5. a. For each active or inactive vested member retiring on or after July 1, 1986, and before July 1, 1990, with four or more complete years of service, a monthly benefit shall be computed which is equal to one-twelfth of an amount equal to fifty percent of the three-year average covered wage multiplied by a fraction of years of service.

b. For each active or inactive vested member retiring on or after July 1, 1990, with four or more complete years of service, a monthly benefit shall be computed which is equal to one-twelfth of an amount equal to fifty-two percent of the three-year average covered wage multiplied by a fraction of years of service.

Commencing July 1, 1991, the department shall increase the percentage multiplier of the three-year average covered wage by an additional two percent each July 1 until reaching sixty percent of the three-year average covered wage if the annual actuarial valuation of the retirement system indicates for that year that the cost of this increase in the percentage of the three-year average covered wage used in com-

puting retirement benefits can be absorbed within the employer and employee contribution rates in effect under section 97B.11. However, commencing July 1, 1994, if the annual actuarial valuation of the retirement system indicates that the employer and employee contribution rates in effect under section 97B.11 can absorb an increase in the percentage multiplier in excess of two percent, the department shall increase the percentage multiplier for that year beyond two percent to the extent which the increase can be absorbed by the contribution rates in effect, not to exceed a maximum percentage multiplier of sixty percent. The increase in the percentage multiplier for a year applies only to the members retiring on or after July 1 of the respective year.

If the annual actuarial valuation of the retirement system in any year indicates that the full cost of the increase provided under this paragraph cannot be absorbed within the employer and employee contribution rates in effect under section 97B.11, the department shall reduce the increase to a level which the department determines can be so absorbed.

Notwithstanding any other provision of this chapter providing for the payment of the benefits provided in subsection 16, the department shall establish the percentage multiplier which applies to members covered under subsection 16 at the same level as is established under this subsection for other members of the system.

By November 15, 1993, the department shall set aside from other moneys in the retirement fund two million eight hundred fifty thousand dollars. The moneys set aside shall be from the funds generated by the employer and employee contributions in effect under section 97B.11 that exceed the amount necessary to fund the system's existing liabilities, as determined in the annual actuarial valuation of the system as of June 30, 1993. If the annual actuarial valuation indicates that the amount of the employer and employee contributions in excess of the amount necessary to fund existing liabilities is less than two million eight hundred fifty thousand dollars, the department shall set aside all funds that are available. The funds set aside shall not be used in determining the percentage multiplier pursuant to this section on July 1, 1994, or in determining the covered wage limitation pursuant to section 97B.41, subsection 20, paragraph "b", subparagraph (11), on January 1, 1994. However, any funds set aside which are not specifically dedicated to a purpose by the Seventy-fifth General Assembly shall be used in determining the percentage multiplier and the covered wage limitation thereafter.

In accordance with sections 97D.1 and 97D.4, it is the intent of the general assembly that once the goal of sixty percent of the three-year average covered wage is attained for a percentage multiplier, the department shall submit to the public retirement systems committee a plan for future benefit enhancements. This plan shall include, but is not limited to, continuation in the increase in the covered wage ceiling until reaching fifty-five thousand dollars for a

calendar year, providing for annual adjustments in the annual dividends paid to retired members as provided in section 97B.49, subsection 13, and providing for the indexing of terminated vested members' earned benefits at a rate of three percent per year calculated from the date of termination from covered employment until the date of retirement.

c. For the purposes of this subsection, "*fraction of years of service*" means a number, not to exceed one, equal to the sum of the years of membership service and the number of years of prior service divided by thirty years.

d. If benefits under this subsection commence on an early retirement date, the amount of benefit shall be reduced in accordance with section 97B.50.

6. On January 1, 1976, for each member who retired before January 1, 1976, the amount of regular monthly retirement allowance attributable to membership service and prior service that was payable to the member for December 1975 is increased by ten percent for the first calendar year or portion of a calendar year the member was retired, and by an additional five percent for each calendar year after the first calendar year the member was retired through the calendar year beginning January 1, 1975. The total increase shall not exceed one hundred percent. Effective July 1, 1987, there is appropriated for each fiscal year from the Iowa public employees' retirement fund created in section 97B.7 to the department of personnel from funds not otherwise appropriated an amount sufficient to fund the monthly retirement allowance increases paid under this subsection.

The benefit increases granted to members retired under the system on January 1, 1976 shall be granted only on January 1, 1976 and shall not be further increased for any year in which the member was retired after the calendar year beginning January 1, 1975.

7. a. Notwithstanding other provisions of this chapter, a member who is or has been employed as a conservation peace officer under section 456A.13 and who retires on or after July 1, 1986, and before July 1, 1988, and at the time of retirement is at least sixty years of age and has completed at least twenty-five years of membership service as a conservation peace officer, may elect to receive, in lieu of the receipt of any benefits under subsection 5 of this section, a monthly retirement allowance equal to one-twelfth of fifty percent of the member's three-year average covered wage as a conservation peace officer, with benefits payable during the member's lifetime.

b. A conservation peace officer who retires on or after July 1, 1986, and before July 1, 1988, and has not completed twenty-five years of membership service as required under this subsection is eligible to receive a monthly retirement allowance equal to one-twelfth of fifty percent of the member's three-year average covered wage as a conservation peace officer multiplied by a fraction of years of service as a conservation peace officer. For the purpose of this subsection, "*fraction of years of service*" means a num-

ber, not to exceed one, equal to the sum of the years of membership service as a conservation peace officer, divided by twenty-five years. On or after July 1, 1986, if the conservation peace officer has not reached sixty years of age at retirement, the monthly retirement allowance shall be reduced by five-tenths of one percent per month for each month that the conservation peace officer's retirement precedes the date on which the conservation peace officer attains sixty years of age.

The annual contribution necessary to pay for the additional benefits provided in this paragraph, shall be paid by the employer and employee in the same proportion that employer and employee contributions are made under section 97B.11.

c. There is appropriated from the state fish and game protection fund to the department of personnel an actuarially-determined amount determined by the Iowa public employees' retirement system sufficient to pay for the additional benefits to conservation peace officers provided by this section, as a percentage, in paragraph "a" and for the employer portion of the benefits provided in paragraph "b". The amount is in addition to the contribution paid by the employer under section 97B.11. The cost of the benefits relating to conservation peace officers within the fish and game division of the department of natural resources shall be paid from the state fish and game protection fund and the cost of the benefits relating to the other conservation peace officers of the department shall be paid from the general fund.

8. a. Notwithstanding other provisions of this chapter, a member who is or has been employed as a peace officer and who retires on or after July 1, 1986, and before July 1, 1988, and at the time of retirement is at least sixty years of age and has completed at least twenty-five years of membership service as a peace officer, may elect to receive, in lieu of the benefits under subsection 5 of this section, a monthly retirement allowance equal to one-twelfth of fifty percent of the member's three-year average covered wage as a peace officer, with benefits payable during the member's lifetime.

A peace officer who retires on or after July 1, 1986, and before July 1, 1988, and has not completed twenty-five years of membership service as required under this subsection is eligible to receive a monthly retirement allowance equal to one-twelfth of fifty percent of the member's three-year average covered wage as a peace officer multiplied by the fraction of years of service as a peace officer. For the purpose of this subsection, "*fraction of years of service*" means a number, not to exceed one, equal to the sum of the years of membership service as a peace officer, divided by twenty-five years. On or after July 1, 1984, if the peace officer has not reached sixty years of age at retirement, the monthly retirement allowance shall be reduced by five-tenths of one percent per month for each month that the peace officer's retirement precedes the date on which the peace officer attains sixty years of age.

For the purpose of this subsection membership service as a peace officer means service under this system as any or all of the following:

(1) As a county sheriff as defined in section 39.17.

(2) As a deputy sheriff appointed pursuant to section 341.1, Code 1981, or section 331.903.

(3) As a marshal or police officer in a city not covered under chapter 400.

b. Each county and applicable city and employee eligible for benefits under this section shall annually contribute an amount determined by the department of personnel, as a percentage of covered wages, to be necessary to pay for the additional benefits provided by this section. The annual contribution in excess of the employer and employee contributions required by this chapter shall be paid by the employer and the employee in the same proportion that employer and employee contributions are made under section 97B.11. The additional percentage of covered wages shall be calculated separately by the department for service under paragraph "a", subparagraphs (1) and (2), and for service under paragraph "a", subparagraph (3), and each shall be an actuarially determined amount for that type of service which, if contributed throughout the entire period of active service, would be sufficient to provide the pension benefit provided in this section.

9. Effective July 1, 1978, for each member who retired from the system prior to January 1, 1976, the amount of regular monthly retirement allowance attributable to membership service and prior service that was payable to the member for June 1978 is increased as follows:

a. For the first ten years of service, fifty cents per month for each complete year of service.

b. For the eleventh through the twentieth years of service, two dollars per month for each complete year of service.

c. For the twenty-first through the thirtieth years of service, three dollars per month for each complete year of service.

Effective July 1, 1979, the increases granted to members under this subsection shall be paid to contingent annuitants and to beneficiaries.

10. Notwithstanding sections of this chapter relating to eligibility for and determination of retirement benefits, a vested member who is or has been employed as a correctional officer by the Iowa department of corrections and who retires on or after July 1, 1986, and before July 1, 1988, and at the time of retirement is at least sixty years of age and has completed at least thirty years of membership service as a correctional officer, may elect to receive, in lieu of the receipt of benefits under subsection 5 of this section, a monthly retirement allowance equal to one-twelfth of fifty percent of the member's three-year average covered wage as a correctional officer, with benefits payable during the member's lifetime.

The Iowa department of corrections and the department of personnel shall jointly determine the applicable merit system job classifications of correctional officers.

The Iowa department of corrections shall pay to the department of personnel, from funds appropriated to the Iowa department of corrections, an actuarially-determined amount sufficient to pay for the additional benefits provided in this subsection. The amount is in addition to the employer contributions required in section 97B.11.

11. Effective July 1, 1980, for each member who retired from the system prior to January 1, 1976, and for each member who retired from the system on or after January 1, 1976 under subsection 1 of this section, the amount of regular monthly retirement allowance attributable to membership service and prior service that was payable to the member for June 1980 is increased as follows:

a. For the first ten years of service, fifty cents per month for each complete year of service.

b. For the eleventh through the twentieth years of service, one dollar per month for each complete year of service.

c. For the twenty-first through the thirtieth years of service, one dollar and fifty cents per month for each complete year of service.

d. The amount of monthly increase payable to a member under this subsection is also payable to a beneficiary and a contingent annuitant and shall be reduced by an amount based upon the actuarial equivalent of the option selected in section 97B.51 or section 97B.52 compared to the full monthly benefit provided in this section.

However, effective July 1, 1980 the monthly retirement allowance attributable to membership service and prior service of a member, contingent annuitant and beneficiary shall not be less than five dollars times the number of complete years of service of the member, not to exceed thirty, reduced by an amount based upon the actuarial equivalent of the option selected in section 97B.51 or section 97B.52, compared to the full monthly retirement benefit provided in this section.

12. Effective beginning July 1, 1982, for each member who retired from the system prior to January 1, 1976, and for each member who retired from the system on or after January 1, 1976 under subsection 1 of this section, the amount of regular monthly retirement allowance attributable to membership service and prior service that was payable to the member for June 1982 is increased as follows:

a. For the first ten years of service, fifty cents per month for each complete year of service.

b. For the eleventh through the twentieth years of service, one dollar per month for each complete year of service.

c. For the twenty-first through the thirtieth years of service, one dollar and fifty cents per month for each complete year of service.

d. The amount of monthly increase payable to a member under this subsection is also payable to a beneficiary and a contingent annuitant and shall be reduced by an amount based upon the actuarial equivalent of the option selected in section 97B.51 or section 97B.52 compared to the full monthly benefit provided in this section.

13. *a.* A member who retired from the system between January 1, 1976, and June 30, 1982, or a contingent annuitant or beneficiary of such a member, shall receive with the November 1992 and the November 1993 monthly benefit payments a retirement dividend equal to one hundred forty percent of the monthly benefit payment the member received for the preceding June, or the most recently received benefit payment, whichever is greater. The retirement dividend does not affect the amount of a monthly benefit payment.

*b.* Each member who retired from the system between July 4, 1953, and December 31, 1975, or a contingent annuitant or beneficiary of such a member, shall receive with the November 1992 and the November 1993 monthly benefit payments a retirement dividend equal to one hundred eighty percent of the monthly benefit payment the member received for the preceding June, or the most recently received benefit payment, whichever is greater. The retirement dividend does not affect the amount of a monthly benefit payment.

*c.* Notwithstanding the determination of the amount of a retirement dividend under paragraph "a", "b", or "d", a retirement dividend shall not be less than twenty-five dollars.

*d.* A member who retired from the system between July 1, 1982, and June 30, 1986, or a contingent annuitant or beneficiary of such a member, shall receive with the November 1992 and the November 1993 monthly benefit payments a retirement dividend equal to twenty-four percent of the monthly benefit payment the member received for the preceding June, or the most recently received benefit payment, whichever is greater. The retirement dividend does not affect the amount of a monthly benefit payment.

*e.* If the member dies on or after July 1 of the dividend year but before the payment date, the full amount of the retirement dividend for that year shall be paid to the designated beneficiary. If there is no beneficiary designated by the member, the department shall pay the dividend to the member's estate. The beneficiary, or the representative of the member's estate, must apply for the dividend within two years after the dividend is payable or the dividend is forfeited.

14. Notwithstanding other provisions of this chapter, a member who is or has been employed by the office of disaster services as an airport firefighter who retires on or after July 1, 1986, and before July 1, 1988, and at the time of retirement is at least sixty years of age and has completed at least twenty-five years of membership service as an airport firefighter, may elect to receive, in lieu of the receipt of any benefits under subsection 5 of this section, a monthly retirement allowance equal to one-twelfth of fifty percent of the member's three-year average covered wage as an airport firefighter, with benefits payable during the member's lifetime.

An airport firefighter who retires on or after July 1, 1986, and before July 1, 1988, and has not com-

pleted twenty-five years of membership service as required under this subsection is eligible to receive a monthly retirement allowance equal to one-twelfth of fifty percent of the member's three-year average covered wage as an airport firefighter multiplied by a fraction of years of service as an airport firefighter. For the purpose of this subsection, "*fraction of years of service*" means a number, not to exceed one, equal to the sum of the years of membership service as an airport firefighter, divided by twenty-five years. On or after July 1, 1986, if the airport firefighter has not reached sixty years of age at retirement, the monthly retirement allowance shall be reduced by five-tenths of one percent per month for each month that the airport firefighter's retirement precedes the date on which the airport firefighter attains sixty years of age.

The employer and each employee eligible for benefits under this subsection shall annually contribute an actuarially determined amount specified by the department, as a percentage of covered wages, that is necessary to pay for the additional benefits provided by this subsection. The annual contribution in excess of the employer and employee contributions required in section 97B.11 shall be paid by the employer and the employee in the same proportion that the employer and employee contributions are made under section 97B.11.

There is appropriated from the general fund of the state to the department from funds not otherwise appropriated an amount sufficient to pay the employer share of the cost of the additional benefits provided in this subsection.

15. In lieu of the monthly benefit computed under subsections 1 and 3 as applicable, or subsection 5:

*a.* For each active or inactive vested member retiring on or after July 1, 1988, and before July 1, 1990, who is at least fifty-five years of age and has completed at least thirty years of membership service and prior service, and for which the sum of the number of years of membership service and prior service and the member's age in years as of the member's last birthday equals or exceeds ninety-two, a monthly benefit shall be computed which is equal to one-twelfth of fifty percent of the three-year average covered wage of the member.

*b.* For each active or inactive vested member retiring on or after July 1, 1990, who is at least fifty-five years of age and for which the sum of the number of years of membership service and prior service and the member's age in years as of the member's last birthday equals or exceeds ninety-two, a monthly benefit shall be computed which is equal to one-twelfth of the same percentage of the three-year average covered wage of the member as is provided in subsection 5.

16. *a.* Notwithstanding other provisions of this chapter:

(1) A member who is or has been employed in a protection occupation who retires on or after July 1, 1988, and before July 1, 1990, and at the time of re-

tirement is at least fifty-five years of age and has completed at least twenty-five years of membership service in a protection occupation, may elect to receive in lieu of the receipt of any benefits under subsection 5 or 15, a monthly retirement allowance equal to one-twelfth of fifty percent of the member's three-year average covered wage as a member who has been employed in a protection occupation, with benefits payable during the member's lifetime.

(2) A member who is or has been employed in a protection occupation who retires on or after July 1, 1990, and at the time of retirement is at least fifty-five years of age and has completed at least twenty-five years of membership service in a protection occupation, may elect to receive in lieu of the receipt of any benefits under subsection 5 or 15, a monthly retirement allowance equal to one-twelfth of fifty-two percent of the member's three-year average covered wage as a member who has been employed in a protection occupation, with benefits payable during the member's lifetime.

(3) Commencing July 1, 1991, the department shall increase the percentage multiplier of the three-year average covered wage as provided in subsection 5, paragraph "b", until reaching sixty percent of the three-year average covered wage.

(4) The years of membership service required under this paragraph include membership service as a sheriff or deputy sheriff and membership service as an employee in a protection occupation under paragraph "d", subparagraph (2).

b. Notwithstanding other provisions of this chapter:

(1) A member who retires from employment as a county sheriff or deputy sheriff who retires on or after July 1, 1988, and before July 1, 1990, and at the time of retirement is at least fifty-five years of age and has completed at least twenty-two years of membership service, may elect to receive in lieu of the receipt of any benefits under subsection 5 or 15, a monthly retirement allowance equal to one-twelfth of fifty percent of the member's three-year average covered wage as a member, with benefits payable during the member's lifetime.

(2) A member who retires from employment as a county sheriff or deputy sheriff who retires on or after July 1, 1990, and at the time of retirement is at least fifty-five years of age and has completed at least twenty-two years of membership service, may elect to receive in lieu of the receipt of any benefits under subsection 5 or 15, a monthly retirement allowance equal to one-twelfth of the same percentage of the member's three-year average covered wage as is provided in paragraph "a", with benefits payable during the member's lifetime.

(3) The years of membership service required under this paragraph shall include membership service as a sheriff or deputy sheriff and membership service under employment in a protection occupation included in paragraph "d", subparagraph (2).

(4) For the purposes of this subsection, sheriff means a county sheriff as defined in section 39.17

and deputy sheriff means a deputy sheriff appointed pursuant to section 341.1 prior to July 1, 1981, or section 331.903 on or after July 1, 1981.

c. A member covered under this subsection who retires on or after July 1, 1988, and before July 1, 1990, and has not completed the twenty-five years of membership service required under paragraph "a", or twenty-two years of membership service required under paragraph "b", is eligible to receive a monthly retirement allowance equal to one-twelfth of fifty percent of the member's three-year average covered wage as a member employed in a protection occupation, or as a sheriff or deputy sheriff, multiplied by a fraction of years of service.

A member covered under this subsection who retires on or after July 1, 1990, and has not completed the twenty-five years of membership service required under paragraph "a", or twenty-two years of membership service required under paragraph "b", is eligible to receive a monthly retirement allowance equal to one-twelfth of the same percentage of the member's three-year average covered wage as is provided in paragraph "a", multiplied by a fraction of years of service.

For the purpose of this subsection, "*fraction of years of service*" means a number, not to exceed one, equal to the sum of the years of membership service for a member retiring in a protection occupation, divided by twenty-five years, or the sum of the years of membership service for a member retiring as a sheriff or deputy sheriff divided by twenty-two years.

d. For the purposes of this subsection, "*a member employed in a protection occupation*" includes all of the following:

(1) A conservation peace officer employed under section 456A.13.

(2) A marshal or police officer in a city not covered under chapter 400.

(3) A correctional officer or correctional supervisor employed by the Iowa department of corrections, and any other employee of that department whose primary purpose is, through ongoing direct inmate contact, to enforce and maintain discipline, safety, and security within a correctional facility.

(4) An airport firefighter employed by the military division of the department of public defense.

(5) An airport safety officer employed under chapter 400 by an airport commission in a city of one hundred thousand population or more.

(6) An arson investigator who commenced employment as an arson investigator of the department of public safety on or after July 1, 1988.

(7) An employee of the state department of transportation who is designated as a "peace officer" by resolution under section 321.477, but only if the employee retires on or after July 1, 1990. For purposes of this subparagraph, service as a traffic weight officer employed by the highway commission prior to the creation of the state department of transportation or as a peace officer employed by the Iowa state commerce commission prior to the creation of the state department of transportation shall be included

in computing the employee's years of membership service.

(8) A fire prevention inspector peace officer employed by the department of public safety.

e. Annually, the department of personnel shall actuarially determine the cost of the additional benefits provided for members covered under paragraph "a" and the cost of the additional benefits provided for members covered under paragraph "b" as percents of the covered wages of the employees covered by this subsection. Sixty percent of the cost shall be paid by the employers of employees covered under this subsection and forty percent of the cost shall be paid by the employees. The employer and employee contributions required under this paragraph are in addition to the contributions paid under section 97B.11.

f. For the fiscal year commencing July 1, 1988, and each succeeding fiscal year, there is appropriated from the state fish and game protection fund to the department of personnel the amount necessary to pay the employer share of the cost of the additional benefits provided to employees covered under paragraph "d", subparagraph (1).

g. Annually, during each fiscal year commencing with the fiscal year beginning July 1, 1988, each applicable city shall pay to the department of personnel the amount necessary to pay the employer share of the cost of the additional benefits provided to employees of that city covered under paragraph "d", subparagraphs (2) and (5).

h. Annually, during each fiscal year commencing with the fiscal year beginning July 1, 1988, each county shall pay to the department of personnel the amount necessary to pay the employer share of the cost of the additional benefits provided to sheriffs and deputy sheriffs.

i. For the fiscal year commencing July 1, 1988, and each succeeding fiscal year, the department of corrections shall pay to the department of personnel from funds appropriated to the Iowa department of corrections, the amount necessary to pay the employer share of the cost of the additional benefits provided to employees covered under paragraph "d", subparagraph (3).

j. For the fiscal year commencing July 1, 1988, and each succeeding fiscal year, there is appropriated from the general fund of the state to the department of personnel, from funds not otherwise appropriated, an amount necessary to pay the employer share of the cost of the additional benefits provided to employees covered under paragraph "d", subparagraphs (4) and (6).

k. For the fiscal year commencing July 1, 1990, and each succeeding fiscal year, the state department of transportation shall pay to the department of personnel, from funds appropriated to the state department of transportation from the road use tax fund and the primary road fund, the amount necessary to pay the employer share of the cost of the additional benefits provided to employees covered under paragraph "d", subparagraph (7).

93 Acts, ch 44, §5-7

Subsection 5, paragraph b, unnumbered paragraph 2 amended

Subsection 5, paragraph b, NEW unnumbered paragraphs 4 and 5

Subsection 16, paragraph a, subparagraph (3) amended

#### 97B.66 Former members.

A vested or retired member who was a member of the teachers insurance and annuity association-college retirement equity fund at any time between July 1, 1967 and June 30, 1971 and who became a member of the system on July 1, 1971, upon submitting verification of service and wages earned during the period of service under the teachers insurance and annuity association-college retirement equity fund, may make employer and employee contributions to the system based upon the covered wages of the member and the covered wages and the contribution rates in effect for that period of service and receive credit for membership service under this system equivalent to the number of years of service in the teachers insurance and annuity association-college retirement equity fund. In addition, a member making employer and employee contributions because of membership in the teachers insurance and annuity association-college retirement equity fund under this section who was a member of the system on June 30, 1967 and withdrew the member's accumulated contributions because of membership on July 1, 1967 in the teachers insurance and annuity association-college retirement equity fund, may make employee contributions to the system for the period of service under the system prior to July 1, 1967.

The contributions paid by the vested or retired member shall be equal to the accumulated contributions as defined in section 97B.41, subsection 2, by the member for that period of service, and the employer contribution for that period of service under the teachers insurance and annuity association-college retirement equity fund, that would have been or had been contributed by the vested or retired member and the employer, if applicable, plus interest on the contributions that would have accrued for the period from the date the previous service commenced under this system or from the date the service of the member in the teachers insurance and annuity association-college retirement equity fund commenced to the date of payment of the contributions by the member equal to two percent plus the interest dividend rate applicable for each year.

However, effective January 1, 1994, the department shall ensure that the member, in exercising an option provided in this section, does not exceed the amount of annual additions to a member's account permitted pursuant to section 415 of the federal Internal Revenue Code.

93 Acts, ch 44, §8

NEW unnumbered paragraph 3

#### 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 2, 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.

However, effective January 1, 1994, the department shall ensure that the member, in exercising an option provided in this section, does not exceed the amount of annual additions to a member's account permitted pursuant to section 415 of the federal Internal Revenue Code.

93 Acts, ch 44, §9  
NEW unnumbered paragraph 3

#### **97B.72A Former legislative service — appropriation.**

1. An active or vested member of the system who was a member of the general assembly prior to July 1, 1988, may make contributions to the system for all or a portion of the period of service in the general assembly. The contributions made by the member shall be equal to the accumulated contributions as defined in section 97B.41, subsection 2, which would have been made if the member of the general assembly had been a member of the system during the period of service in the general assembly. The member of the system shall submit proof to the department of membership in the general assembly. The department shall credit the member with the period of membership service for which contributions are made.

There is appropriated from the general fund of the state to the department an amount sufficient to pay the contributions of the employer based on the period of service of members of the general assembly for which the member paid accumulated contributions under this section. The amount appropriated is equal to the employer contributions which would have been made if the members of the system who made employee contributions had been members of the system during the period for which they made employee contributions plus two percent interest

plus the interest dividend rate applicable for each year compounded annually.

2. A former member of the general assembly who has six or more years of service as a member of the general assembly or who has a total of six or more years of service as a member of the general assembly and as an employee under this chapter may make contributions to the system for all or a portion of the period of service as a member of the general assembly. The contributions made by the former member shall be equal to the accumulated contributions plus the employer contributions that would have been made if the former member had been a member of the system during the period of service elected. The employer contributions shall be equal to the contributions that would have been made by the employer if the former member had been a member of the system during the period of service elected plus the interest on the contributions equal to two percent plus the interest dividend rate applicable for each year compounded annually. The former member shall submit proof to the department of membership in the general assembly. The department shall credit the former member with the period of membership service for which contributions are made.

3. Effective January 1, 1994, however, the department shall ensure that the member, in exercising an option provided in this section, does not exceed the amount of annual additions to a member's account permitted pursuant to section 415 of the federal Internal Revenue Code.

93 Acts, ch 44, §10  
NEW subsection 3

#### **97B.73 Members from other public systems.**

A vested or retired member who was in public employment comparable to employment covered under this chapter in another state or in the federal government, or who was a member of another public retirement system in this state, including but not limited to the teachers insurance annuity association-college retirement equities fund, but who was not retired under that system, upon submitting verification of membership and service in the other public system to the department, including proof that the member has no further claim upon a retirement benefit from that other public system, may make employer and employee contributions to the system either for the entire period of service in the other public system, or for partial service in the other public system in increments of one or more years, as long as the increments represent full years and not a portion of a year. The member may also make one lump sum contribution to the system which represents the entire period of service in the other public system, even if the period of time exceeds one year or includes a portion of a year. If the member wishes to transfer only a portion of the service value of another public system to this system and the other public system allows a partial withdrawal of a member's system credits, the member shall receive credit for membership service in this system equivalent to the number of years of service transferred from the other public

system. The contribution payable shall be based upon the member's covered wages for the most recent full calendar year at the applicable rates in effect for that calendar year under sections 97B.11 and 97B.49 and multiplied by the member's years of service in other public employment. If the member's most recent covered wages were earned prior to the most recent calendar year, the member's covered wages shall be adjusted by the department by an inflation factor to reflect changes in the economy since the covered wages were earned.

This section is applicable to a vested or retired member who was a member of a public retirement system established in sections 294.8, 294.9, and 294.10 but was not retired under that system.

A member entitled to a benefit from another public system must waive, on a form provided by the Iowa public employees' retirement system, all rights to a retirement benefit under the other public system before receiving credit in this system for the years of service in the other public system. The waiver must be accepted by the other public system.

Effective July 1, 1988, a member eligible for an increased retirement allowance because of the payment of contributions 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 was submitted to the department.

However, effective January 1, 1994, the department shall ensure that the member, in exercising an option provided in this section, does not exceed the amount of annual additions to a member's account permitted pursuant to section 415 of the federal Internal Revenue Code.

93 Acts, ch 44, §11  
NEW unnumbered paragraph 5

#### **97B.73A Part-time county attorneys.**

A part-time county attorney may elect in writing to the department to make employee contributions to the system for the county attorney's previous service as a county attorney and receive credit for membership service in the system for the period of service as a part-time county attorney for which employee contributions are made. The contributions paid by the member shall be equal to the accumulated contributions, as defined in section 97B.41, subsection 2, for that period of membership service. A member who elects to make contributions under this section shall notify the county board of supervisors of the member's election, and the county board of supervisors shall pay to the department the employer contributions that would have been contributed by the employer under section 97B.11 plus interest on the contributions that would have accrued if the county attorney had been a member of the system for that period of service.

Effective July 1, 1988, a member eligible for an increased retirement allowance because of the payment of contributions 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 was submitted to the department.

However, effective January 1, 1994, the department shall ensure that the member, in exercising an option provided in this section, does not exceed the amount of annual additions to a member's account permitted pursuant to section 415 of the federal Internal Revenue Code.

93 Acts, ch 44, §12  
NEW unnumbered paragraph 3

#### **97B.74 Reinstatement as a vested member (buy-back).**

Effective January 1, 1991, an active, vested, or retired member who was a member of the system at any time on or after July 4, 1953, and who received a refund of the member's contributions for that period of membership service, may elect in writing to the department to make contributions to the system for that period of membership service for which a refund of contributions was made. The contributions repaid by the member for such service shall be equal to the accumulated contributions, as defined in section 97B.41, subsection 2, received by the member for that period of membership service plus interest on the accumulated contributions for the period from the date of receipt by the member to the date of repayment equal to two percent plus the interest dividend rate applicable for each year compounded annually.

An active member must have at least one quarter's reportable wages on file and have membership service, including that period of membership service for which a refund of contributions was made, sufficient to give the member vested status.

Effective July 1, 1988, a member eligible for an increased retirement allowance because of the payment of contributions 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 was submitted to the department.

However, effective January 1, 1994, the department shall ensure that the member, in exercising an option provided in this section, does not exceed the amount of annual additions to a member's account permitted pursuant to section 415 of the federal Internal Revenue Code.

93 Acts, ch 44, §13  
NEW unnumbered paragraph 4

#### **97B.80 Veteran's credit.**

Effective July 1, 1992, a vested or retired member, who at any time served on active duty in the armed forces of the United States, upon submitting verification of the dates of the active duty service, may make employer and employee contributions to the system based upon the member's covered wages for the most recent full calendar year in which the member had reportable wages at the applicable rates in effect for that year under sections 97B.11 and 97B.49, for the period of time of the active duty service, in increments of no greater than one year and



not less than one calendar quarter, and receive credit for membership service and prior service for the period of time for which the contributions are made. However, the member may not make contributions in an increment of less than one year more than once. The member may also make one lump sum contribution to the system which represents the period of time of the active duty service, even if the period of time exceeds one year. If the member's most recent covered wages were earned prior to the most recent calendar year, the member's covered wages shall be adjusted by the department by an inflation factor to reflect changes in the economy. The department shall adjust benefits for a six-month period prior to the date the member pays contributions under this section if the member is receiving a retirement allowance at the time the contribution payment is made. Verification of active duty service and payment of contributions shall be made to the department. However, a member is not eligible to make

contributions under this section if the member is receiving, is eligible to receive, or may in the future be eligible to receive retirement pay from the United States government for active duty in the armed forces, except for retirement pay granted by the United States government under retired pay for nonregular service (10 U.S.C. § 1331, et seq.). A member receiving retired pay for nonregular service who makes contributions under this section shall provide information required by the department documenting time periods covered under retired pay for nonregular service.

However, effective January 1, 1994, the department shall ensure that the member, in exercising an option provided in this section, does not exceed the amount of annual additions to a member's account permitted pursuant to section 415 of the federal Internal Revenue Code.

93 Acts, ch 44, §14  
NEW unnumbered paragraph 2

## CHAPTER 99D

### PARI-MUTUEL WAGERING

#### 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. 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, beginning on July 1, 1991, all funds received shall be deposited into the general fund of the state.

93 Acts, ch 131, §2  
Restrictions on use of moneys deposited in state general fund, see § 8 60  
Unnumbered paragraph 2 amended

## CHAPTER 99E

### IOWA LOTTERY

Exception to transfers, appropriations, and allotments under §99E 10, 99E 20, and 99E 34 for 1993 1994 fiscal year, transfer to general fund, 93 Acts, ch 180, §17

#### 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 ap-

propriated 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 depos-

ited 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, beginning July 1, 1991, 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 the product of the state sales tax rate under section 422.43 multiplied by 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.

e. For the fiscal year beginning July 1, 1993, after the first thirty-three million dollars is transferred to the general fund of the state, five hundred thousand dollars shall be deposited in the Iowa state fair foundation in the office of the treasurer of state to be used by the foundation fund for capital projects or major maintenance improvements at the Iowa state fairgrounds. For the fiscal period beginning July 1, 1994, and ending June 30, 1996, five hundred thousand dollars shall annually be deposited in the Iowa state fair foundation fund in the office of the treasurer of state to be used by the foundation for capital projects or major maintenance improvements at the Iowa state fairgrounds. Matching funds from other sources shall not be required for expenditure of funds deposited pursuant to this subsection.

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 12B.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 financial institutions in this state or invested in the manner provided in section 12B.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.

93 Acts, ch 131, §3, 93 Acts, ch 180, §31

Restrictions on use of gamblers assistance moneys deposited in state general fund, see § 8 60

Exceptions for 1993-1994 fiscal year, revenue transfers, transfer to general fund, 93 Acts, ch 180, §17, 61, 64

Subsection 1, paragraph a, unnumbered paragraph 2 amended

Subsection 1, NEW paragraph e

## 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, beginning on July 1, 1991, 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 gambling 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.

93 Acts, ch 131, §4

Restrictions on use of moneys deposited in state general fund, see § 8 60  
Subsection 2, unnumbered paragraph 2 amended

#### **99F.7 Licenses — terms and conditions — revocation.**

1. If the commission is satisfied that this chapter and its rules adopted under this chapter applicable to licensees have been or will be complied with, the commission shall issue a license for a period of not more than three years to an applicant to own a gambling game operation and to an applicant to operate an excursion gambling boat. The commission shall decide which of the gambling games authorized under this chapter it will permit. The commission shall decide the number, location, and type of excursion gambling boats licensed under this chapter for operation on the rivers, lakes, and reservoirs of this state. The license shall set forth the name of the licensee, the type of license granted, the place where the excursion gambling boats will operate and dock, and the time and number of days during the excursion season and the off season when gambling may be conducted by the licensee. The commission shall not allow a licensee to conduct gambling games on

an excursion gambling boat while docked during the off season if the licensee does not operate gambling excursions for a minimum number of days during the excursion season. The commission may delay the commencement of the excursion season at the request of a licensee.

2. A license shall only be granted to an applicant upon the express conditions that:

a. The applicant shall not, by a lease, contract, understanding, or arrangement of any kind, grant, assign, or turn over to a person the operation of an excursion gambling boat licensed under this section or of the system of wagering described in section 99F.9. This section does not prohibit a management contract approved by the commission.

b. The applicant shall not in any manner permit a person other than the licensee to have a share, percentage, or proportion of the money received for admissions to the excursion gambling boat.

3. The commission shall require, as a condition of granting a license, that an applicant to operate an excursion gambling boat develop, and as nearly as practicable, recreate boats that resemble Iowa's riverboat history.

4. The commission shall require that an applicant utilize Iowa resources, goods and services in the operation of an excursion gambling boat. The commission shall develop standards to assure that a substantial amount of all resources and goods used in the operation of an excursion gambling boat come from Iowa and that a substantial amount of all services and entertainment be provided by Iowans.

5. The commission shall, as a condition of granting a license, require an applicant to provide written documentation that, on each excursion gambling boat:

a. No more than thirty percent of the square footage shall be used for gambling activity.

b. An applicant shall make every effort to ensure that a substantial number of the staff and entertainers employed are residents of Iowa.

c. A section is reserved solely for activities and interests of persons under the age of twenty-one and is staffed to provide adequate supervision.

d. A section is reserved for promotion and sale of arts, crafts, and gifts native to and made in Iowa.

6. It is the intent of the general assembly that employees be paid at least twenty-five percent above the federal minimum wage level.

7. A license shall not be granted if there is substantial evidence that any of the following apply:

a. The applicant has been suspended from operating a game of chance or gambling operation in another jurisdiction by a board or commission of that jurisdiction.

b. The applicant has not demonstrated financial responsibility sufficient to meet adequately the requirements of the enterprise proposed.

c. The applicant is not the true owner of the enterprise proposed.

d. The applicant is not the sole owner, and other persons have ownership in the enterprise, which fact has not been disclosed.

*e.* The applicant is a corporation and ten percent of the stock of the corporation is subject to a contract or option to purchase at any time during the period for which the license is to be issued unless the contract or option was disclosed to the commission and the commission approved the sale or transfer during the period of the license.

*f.* The applicant has knowingly made a false statement of a material fact to the commission.

*g.* The applicant has failed to meet a monetary obligation in connection with an excursion gambling boat.

8. A license shall not be granted if there is substantial evidence that the applicant is not of good repute and moral character or if the applicant has pled guilty to, or has been convicted of, a felony.

9. A licensee shall not loan to any person money or any other thing of value for the purpose of permitting that person to wager on any game of chance.

10. *a.* A license to conduct gambling games on an excursion gambling boat in a county shall be issued only if the county electorate approves the conduct of the gambling games as provided in this subsection. The board of supervisors, upon receipt of a valid petition meeting the requirements of section 331.306, shall direct the commissioner of elections to submit to the qualified electors of the county a proposition to approve or disapprove the conduct of gambling games on an excursion gambling boat in the county. The proposition shall be submitted at a general election or at a special election called for that purpose. To be submitted at a general election, the petition must be received by the board of supervisors at least five working days before the last day for candidates for county offices to file nomination papers for the general election pursuant to section 44.4. If a majority of the county voters voting on the proposition favor the conduct of gambling games, the commission may issue one or more licenses as provided in this chapter. If a majority of the county voters voting on the proposition do not favor the conduct of gambling games, a license to conduct gambling games in the county shall not be issued. After a referendum has been held, another referendum requested by petition shall not be held for at least two years.

*b.* If licenses to conduct gambling games and to operate an excursion gambling boat are in effect pursuant to a referendum as set forth in this section and

are subsequently disapproved by a referendum of the county electorate, the licenses issued by the commission after a referendum approving gambling games on excursion gambling boats shall remain valid and are subject to renewal for a total of nine years from the date of original issue unless the commission revokes a license at an earlier date as provided in this chapter.

*c.* If, after July 1, 1989, section 99F.4, subsection 4 or 99F.9, subsection 2, is amended, the board of supervisors of a county in which excursion boat gambling has been approved shall submit to the county electorate a proposition to approve or disapprove the conduct of gambling games on excursion gambling boats at a special election at the earliest practicable time. If excursion boat gambling is not approved at the election, paragraph "b" does not apply to the licenses and the commission shall cancel the licenses issued for the county within sixty days of the unfavorable referendum.

11. If a docking fee is charged by a city or a county, a licensee operating an excursion gambling boat shall pay the docking fee one year in advance.

12. A licensee shall not be delinquent in the payment of property taxes or other taxes or fees or in the payment of any other contractual obligation or debt due or owed to a city or county.

13. An excursion gambling boat operated on inland waters of this state shall meet all of the requirements of chapter 462A and is subject to an inspection of its sanitary facilities to protect the environment and water quality before a certificate of registration is issued by the department of natural resources or a license is issued under this chapter.

14. If a licensed excursion boat stops at more than one harbor and travels past a county without stopping at any port in that county, the commission shall require the excursion boat operator to develop a schedule for ports of call in which a county referendum has been approved, and the port of call has the necessary facilities to handle the boat. The commission may limit the schedule to only one port of call per county.

15. Upon a violation of any of the conditions listed in this section, the commission shall immediately revoke the license.

93 Acts, ch 143, §42

Subsection 10, paragraph a amended

## CHAPTER 100A

### ARSON INVESTIGATION

#### 100A.1 Definitions.

1. "Authorized agencies" means:
  - a. The state fire marshal.
  - b. The commissioner of public safety.
  - c. The county attorney responsible for prosecutions in the county where a fire occurs.
  - d. The attorney general.
  - e. The federal bureau of investigation or other federal agency requesting information on a fire loss.
  - f. The United States attorney's office when authorized or charged with investigation of a fire or prosecution for arson.
  - g. The fire chief of the city in which the fire occurs.

h. The police chief of the city in which the fire occurs.

i. The sheriff of the county in which the fire occurs.

2. "Insurance company" includes, but is not limited to, the Iowa fair plan and its member insurance companies.

3. "Relevant information" means information having any tendency to make the existence of a fact that is of consequence to the investigation or determination of the issue more probable or less probable than it would be without the information.

93 Acts, ch 100, §1  
Subsection 1, NEW paragraph 1

## CHAPTER 101

### FLAMMABLE LIQUIDS AND LIQUEFIED PETROLEUM GASES

#### 101.13 Liquefied petroleum gas containers.

1. If a liquefied petroleum gas container designed to hold more than twenty pounds of liquefied petroleum gas has the name, mark, initials, or other identifying device of the owner in plainly legible characters on the surface of the container, a person other than the owner or a person authorized by the owner shall not do any of the following:

a. Fill or refill the container with liquefied petroleum gas or any other gas or compound except when the owner is unable to supply liquefied petroleum gas to a person to whom the owner is leasing or furnishing the container and to whom the owner ordinarily supplies the liquefied petroleum gas in which case, the owner shall authorize the refilling of the container by another person designated by the owner.

b. Buy, sell, offer for sale, give, take, loan, deliver or permit to be delivered, or otherwise use the container.

c. Deface, remove, conceal, or change the name, mark, initials, or other identifying device of the owner.

d. Place the name, mark, initials, or other identifying device indicating ownership by any person other than the owner on the container.

2. A person who violates this section is guilty of a simple misdemeanor. Each violation of this section shall constitute a separate offense.

93 Acts, ch 138, §1  
NEW section

**101.14 through 101.20 Reserved.**

## CHAPTER 103A

### STATE BUILDING CODE

#### 103A.7 State building code.

The state building code commissioner with the approval of the advisory council is hereby empowered and directed to formulate and adopt and from time to time amend or revise and to promulgate, in conformity with and subject to the conditions set forth in this chapter, reasonable rules designed to establish minimum safeguards in the erection and construction of buildings and structures, to protect the human beings who live and work in them from fire and other hazards, and to establish regulations to further protect the health, safety and welfare of the public.

The rules shall include reasonable provisions for the following:

1. The installation of equipment.
2. The standards or requirements for materials to be used in construction.
3. The manufacture and installation of factory-built structures.
4. Protection of the health, safety, and welfare of occupants and users.
5. The accessibility and use by persons with disabilities and elderly persons, of buildings, structures and facilities which are constructed and intended for use by the general public. The rules shall be consistent with federal standards for building accessibility.
6. The conservation of energy through thermal and lighting efficiency standards for buildings intended for human occupancy or use.

These rules shall comprise and be known as the state building code.

93 Acts, ch 95, §1  
Subsection 5 amended

#### 103A.9 Factory-built structures.

The state building code shall contain provisions relating to the manufacture and installation of factory-built structures.

1. Factory-built structures manufactured in Iowa, after the effective date of the code, shall be manufactured in accordance with the code, unless the commissioner determines the structure is manufactured for installation outside the state.
2. Factory-built structures manufactured outside the state of Iowa, after the effective date of the code, and brought into Iowa for installation must, prior to installation, comply with the code.
3. Factory-built structures manufactured prior to the effective date of the code, which prior to that

date have never been installed, must comply with the code prior to installation.

4. All factory-built structures, without regard to manufacture date, shall be installed in accordance with the code in the governmental subdivisions which have adopted the state building code or any other building code. However, a governmental subdivision shall not require that a factory-built structure, that was manufactured in accordance with federally mandated standards, be renovated in accordance with the state building code or any other building code which the governmental subdivision has adopted when the factory-built structure is being moved from one lawful location within the state to another unless such required renovation is in conformity with those specifications for the factory-built structure which existed when it was manufactured or the factory-built structure is being rented for occupancy.

Existing factory-built structures not constructed to be in compliance with federally mandated standards may be moved from one established mobile home park to another within the state and shall not be required to be renovated to comply with the state building code or any other building code which the governmental subdivision has adopted unless the factory-built structure is being rented for occupancy or has been declared a public nuisance according to standards generally applied to housing.

5. Factory-built structures required to comply with the code provisions on manufacture, shall not be modified in any way prior to or during installation, unless prior approval is obtained from the commissioner.

6. The commissioner shall establish an insignia of approval and provide that factory-built structures required to comply with code provisions on manufacture bear an insignia of approval prior to installation. The insignia may be issued for other factory-built structures which meet code standards and which were manufactured prior to the effective date of the state building code.

7. The commissioner may contract with local government agencies for enforcement of the code relating to manufacture of factory-built structures. Code provisions relating to installation of factory-built structures shall be enforced by the local building departments only in those governmental subdivisions which have adopted the state building code or any other building code.

93 Acts, ch 154, §1  
Subsection 4 amended

## CHAPTER 104A

### ACCESSIBILITY FOR PERSONS WITH DISABILITIES

#### 104A.1 Intent of chapter.

It is the intent of this chapter that standards and specifications are followed in the construction of public and private buildings and facilities which are intended for use by the general public to ensure that these buildings and facilities are accessible to and functional for persons with disabilities.

93 Acts, ch 95, §2  
Section amended

#### 104A.2 Applicability — requirements.

The standards and specifications adopted by the state building code commissioner and as set forth in this chapter shall apply to all public and private buildings and facilities, temporary and permanent, used by the general public. The specific occupancies and minimum extent of accessibility shall be in accordance with the conforming standards set forth in section 104A.6. In every covered multiple-dwelling-unit building containing four or more individual dwelling units the requirements of this chapter and those adopted by the state building code commissioner shall be met.

93 Acts, ch 95, §3  
Section amended

**104A.3 Requirements.** Repealed by 93 Acts, ch 95, § 8. See § 104A.6.

**104A.4 Ramps.** Repealed by 93 Acts, ch 95, § 8. See § 104A.6.

#### 104A.6 Conformance with rules of state building code commissioner.

The authority responsible for the construction of any building or facility covered by section 104A.2 shall conform with rules adopted by the state building code commissioner as provided in section 103A.7.

93 Acts, ch 95, §4  
Section amended

**104A.7 Parking spaces — penalty.** Repealed by 93 Acts, ch 95, § 8. See § 104A.6.

#### 104A.8 Enforcement.

This chapter is subject to enforcement as provided in chapter 103A.

93 Acts, ch 95, §5  
NEW section

## CHAPTER 123

### ALCOHOLIC BEVERAGE CONTROL

#### 123.3 Definitions.

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

1. “*Administrator*” means the administrator of the division, appointed pursuant to the provisions of this chapter, or the administrator’s designee.
2. “*Air common carrier*” means a person engaged in transporting passengers for hire in interstate or foreign commerce by aircraft and operating regularly scheduled flights under a certificate of public convenience issued by the civil aeronautics board.
3. “*Alcohol*” means the product of distillation of any fermented liquor rectified one or more times, whatever may be the origin thereof, and includes synthetic ethyl alcohol.
4. “*Alcoholic beverage*” means any beverage containing more than one-half of one percent of alcohol by volume including alcoholic liquor, wine, and beer.
5. “*Alcoholic liquor*” or “*intoxicating liquor*” means the varieties of liquor defined in subsections

3 and 33 which contain more than five percent of alcohol by weight, beverages made as described in subsection 7 which beverages contain more than five percent of alcohol by weight but which are not wine as defined in subsection 37, and every other liquid or solid, patented or not, containing spirits and every beverage obtained by the process described in subsection 37 containing more than seventeen percent alcohol by weight, and susceptible of being consumed by a human being, for beverage purposes. Alcohol manufactured in this state for use as fuel pursuant to an experimental distilled spirits plant permit or its equivalent issued by the federal bureau of alcohol, tobacco and firearms is not an “*alcoholic liquor*”.

6. “*Application*” means a formal written request for the issuance of a permit or license supported by a verified statement of facts.

7. “*Beer*” means any liquid capable of being used for beverage purposes made by the fermentation of an infusion in potable water of barley, malt, and



hops, with or without unmalted grains or decorticated and degerminated grains or made by the fermentation of or by distillation of the fermented products of fruit, fruit extracts, or other agricultural products, containing more than one-half of one percent of alcohol by volume but not more than five percent of alcohol by weight but not including mixed drinks or cocktails mixed on the premises.

8. *"Brewer"* means any person who manufactures beer for the purpose of sale, barter, exchange, or transportation.

9. *"City"* means a municipal corporation but not including a county, township, school district, or any special purpose district or authority.

10. *"Club"* means any nonprofit corporation or association of individuals, which is the owner, lessee, or occupant of a permanent building or part thereof, membership in which entails the prepayment of regular dues and is not operated for a profit other than such profits as would accrue to the entire membership.

11. *"Commercial establishment"* means a place of business which is at all times equipped with sufficient tables and seats to accommodate twenty-five persons at one time, and the licensed premises of which conform to the standards and specifications of the division.

12. *"Commission"* means the alcoholic beverages commission established by this chapter.

13. *"Distillery"*, *"winery"*, and *"brewery"* mean not only the premises where alcohol or spirits are distilled, wine is fermented, or beer is brewed, but in addition mean a person owning, representing, or in charge of such premises and the operations conducted there, including the blending and bottling or other handling and preparation of alcoholic liquor, wine, or beer in any form.

14. *"Division"* means the alcoholic beverages division of the department of commerce established by this chapter.

15. *"Hotel"* or *"motel"* means a premise licensed by the department of inspections and appeals and regularly or seasonally kept open in a bona fide manner for the lodging of transient guests, and with twenty or more sleeping rooms.

16. *"Import"* means the transporting or ordering or arranging the transportation of alcoholic liquor, wine, or beer into this state whether by a resident of this state or not.

17. *"Importer"* means the person who transports or orders, authorizes, or arranges the transportation of alcoholic liquor, wine, or beer into this state whether the person is a resident of this state or not.

18. The terms *"in accordance with the provisions of this chapter"*, *"pursuant to the provisions of this title"*, or similar terms shall include all rules and regulations of the division adopted to aid in the administration or enforcement of those provisions.

19. *"Legal age"* means nineteen years of age or more.\*

20. *"Licensed premises"* or *"premises"* means all rooms, enclosures, contiguous areas, or places sus-

ceptible of precise description satisfactory to the administrator where alcoholic beverages, wine, or beer is sold or consumed under authority of a liquor control license, wine permit, or beer permit. A single licensed premise may consist of multiple rooms, enclosures, areas or places if they are wholly within the confines of a single building or contiguous grounds.

21. *"Local authority"* means the city council of any incorporated city in this state, or the county board of supervisors of any county in this state, which is empowered by this chapter to approve or deny applications for retail beer or wine permits and liquor control licenses; empowered to recommend that such permits or licenses be granted and issued by the division; and empowered to take other actions reserved to them by this chapter.

22. *"Manufacture"* means to distill, rectify, ferment, brew, make, mix, concoct, or process any substance capable of producing a beverage containing more than one-half of one percent of alcohol by volume and includes blending, bottling, or the preparation for sale.

23. *"Package"* means any container or receptacle used for holding alcoholic liquor.

24. *"Permit"* or *"license"* means an express written authorization issued by the division for the manufacture or sale, or both, of alcoholic liquor, wine, or beer.

25. *"Person"* means any individual, association, partnership, corporation, club, hotel or motel, or municipal corporation owning or operating a bona fide airport, marina, park, coliseum, auditorium, or recreational facility in or at which the sale of alcoholic liquor, wine, or beer is only an incidental part of the ownership or operation.

26. *"Person of good moral character"* means any person who meets all of the following requirements:

a. The person has such financial standing and good reputation as will satisfy the administrator that the person will comply with this chapter and all laws, ordinances, and regulations applicable to the person's operations under this chapter. However, the administrator shall not require the person to post a bond to meet the requirements of this paragraph.

b. The person is not prohibited by section 123.40 from obtaining a liquor control license or a wine or beer permit.

c. Notwithstanding paragraph "e", the applicant is a citizen of the United States and a resident of this state, or licensed to do business in this state in the case of a corporation. Notwithstanding paragraph "e", in the case of a partnership, only one general partner need be a resident of this state.

d. The person has not been convicted of a felony. However, if the person's conviction of a felony occurred more than five years before the date of the application for a license or permit, and if the person's rights of citizenship have been restored by the governor, the administrator may determine that the person is of good moral character notwithstanding such conviction.

e. The requirements of this subsection apply to the following:

(1) Each of the officers, directors, and partners of such person.

(2) A person who directly or indirectly owns or controls ten percent or more of any class of stock of such person.

(3) A person who directly or indirectly has an interest of ten percent or more in the ownership or profits of such person.

27. "Public place" means any place, building, or conveyance to which the public has or is permitted access.

28. "Residence" means the place where a person resides, permanently or temporarily.

29. "Retail beer permit" means a class "B" or class "C" beer permit issued under the provisions of this chapter.

30. "Retail wine permit" means a class "B" wine permit issued under this chapter.

31. "Retailer" means any person who shall sell, barter, exchange, offer for sale, or have in possession with intent to sell any alcoholic liquor, wine, or beer for consumption either on or off the premises where sold.

32. The prohibited "sale" of alcoholic liquor, wine, or beer under this chapter includes soliciting for sales, taking orders for sales, keeping or exposing for sale, delivery or other trafficking for a valuable consideration promised or obtained, and procuring or allowing procurement for any other person.

33. "Spirits" means any beverage which contains alcohol obtained by distillation mixed with drinkable water and other substances in solution, including, but not limited to, brandy, rum, whisky, and gin.

34. "Unincorporated town" means a compactly populated area recognized as a distinct place with a distinct place-name which is not itself incorporated or within the corporate limits of a city.

35. "Warehouse" means any premises or place primarily constructed or used or provided with facilities for the storage in transit or other temporary storage of perishable goods or for the conduct of normal warehousing business.

36. "Wholesaler" means any person, other than a vintner, brewer or bottler of beer or wine, who shall sell, barter, exchange, offer for sale, have in possession with intent to sell, deal or traffic in alcoholic liquor, wine, or beer. A wholesaler shall not sell for consumption upon the premises.

37. "Wine" means any beverage containing more than five percent but not more than seventeen percent of alcohol by weight obtained by the fermentation of the natural sugar contents of fruits or other agricultural products but excluding any product containing alcohol derived from malt or by the distillation process from grain, cereal, molasses or cactus.

93 Acts, ch 91, §1

\*Restrictions applicable to persons age nineteen or twenty, see §123.47A Subsection 26, paragraphs c and e amended

**123.15 Hearing board created.** Repealed by 93 Acts, ch 91, § 22.

### **123.16 Duties of commission and administrator.**

1. The commission, in addition to the duties specifically enumerated in this chapter, shall act as a division policy-making body and serve in an advisory capacity to the administrator. The administrator shall supervise the daily operations of the division and shall execute the policies of the division as determined by the commission.

2. The commission may review and affirm, reverse, or amend all actions of the administrator, including but not limited to the following instances:

a. Purchases of alcoholic liquor for resale by the division.

b. The establishment of wholesale prices of alcoholic liquor.

93 Acts, ch 91, §2

Subsection 2, paragraph b stricken and former paragraph c relettered as b

### **123.19 Distiller's certificate of compliance — injunction — penalty.**

1. Any manufacturer, distiller or importer of alcoholic beverages shipping, selling, or having alcoholic beverages brought into this state for resale by the state shall, as a condition precedent to the privilege of so trafficking in alcoholic liquors in this state, annually make application for and hold a distiller's certificate of compliance which shall be issued by the administrator for that purpose. No brand of alcoholic liquor shall be sold by the division in this state unless the manufacturer, distiller, importer, and all other persons participating in the distribution of that brand in this state have obtained a certificate. The certificate of compliance shall expire at the end of one year from the date of issuance and shall be renewed for a like period upon application to the administrator unless otherwise suspended or revoked for cause. Each application for a certificate of compliance or renewal shall be made in a manner and upon forms prescribed by the administrator and shall be accompanied by a fee of fifty dollars payable to the division. However, this subsection need not apply to a manufacturer, distiller, or importer who ships or sells in this state no more than eleven gallons or its case equivalent during any fiscal year as a result of "special orders" which might be placed, as defined and allowed by divisional rules adopted under this chapter.

2. At the time of applying for a certificate of compliance, each applicant shall file with the division the name and address of its authorized agent for service of process which shall remain effective until changed for another, and a list of names and addresses of all representatives, employees, or attorneys whom the applicant has appointed in the state of Iowa to represent it for any purpose. The listing shall be amended from time to time by the certificate holder as necessary to keep the listing current with the division.

3. The administrator and the attorney general

are authorized to require any certificate holder or person listed as the certificate holder's representative, employee, or attorney to disclose such financial and other records and transactions as may be considered relevant in discovering violations of this chapter or of rules and regulations of the division or of any other provision of law by any person.

4. Any violation of the requirements of this section, except subsection 3, shall subject the violator to the general penalties provided in this chapter and in addition to the general penalties, is grounds for suspension or revocation of the certificate of compliance, after notice and hearing before the administrator. Willful failure to comply with requirements which may be imposed under subsection 3 is grounds for suspension or revocation of the certificate of compliance only.

5. This section shall not require the listing of those persons who are employed on premises where alcoholic beverages are manufactured, processed, bottled or packaged in Iowa or to persons who are thereafter engaged in the transporting of such alcoholic beverages to the division.

6. The attorney general may also proceed pursuant to the provisions of section 714.16 in order to gain compliance with subsection 3 of this section and may obtain an injunction prohibiting any further violations of this chapter or other provisions of law. Any violation of that injunction shall be punished as contempt of court pursuant to chapter 665 except that the maximum fine that may be imposed shall not exceed fifty thousand dollars.

93 Acts, ch 91, §3  
Subsection 4 amended

**123.24 Alcoholic liquor sales by the division — dishonored checks — liquor prices.**

1. The division shall sell alcoholic liquor at wholesale only. The division shall sell alcoholic liquor to class "E" liquor control licensees only. The division shall offer the same price on alcoholic liquor to all class "E" liquor control licensees without regard to the quantity of purchase or the distance for delivery. However, the division may assess a split-case charge when liquor is sold in quantities which require a case to be split.

2. *a.* The division may accept from a class "E" liquor control licensee a cashier's check which shows the licensee is the remitter or a check issued by the licensee in payment of alcoholic liquor. If a check is subsequently dishonored, the division shall cause a notice of nonpayment and penalty to be served upon the class "E" liquor control licensee or upon any person in charge of the licensed premises. The notice shall state that if payment or satisfaction for the dishonored check is not made within ten days of the service of notice, the licensee's liquor control license may be suspended under section 123.39. The notice of nonpayment and penalty shall be in a form prescribed by the administrator, and shall be sent by certified mail.

*b.* If upon notice and hearing under section 123.39 and pursuant to the provisions of chapter 17A

concerning a contested case hearing, the administrator determines that the class "E" liquor control licensee failed to satisfy the obligation for which the check was issued within ten days after the notice of nonpayment and penalty was served on the licensee as provided in paragraph "a" of this subsection, the administrator may suspend the licensee's class "E" liquor control license for a period not to exceed ten days.

3. The administrator may refuse to sell alcoholic liquor to a class "E" liquor control licensee who tenders a check or electronic funds transfer which is subsequently dishonored until the outstanding obligation is satisfied.

4. The price of alcoholic liquor sold by the division shall include a markup of up to fifty percent of the wholesale price paid by the division for the alcoholic liquor. The markup shall apply to all alcoholic liquor sold by the division; however, the division may increase the markup on selected kinds of alcoholic liquor sold by the division if the average return to the division on all sales of alcoholic liquor does not exceed the wholesale price paid by the division and the fifty percent markup.

5. Notwithstanding subsection 4, the division shall assess a bottle surcharge to be included in the price of alcoholic liquor in an amount sufficient, when added to the amount not refunded to class "E" liquor control licensees pursuant to section 455C.2, to pay the costs incurred by the division for collecting and properly disposing of the liquor containers. The amount collected pursuant to this subsection, in addition to any amounts not refunded to class "E" liquor control licensees pursuant to section 455C.2, shall be deposited in the beer and liquor control fund established under section 123.53.

93 Acts, ch 91, §4, 5  
Subsection 2, paragraphs a and b amended  
Subsection 2, paragraph c stricken

**123.29 Patent and proprietary products and sacramental wine.**

1. This chapter does not prohibit the sale of patent and proprietary medicines, tinctures, food products, extracts, toiletries, perfumes, and similar products, which are not susceptible of use as a beverage, but which contain alcoholic liquor, wine, or beer as one of their ingredients. These products may be sold through ordinary wholesale and retail businesses without a license or permit issued by the division.

2. This chapter does not prohibit a member of the clergy of any religious denomination which uses vinous liquor in its sacramental ceremonies from purchasing, receiving, possessing, and using vinous liquor for sacramental purposes.

93 Acts, ch 91, §6  
Section stricken and rewritten

**123.30 Liquor control licenses — classes.**

1. *a.* A liquor control license may be issued to any person who is of good moral character as defined by this chapter.

*b.* 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 division and 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 permittee 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 premises 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.

c. 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.

d. 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 licensees 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"*.

(1) 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.

(2) A class "D" liquor control licensee who operates a train or a watercraft intrastate only, or an ex-

cursion gambling boat licensed under chapter 99F, shall purchase alcoholic liquor from a class “E” liquor control licensee only, wine from a class “A” wine permittee or a class “B” wine permittee who also holds a class “E” liquor control license only, and beer from a class “A” beer permittee only.

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.

93 Acts, ch 91, § 7, 8  
 Subsection 1 amended  
 Subsection 3, paragraph d amended

**123.31 Application contents.**

Except as otherwise provided in section 123.35, verified applications for the original issuance or the renewal of liquor control licenses shall be filed at the time and in the number of copies as the administrator shall prescribe, on forms prescribed by the administrator, and shall set forth under oath the following information:

1. The name and address of the applicant.
2. The precise location of the premises for which a license is sought.
3. The names and addresses of all persons, in the case of a corporation, the officers, directors, and persons owning or controlling ten percent or more of the capital stock thereof, having a financial interest, by way of loan, ownership, or otherwise, in the business.
4. When required by the administrator, a sketch or drawing of the premises proposed to be licensed, in such form and containing such information as the administrator may require.
5. A statement whether any person specified in subsection 3 has ever been convicted of any offense against the laws of the United States, or any state or territory thereof, or any political subdivision of any such state or territory.
6. A statement whether the applicant or any per-

son specified in subsection 3 possesses a federal gambling stamp.

7. Such other information as the administrator shall require.

93 Acts, ch 91, § 9  
 Unnumbered paragraph 1 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 with the necessary fee and bond, if required, to the division. 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*.

a. Upon receipt of an application having been disapproved by the local authority, the administrator shall notify the applicant that the applicant may appeal the disapproval of the application to the administrator. The applicant shall be notified by certified mail, and the application, the fee, and any bond shall be returned to the applicant.

b. Upon receipt of an application having been approved by the local authority, the division shall make an investigation as the administrator deems necessary to determine that the applicant complies with all requirements for holding a license or permit,

and may require the applicant to appear to be examined under oath to demonstrate that the applicant complies with all of the requirements to hold a license or permit. If the administrator requires the applicant to appear and to testify under oath, a record shall be made of all testimony or evidence and the record shall become a part of the application. The administrator may appoint a member of the division or may request an administrative law judge of the department of inspections and appeals to receive the testimony under oath and evidence, and to issue a proposed decision to approve or disapprove the application for a license or permit. The administrator may affirm, reverse, or modify the proposed decision to approve or disapprove the application for the license or permit. If the application is approved by the administrator, the license or permit 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.

5. *Appeal to administrator.* An applicant for a liquor control license, wine permit, or beer permit may appeal from the local authority's disapproval of an application for a license or permit to the administrator. In the appeal the applicant shall be allowed the opportunity to demonstrate in an evidentiary hearing conducted pursuant to chapter 17A that the applicant complies with all of the requirements for holding the license or permit. The administrator may appoint a member of the division or may request an administrative law judge from the department of inspections and appeals to conduct the evidentiary hearing and to render a proposed decision to approve or disapprove the issuance of the license or permit. The administrator may affirm, reverse, or modify the proposed decision. If the administrator determines that the applicant complies with all of the requirements for holding a license or permit, the administrator shall order the issuance of the license or permit. If the administrator determines that the applicant does not comply with the requirements for holding a license or permit, the administrator shall disapprove the issuance of the license or permit.

6. *Judicial review.* The applicant or the local authority may seek judicial review of the action of the administrator in accordance with the terms of the Iowa administrative procedure Act. Notwithstanding the terms of the Iowa administrative procedure Act, petitions for judicial review may be filed in the district court of the county where the premises covered by the application are situated.

7. *Suspension by local authority.* A liquor control licensee or a wine or beer permittee whose license or permit has been suspended or revoked or a civil penalty imposed by a local authority for a violation of this chapter or suspended by a local authority for violation of a local ordinance may appeal the suspension, revocation, or civil penalty to the administrator. The administrator may appoint a member of the division or may request an administrative law judge from the department of inspections and appeals to hear the appeal which shall be conducted in

accordance with chapter 17A and to issue a proposed decision. The administrator may review the proposed decision upon the motion of a party to the appeal or upon the administrator's own motion in accordance with chapter 17A. Upon review of the proposed decision, the administrator may affirm, reverse, or modify the proposed decision. A liquor control licensee, wine or beer permittee, or a local authority aggrieved by a decision of the administrator may seek judicial review of the decision pursuant to chapter 17A.

93 Acts, ch 91, §10-12  
 Applicability of 1993 amendments regarding administrative appeals, 93 Acts, ch 91, §23  
 Subsections 2, 4 and 6 amended  
 Subsection 5 stricken and rewritten  
 NEW subsection 7

### 123.35 Simplified renewal procedure — class "E" procedure.

The administrator shall prescribe simplified application forms for the renewal of liquor control licenses, wine permits, and beer permits which may be filed by licensees and permittees in lieu of a detailed renewal application form when qualifications and qualification information have not changed since the original issuance of the license or permit. The simplified form shall require the licensee or permittee to verify under oath that the information contained in the original application remains current, and that no reason exists for the division's refusal to renew the license or permit as originally issued.

The application, accompanied by the necessary fee and bond, if required, shall be filed in the same manner as is provided for filing the initial application. However, for the renewal of a class "E" license, the simplified application form for renewal, accompanied by the necessary fee and bond if required, shall be filed directly with the administrator without the endorsement of local authorities if all of the following conditions are met: the applicant's license has not been suspended or revoked since the preceding license was issued; a civil penalty has not been imposed against the applicant under this chapter since the preceding license was issued; an administrative proceeding is not pending against the applicant to suspend or revoke the applicant's license or to impose a civil penalty under this chapter; and the applicant has not been convicted of a violation of this chapter since the preceding license was issued.

93 Acts, ch 91, §13  
 Unnumbered paragraph 2 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. Reserved.

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 establishment 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 by 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.

93 Acts, ch 91, §14  
Subsection 1 stricken

### 123.37 Exclusive power to license and levy taxes — disputed taxes.

The power to establish licenses and permits and levy taxes as imposed in chapters 123 and 125 is vested exclusively with the state. Unless specifically provided, a local authority shall not require the obtaining of a special license or permit for the sale of alcoholic beverages, wine, or beer at any establishment, or require the obtaining of a license by any person as a condition precedent to the person's employment in the sale, serving, or handling of alcoholic beverages, wine, or beer, within an establishment operating under a license or permit.

The administrator may compromise and settle doubtful and disputed claims for taxes imposed under this chapter or for taxes of doubtful collectibility, notwithstanding section 7D.9. The administrator may enter into informal settlements pursuant to section 17A.10 to compromise and settle doubtful and disputed claims for taxes imposed under this chapter. The administrator may make a claim under a licensee's or permittee's penal bond for taxes of doubtful collectibility. Whenever a compromise or settlement is made, the administrator shall make a complete record of the case showing the tax assessed, reports and audits, if any, the licensee's or permittee's grounds for dispute or contest, together with all evidence of the dispute or contest, and the amounts, conditions, and settlement or compromise of the dispute or contest.

A licensee or permittee who disputes the amount of tax imposed must pay all tax and penalty pertaining to the disputed tax liability prior to appealing the disputed tax liability to the administrator.

The administrator shall adopt rules establishing procedures for payment of disputed taxes imposed under this chapter. If it is determined that the tax is not due in whole or in part, the division shall promptly refund the part of the tax payment which is determined not to be due.

93 Acts, ch 91, §15  
Applicability of 1993 amendment, 93 Acts, ch 91, §23  
Unnumbered paragraph 5 stricken

### 123.39 Suspension or revocation of license or permit — civil penalty.

1. *a.* The administrator or the local authority may suspend a liquor control license, wine permit, or beer permit for a period not to exceed one year, revoke the license or permit, or impose a civil penalty not to exceed one thousand dollars per violation. Before suspension, revocation, or imposition of a civil penalty, the licensee or permit holder shall be given written notice and an opportunity for a hearing. The administrator may appoint a member of the division or may request an administrative law judge from the department of inspections and appeals to conduct the hearing and issue a proposed decision. Upon the motion of a party to the hearing or upon the administrator's own motion, the administrator may review the proposed decision in accordance with chapter 17A. Upon review of the proposed decision, the administrator may affirm, reverse, or modify the proposed decision. A liquor control licensee, wine, or beer permittee aggrieved by a decision of the administrator may seek judicial review of the administrator's decision in accordance with chapter 17A.

*b.* A license or permit issued under this chapter may be suspended or revoked, or a civil penalty may be imposed on the license or permit holder by the local authority or the administrator for any of the following causes:

(1) Misrepresentation of any material fact in the application for the license or permit.

(2) Violation of any of the provisions of this chapter.

(3) Any change in the ownership or interest in the business operated under a class "A", class "B", or class "C" liquor control license, or any wine or beer permit, which change was not previously reported to and approved by the local authority and the division.

(4) An event which would have resulted in disqualification from receiving the license or permit when originally issued.

(5) Any sale, hypothecation, or transfer of the license or permit.

(6) The failure or refusal on the part of any licensee or permittee to render any report or remit any taxes to the division under this chapter when due.

*c.* A criminal conviction is not a prerequisite to suspension, revocation, or imposition of a civil penalty pursuant to this section. A local authority which acts pursuant to this section or section 123.32 shall notify the division in writing of the action taken, and shall notify the licensee or permit holder of the right to appeal a suspension, revocation, or imposition of a civil penalty to the division. Civil penalties imposed and collected by the local authority under this section shall be retained by the local authority. Civil penalties imposed and collected by the division under this section shall be retained by the division.

2. Local authorities may suspend any retail wine or beer permit or liquor control license for a violation of any ordinance or regulation adopted by the local authority. Local authorities may adopt ordinances or regulations for the location of the premises of re-



tail wine or beer and liquor control licensed establishments and local authorities may adopt ordinances, not in conflict with this chapter and that do not diminish the hours during which beer, wine, or alcoholic beverages may be sold or consumed at retail, governing any other activities or matters which may affect the retail sale and consumption of beer, wine, and alcoholic liquor and the health, welfare and morals of the community involved.

3. When a liquor license or wine or beer permit is suspended after a hearing as a result of violations of this chapter by the licensee, permittee or the licensee's or permittee's agents or employees, the premises which were licensed by the license or permit shall not be relicensed for a new applicant until the suspension has terminated or time of suspension has elapsed, or ninety days have elapsed since the commencement of the suspension, whichever occurs first. However, this section does not prohibit the premises from being relicensed to a new applicant before the suspension has terminated or before the time of suspension has elapsed or before ninety days have elapsed from the commencement of the suspension, if the premises prior to the time of the suspension had been purchased under contract, and the vendor under that contract had exercised the person's rights under chapter 656 and sold the property to a different person who is not related to the previous licensee or permittee by marriage or within the third degree of consanguinity or affinity and if the previous licensee or permittee does not have a financial interest in the business of the new applicant.

4. If the cause for suspension is a first offense violation of section 123.49, subsection 2, paragraph "h", the administrator or local authority shall impose a civil penalty in the amount of three hundred dollars in lieu of suspension of the license or permit. Local authorities shall retain civil penalties collected under this paragraph if the proceeding to impose the penalty is conducted by the local authority. The division shall retain civil penalties collected under this paragraph if the proceeding to impose the penalty is conducted by the administrator of the division.

93 Acts, ch 91, §16, 17  
Applicability of 1993 amendments regarding administrative appeals, 93 Acts, ch 91, §23  
Subsections 1 and 4 amended

**123.50 Criminal and civil penalties.**

1. Any person who violates any of the provisions of section 123.49 shall be guilty of a simple misdemeanor.

2. The conviction of any liquor control licensee, wine permittee, or beer permittee for a violation of any of the provisions of section 123.49, subject to subsection 3 of this section, is grounds for the suspension or revocation of the license or permit by the division or the local authority. However, if any liquor control licensee is convicted of any violation of subsection 2, paragraphs "a", "d" or "e", of that section, or any wine or beer permittee is convicted of a violation of paragraph "a" or "e" of that section, the liquor control license, wine permit, or beer permit shall be

revoked and shall immediately be surrendered by the holder, and the bond, if any, of the license or permit holder shall be forfeited to the division.

3. If any licensee, wine permittee, beer permittee, or employee of a licensee or permittee is convicted of a violation of section 123.49, subsection 2, paragraph "h", or if a retail wine or beer permittee is convicted of a violation of paragraph "i" of that subsection, the administrator or local authority shall, in addition to criminal penalties fixed for violations by this section, assess a civil penalty as follows:

a. Upon a first conviction, the violator's liquor control license, wine permit, or beer permit shall be suspended for a period of fourteen days. However, if the conviction is for a violation of section 123.49, subsection 2, paragraph "h", the violator's liquor control license or wine or beer permit shall not be suspended, but the violator shall be assessed a civil penalty in the amount of three hundred dollars. Failure to pay the civil penalty as ordered under section 123.39 for a violation of section 123.49, subsection 2, paragraph "h", or this subsection will result in automatic suspension of the license or permit for a period of fourteen days.

b. Upon a second conviction within a period of two years, the violator's liquor control license, wine permit, or beer permit shall be suspended for a period of thirty days.

c. Upon a third conviction within a period of three years, the violator's liquor control license, wine permit, or beer permit shall be suspended for a period of sixty days.

d. Upon a fourth conviction within a period of three years, the violator's liquor control license, wine permit, or beer permit shall be revoked.

4. A person, other than a licensee or permittee or a minor, who violates section 123.47 is guilty of a serious misdemeanor punishable by a minimum fine of one hundred dollars for a first offense, two hundred and fifty dollars for a second offense, and five hundred dollars for a third and subsequent offense, and a maximum fine for any offense of not more than one thousand dollars.

5. In addition to any other penalties imposed under this chapter, the division shall assess a civil penalty up to the amount of five thousand dollars upon a class "E" liquor control licensee when the class "E" liquor license is revoked for a violation of section 123.59. Failure to pay the civil penalty as required under this subsection shall result in forfeiture of the bond to the division.

93 Acts, ch 91, §18  
Subsection 3, unnumbered paragraph 1 and paragraphs a, c, and d amended

**123.53 Beer and liquor control fund — allocations to substance abuse — use of civil penalties.**

1. There shall be established within the office of the treasurer of state a fund to be known as the beer and liquor control fund. The fund shall consist of any moneys appropriated by the general assembly for deposit in the fund and moneys received from the sale of alcoholic liquors by the division, from the issuance

of permits and licenses, and of moneys and receipts received by the division from any other source.

2. The director of revenue and finance shall periodically transfer from the beer and liquor control fund to the general fund of the state those revenues of the division which are not necessary for the purchase of liquor for resale by the division, or for remittances to local authorities or other sources as required by this chapter, or for other obligations and expenses of the division which are paid from such fund.

All moneys received by the division from the issuance of vintner's certificates of compliance and wine permits shall be transferred by the director of revenue and finance to the general fund of the state.

3. The treasurer of state shall transfer into a special revenue account in the general fund of the state, a sum of money at least equal to seven percent of the gross amount of sales made by the division from the beer and liquor control fund on a monthly basis but not less than nine million dollars annually, and any amounts so transferred shall be used by the substance abuse division of the Iowa department of public health for substance abuse treatment and prevention programs in an amount determined by the general assembly and any amounts received in excess of the amounts appropriated to the substance abuse division of the Iowa department of public health shall be considered part of the general fund balance.

4. The treasurer of state, after making the transfer provided for in subsection 3, shall transfer to the division from the beer and liquor control fund and before any other transfer to the general fund, an amount sufficient to pay the costs incurred by the division for collecting and properly disposing of the liquor containers.

5. Notwithstanding section 8.33, civil penalties imposed and collected by the division shall not revert to the general fund of the state. The moneys from the civil penalties are appropriated for use by the division for the purposes of providing educational programs, information and publications for alcoholic beverage licensees and permittees, local authorities, and law enforcement agencies regarding the laws and rules which govern the alcoholic beverages industry, and for promoting compliance with alcoholic beverage laws and rules.

93 Acts, ch 91, §19  
NEW subsection 5

### **123.95 Premises must be licensed — exception as to conventions and social gatherings.**

1. A person shall not allow the dispensing or consumption of alcoholic liquor, except wines and beer, in any establishment unless the establishment is licensed under this chapter or except as otherwise provided in this section. The holder of an annual class "B" liquor control license or an annual class "C" liquor control license may act as the agent of a private social host for the purpose of providing and serving alcoholic liquor, wine, and beer as part of a food catering service for a private social gathering in a private place. The holder of an annual special class "C" liquor control license shall not act as the agent

of a private social host for the purpose of providing and serving wine and beer as part of a food catering service for a private social gathering in a private place. The private social host or the licensee shall not solicit donations in payment for the food or alcoholic beverages from the guests, and the alcoholic beverages and food shall be served without cost to the guests. Section 123.92 does not apply to a liquor control licensee who acts in accordance with this section when the liquor control licensee is providing and serving food and alcoholic beverages as an agent of a private social host at a private social gathering in a private place which is not on the licensed premises.

2. An applicant for a class "B" liquor control license or class "C" liquor control license shall state on the application for the license that the licensee intends to engage in catering food and alcoholic beverages for private social gatherings and the catering privilege shall be noted on the license or permit. A licensee who engages in catering food and alcoholic beverages for private social gatherings shall maintain a record on the licensed premises which includes the name and address of the host of the private social gathering, and the date for which catering was provided. The record maintained pursuant to this section shall be open to inspection pursuant to section 123.30, subsection 1, during normal business hours of the licensee.

3. However, bona fide conventions or meetings may bring their own legal liquor onto the licensed premises if the liquor is served to delegates or guests without cost. All other provisions of this chapter shall be applicable to such premises. The provisions of this section shall have no application to private social gatherings of friends or relatives in a private home or private place which is not of a commercial nature nor where goods or services may be purchased or sold nor any charge or rent or other thing of value is exchanged for the use of such premises for any purpose other than for sleeping quarters.

93 Acts, ch 91, §20  
Section stricken and rewritten

### **123.151 Posting notice on drunk driving laws required.** Repealed by 93 Acts, ch 91, § 22.

### **123.177 Authority under class "A" permit.**

1. A person holding a class "A" wine permit may manufacture and sell, or sell at wholesale, wine for consumption off the premises. Sales within the state may be made only to persons holding a class "A" or "B" wine permit and to persons holding a class "A", "B", "C" or "D" liquor control license. A class "A" wine permittee having more than one place of business shall obtain a separate permit for each place of business where wine is to be stored, warehoused, or sold.

2. A class "A" wine permit holder may purchase and resell only those brands of wine which are manufactured, fermented, bottled, shipped, or imported by a person holding a certificate of compliance issued pursuant to section 123.180.

93 Acts, ch 91, §21  
Subsection 1 amended

## CHAPTER 124

### CONTROLLED SUBSTANCES

#### 124.412 Notice of conviction.

If a person enters a plea of guilty to, or forfeits bail or collateral deposited to secure the person's appearance in court, and such forfeiture is not vacated, or if a person is found guilty upon an indictment or information alleging a violation of this chapter, a copy of the minutes attached to the indictment returned by the grand jury, or to the county attorney's information, a copy of the judgment and sentence, and a copy of the opinion of the judge if one is filed, shall be sent by the clerk of the district court or the judge to the state department of transportation and to any

state board or officer by whom the convicted person has been licensed or registered to practice the person's profession or carry on the person's business. On the conviction of a person, the court may suspend or revoke the license or registration of the convicted defendant to practice the defendant's profession or carry on the defendant's business. On the application of a person whose license or registration has been suspended or revoked, and upon proper showing and for good cause, the board or officer may reinstate the license or registration.

93 Acts, ch 16, §1  
Section amended

## CHAPTER 124C

### CLEANUP OF CLANDESTINE LABORATORY SITES

#### 124C.1 Definitions.

As used in this section, unless the context clearly requires otherwise:

1. "*Clandestine laboratory site*" means a location or operation, including but not limited to buildings or vehicles equipped with glassware, heating devices, and precursors or related reagents and solvents needed to unlawfully prepare or manufacture controlled substances defined in chapter 124.

2. "*Cleanup*" means actions necessary to contain, collect, control, identify, analyze, disassemble, treat, remove, or otherwise disperse all substances and materials, including but not limited to those found to be hazardous waste as defined in section 455B.411 and controlled substances defined in chapter 124, including contamination caused by those chemicals or substances.

3. "*Commissioner*" means the commissioner of public safety.

4. "*Department*" means the department of public safety.

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, and other substances defined in rules adopted pursuant to section 455B.381 and controlled substances as defined in chapter 124.

6. "*Person having control over a clandestine laboratory site*" means a person who at any time possesses, produces, handles, stores, uses, transports, or disposes of a hazardous substance or controlled sub-

stance used or intended for use at a clandestine laboratory site. A person having control over a clandestine laboratory site does not include persons performing duties listed in section 124C.2 at the direction of the commissioner and does not include a person who is the owner of the property or a person holding a security interest in the property in or upon which the clandestine laboratory site is located unless the person knew that a clandestine laboratory existed in or upon the person's property.

93 Acts, ch 141, §1  
NEW section

#### 124C.2 Powers and duties of the commissioner.

1. The commissioner or the commissioner's designee may use funds appropriated or otherwise available to the department for the following purposes:

a. Administrative services for the identification, assessment, and cleanup of clandestine laboratory sites.

b. Payments to other government agencies or private contractors for services consistent with the management and cleanup of a clandestine laboratory site.

c. Emergency response activities involving clandestine laboratory sites, including surveillance, entry, security, cleanup, and disposal.

The commissioner may request the assistance of other state, federal, and local agencies as necessary.

2. The commissioner shall proceed, pursuant to this section, to collect all costs incurred in cleanup

of a clandestine laboratory site from the person having control over a clandestine laboratory site.

3. The commissioner shall make all reasonable efforts to recover the full amount of moneys expended, through litigation or otherwise. Moneys recovered shall be deposited with the treasurer of state and credited to the department of public safety.

93 Acts, ch 141, §2  
NEW section

#### **124C.3 Liability to the state.**

A person having control over a clandestine laboratory site shall be strictly liable to the state for all of the following:

1. The reasonable costs incurred by the state as a result of cleanup of the site.

2. The reasonable costs incurred by the state to evacuate people from the area threatened by the clandestine laboratory site.

3. The reasonable damages to the state for the injury to, destruction of, or loss of natural resources resulting from the clandestine laboratory site, including the costs of assessing the injury, destruction, or loss.

93 Acts, ch 141, §3  
NEW section

#### **124C.4 Claim of state.**

1. An amount for which a person having control over a clandestine laboratory is liable to the state shall constitute a lien in favor of the state upon all property and rights to property, real and personal, belonging to that person. This lien shall attach at the time the charges set out in section 124C.3 become due and payable and shall continue for ten years from the time the lien attaches unless sooner released or otherwise discharged. The lien may be extended, within ten years from the date the lien attaches, by filing a notice with the appropriate county official of the appropriate county and from the time of filing the lien shall be extended as to the property in that county for ten years, unless sooner released or otherwise discharged, with no limit on the number of extensions.

2. In order to preserve the lien against subsequent mortgagees, purchasers, or judgment creditors for value and without notice of the lien, the commissioner shall file with the recorder of the county in which the property is located a notice of the lien. A laboratory cleanup lien shall be recorded in the index of income tax liens in the county.

3. Each notice of lien shall be endorsed with the

day, hour, and minute when the notice was received, and the notice shall be preserved, indexed in the index book, and recorded in the manner provided for recording real estate mortgages. The lien shall be effective from the time of its indexing. The department shall pay a recording fee as provided by section 331.604 for the recording of the lien or for its satisfaction.

4. Upon payment of a charge for which the commissioner has filed a notice of lien with a county, the commissioner shall immediately file with the county a satisfaction of the charge and the satisfaction of the charge shall be indicated on the index.

The attorney general, upon the request of the commissioner, shall bring an action at law or in equity, without bond, to enforce payment of any charges or 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.

The remedies available to the state in this chapter shall be cumulative and no action taken by the commissioner or attorney general shall be construed to be an election on the part of the state to pursue any remedy to the exclusion of any other remedy provided by law.

93 Acts, ch 141, §4  
NEW section

#### **124C.5 Liability of state employees or persons providing cleanup assistance.**

The state and its officers or employees are not liable for damages or injury caused by a condition at a clandestine laboratory site or resulting from action or inaction taken by any officers or employees when acting in their official capacity pursuant to this chapter, unless the damage or injury resulted from intentional wrongdoing or gross negligence.

93 Acts, ch 141, §5  
NEW section

#### **124C.6 Legal remedies.**

This chapter does not deny a person any legal or equitable rights, remedies, or defenses, or affect any legal relationship other than the legal relationship between the state and a person having control over a clandestine laboratory site.

93 Acts, ch 141, §6  
NEW section

#### **124C.7 Rulemaking authority.**

The department may adopt rules pursuant to chapter 17A necessary to administer this chapter.

93 Acts, ch 141, §7  
NEW section

## CHAPTER 125

### CHEMICAL SUBSTANCE ABUSE

#### 125.15A Licensure — emergencies.

1. The department may place an employee or agent to serve as a monitor in a licensed substance abuse treatment program or may petition the court for appointment of a receiver for a program when any of the following conditions exist:

- a. The program is operating without a license.
- b. The commission has suspended, revoked, or refused to renew the existing license of the program.
- c. The program is closing or has informed the department that it intends to close and adequate arrangements for the location of clients have not been made at least thirty days before the closing.
- d. The department determines that an emergen-

cy exists, whether or not it has initiated revocation or nonrenewal procedures, and because of the unwillingness or inability of the licensee to remedy the emergency, the department determines that a monitor or receiver is necessary. As used in this paragraph, "emergency" means a threat to the health, safety, or welfare of a client that the program is unwilling or unable to correct.

2. The monitor shall observe operation of the program, assist the program with advice regarding compliance with state regulations, and report periodically to the department on the operation of the program.

93 Acts, ch 139, §1  
NEW section

## CHAPTER 126

### DRUGS, DEVICES, AND COSMETICS

#### 126.26 Notice of conviction under chapter.

If a person enters a plea of guilty, or forfeits bail or collateral deposited to secure the person's appearance in court, and the forfeiture is not vacated, or if a person is found guilty upon an indictment or information alleging a violation of this chapter, a copy of the minutes attached to the indictment returned by

the grand jury, or to the county attorney's information, a copy of the judgment and sentence, and a copy of the opinion of the judge if one is filed, shall be sent by the clerk of the district court or the judge to the state department of transportation.

93 Acts, ch 16, §2  
NEW section

## CHAPTER 135

### DEPARTMENT OF PUBLIC HEALTH

Home care aide program, 93 Acts, ch 170, §4  
Moratorium on certificates of need for intermediate care facilities  
for the mentally retarded from July 1, 1993, to June 30, 1995, 93 Acts, ch 172, §28

#### 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 administration 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 chapter 146 and "Health-related Professions," title IV, subtitle 3, excluding chapters 152B and 155.

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 chapters 125, 152B, 155, and 435 and title IV, subtitle 2, excluding chapters 142B, 145B, and 146 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 conditions 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.

24. Adopt rules which provide for the testing of a convicted offender for the human immunodeficiency virus pursuant to chapter 709B. The rules shall provide for the provision of counseling, health care, and support services to the victim.

93 Acts, ch 140, §4  
 Rules and procedures for organized delivery system projects, 93 Acts, ch 158, §3, 4  
 NEW subsection 24

**135.24 Volunteer physician program established — immunity from civil liability.**

1. The director shall establish within the department a program to provide to eligible hospitals, clinics, or other health care facilities, or health care referral programs, free medical services given on a voluntary basis by physicians licensed under chapter 148, 150, or 150A. A participating physician shall register with the department and obtain from the department a list of eligible, participating hospitals, clinics, or other health care facilities, or health care referral programs.

2. The department, in consultation with the department of human services, shall adopt rules to implement the volunteer physician program which shall include the following:

a. Procedures for registration of physicians deemed qualified by the board of medical examiners.

b. Criteria for and identification of hospitals, clinics, or other health care facilities, or health care referral programs eligible to participate in the provision of free medical services through the volunteer physician program. A health care facility, a health care referral program, or a health care provider participating in the program shall not bill or charge a patient for any physician service provided under the volunteer physician program.

3. A physician providing free care under this section shall be considered an employee of the state under chapter 669 and shall be afforded protection as an employee of the state under section 669.21, provided that the physician has done all of the following:

a. Registered with the department pursuant to subsection 1.

b. Provided medical services through a hospital, clinic, or other health care facility, or health care referral program listed as eligible and participating by the department pursuant to subsection 1.

93 Acts, ch 65, §1  
 NEW section

**135.25 Emergency medical services fund.**

An emergency medical services fund is created in the state treasury under the control of the department. The fund includes, but is not limited to, amounts appropriated by the general assembly, and other moneys available from federal or private sources which are to be used for purposes of this section. Funds remaining in the fund at the end of each fiscal year shall not revert to the general fund of the state but shall remain in the emergency medical services fund, notwithstanding section 8.33. The fund is established to assist counties by matching, on a

dollar-for-dollar basis, moneys spent by a county for the acquisition of equipment for the provision of emergency medical services and by providing grants to counties for education and training in the delivery of emergency medical services, as provided in this section and section 422D.6. A county seeking matching funds under this section shall apply to the emergency medical services division of the department. The department shall adopt rules concerning the application and awarding process for the matching funds and the criteria for the allocation of moneys in the fund if the moneys are insufficient to meet the emergency medical services needs of the counties.

93 Acts, ch 58, §1  
 NEW section

**135.26 and 135.27** Repealed by 65 Acts, ch 375, § 29.

**135.28 State substitute medical decision-making board.**

A state substitute medical decision-making board is established to formulate policy and guidelines for the operations of local substitute medical decision-making boards, and to act if a local substitute medical decision-making board does not exist. The department, with the approval of the state substitute medical decision-making board, shall adopt rules pursuant to chapter 17A for the appointment and operation of local substitute medical decision-making boards. Notwithstanding any other provision to the contrary regarding confidentiality of medical records, the state substitute medical decision-making board may issue subpoenas relating to the production of medical records of a patient under the board's review. A person participating in good faith in releasing medical record information in response to a board subpoena is immune from any liability, civil or criminal, which might otherwise be incurred or imposed.

The state substitute medical decision-making board is comprised of medical professionals and lay persons appointed by the director and the state board of health according to rules adopted by the department. The state substitute medical decision-making board and its members are not liable, jointly or severally, for actions or omissions taken or made in the official discharge of their duties, except those acts or omissions constituting willful or wanton misconduct.

93 Acts, ch 139, §2  
 Unnumbered paragraph 1 amended

**135.29 Local substitute medical decision-making board.**

1. Each county in this state may establish and fund a local substitute medical decision-making board. The local substitute medical decision-making board shall be comprised of medical professionals and lay persons appointed pursuant to the rules adopted by the department.

2. Pursuant to rules adopted by the department, the local substitute medical decision-making board

may act as a substitute decision maker for patients incapable of making their own medical care decisions if no other substitute decision maker is available to act. The local substitute medical decision-making board may exercise decision-making authority in situations where there is sufficient time to review the patient's condition, and a reasonably prudent person would consider a decision to be medically necessary. Such medically necessary decisions shall constitute good cause for subsequently filing a petition in the district court for appointment of a guardian pursuant to chapter 633, but the local substitute medical decision-making board shall continue to act in the patient's best interests until a guardian is appointed. Notwithstanding any other provision to the contrary regarding confidentiality of medical records, the local substitute decision-making board may issue subpoenas relating to the production of medical records of a patient under the board's review. A person participating in good faith

in releasing medical record information in response to a board subpoena is immune from any liability, civil or criminal, which might otherwise be incurred or imposed.

3. The local substitute medical decision-making board and its members shall not be held liable, jointly or severally, for any actions or omissions taken or made in the official discharge of their duties, except those acts or omissions constituting willful or wanton misconduct. A physician or other health care provider who acts on a decision or directive of the local substitute medical decision-making board or state substitute medical decision-making board shall not be held liable for any damages resulting from that act, unless such physician's or other health care provider's actions or omissions constitute negligence in the practice of the profession or occupation, or willful or wanton misconduct.

93 Acts, ch 139, §3  
Subsection 2 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, dentists, or certified health service providers in psychology licensed under chapter 148, 149, 150, 150A, or 153, or section 154B.7 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 post-secondary accreditation or an accrediting group recognized by the United States department of education. A hospital may establish procedures for interaction between a patient and a practitioner. Nothing in the rules shall prohibit a hospital from limiting,

restricting, or revoking clinical privileges of a practitioner for violation of hospital rules, regulations, or procedures established under this paragraph, when applied in good faith and in a nondiscriminatory manner. Nothing in this paragraph shall require a hospital to expand the hospital's current scope of service delivery solely to offer the services of a class of providers not currently providing services at the hospital. Nothing in this section shall be construed to require a hospital to establish rules which are inconsistent with the scope of practice established for licensure of practitioners to whom this paragraph applies. This section shall not be construed to authorize the denial of clinical privileges to a practitioner or class of practitioners solely because a hospital has as employees of the hospital identically licensed practitioners providing the same or similar services.

The rules shall require that a hospital establish and implement written criteria for the granting of clinical privileges. The written criteria shall include but are not limited to consideration of the ability of an applicant for privileges to provide patient care services independently and appropriately in the hospital; the license held by the applicant to practice; training, experience, and competence of the applicant; the relationship between the applicant's request for the granting of privileges and the hospital's current scope of patient care services, as well as the hospital's determination of the necessity to grant privileges to a practitioner authorized to provide



comprehensive, appropriate, and cost-effective services.

The department shall adopt rules requiring hospitals to establish and implement protocols for re-

sponding to the needs of patients who are victims of domestic abuse, as defined in section 236.2.

93 Acts, ch 108, §1

Unnumbered paragraph 2 amended and NEW unnumbered paragraph 3

## CHAPTER 135H

### PSYCHIATRIC MEDICAL INSTITUTIONS FOR CHILDREN

#### 135H.4 Licensure.

A person shall not establish, operate, or maintain a psychiatric medical institution for children unless the person obtains a license for the institution under this chapter and either holds a license under section 237.3, subsection 2, paragraph "a", as a comprehensive residential facility for children or holds a license under section 125.13, if the facility provides substance abuse treatment.

93 Acts, ch 53, §6, 93 Acts, ch 172, §29, 93 Acts, ch 180, §79

See Code editor's note

Section amended

#### 135H.6 Inspection before issuance.

The department shall issue a license to an applicant under this chapter if all the following conditions exist:

1. The department has ascertained that the applicant's medical facilities and staff are adequate to provide the care and services required of a psychiatric institution.

2. The proposed psychiatric institution is accredited by the joint commission on the accreditation of health care organizations.

3. The applicant complies with applicable state rules and standards for a psychiatric institution adopted by the department in accordance with federal requirements under 42 C.F.R. § 441.150-441.156.

4. The applicant has been awarded a certificate of need pursuant to chapter 135.

5. The department of human services has submitted written approval of the application based on the department of human services' determination of need. The department of human services shall identify the location and number of children in the state who require the services of a psychiatric medical institution for children. Approval of an application shall be based upon the location of the proposed psychiatric institution relative to the need for services identified by the department of human services and an analysis of the applicant's ability to provide services and support consistent with requirements under chapter 232, particularly regarding community-based treatment. If the proposed psychiatric institution is not freestanding from a facility licensed under chapter 135B or 135C, approval under this

subsection shall not be given unless the department of human services certifies that the proposed psychiatric institution is capable of providing a resident with a living environment similar to the living environment provided by a licensee which is freestanding from a facility licensed under chapter 135B or 135C. Unless a psychiatric institution was accredited to provide psychiatric services by the joint commission on the accreditation of health care organizations under the commission's consolidated standards for residential settings prior to June 1, 1989, the department of human services shall not approve an application for a license under this chapter until the federal health care financing administration has approved a state Title XIX plan amendment to include coverage of services in a psychiatric medical institution for children. In addition, either of the following conditions must be met:

a. The department of human services shall not give approval to an application which would cause the total number of beds licensed under this chapter to exceed three hundred sixty beds, except as provided in paragraph "b", with not more than three hundred of the beds licensed under chapter 237 before January 1, 1989, and not more than sixty of the beds licensed under chapter 237 on or after January 1, 1989.

b. The department of human services shall not give approval to an application which would cause the total number of beds licensed under this chapter after June 30, 1990, which specialize in providing substance abuse treatment to children to exceed seventy beds.

6. The proposed psychiatric institution is under the direction of an agency which has operated a facility licensed under section 237.3, subsection 2, paragraph "a", as a comprehensive residential facility for children for three years or of an agency which has operated a facility for three years providing psychiatric services exclusively to children or adolescents and the facility meets or exceeds requirements for licensure under section 237.3, subsection 2, paragraph "a", as a comprehensive residential facility for children.

93 Acts, ch 53, §7, 93 Acts, ch 172, §30, 93 Acts, ch 180, §80

Subsections 2 and 6 amended

## CHAPTER 136C

## RADIATION MACHINES AND RADIOACTIVE MATERIALS

**136C.15 Radiation machines used for mammography — registration standards and requirements — application for authority — inspection.**

1. A person shall not use a radiation machine to perform mammography unless the radiation machine is registered with the department pursuant to the department's rules and is specifically authorized for use for mammography as provided in this section.

2. The department shall authorize a radiation machine for use for mammography if the radiation machine meets all of the following:

a. The radiation machine meets the criteria for the American college of radiology mammography accreditation program. The department shall make copies of those criteria available to the public and may by rule adopt modified criteria. The department may accept an evaluation report issued by the American college of radiology as evidence that a radiation machine meets those criteria. If at any time the department determines that it will not accept any evaluation reports issued by the American college of radiology as evidence that a radiation machine meets those criteria, the department shall promptly notify each person who has registered a radiation machine under this paragraph.

b. The radiation machine, the film or other image receptor used in the radiation machine, and the facility where the radiation machine is used meet the requirements set forth in department rules for radiation machines.

c. The radiation machine is specifically designed to perform mammography.

d. The radiation machine is used in a facility that does all of the following:

(1) At least annually has a qualified radiation physicist provide on-site consultation to the facility, including, but not limited to, a complete evaluation of the entire mammography system to ensure compliance with this section and the rules adopted pursuant to this section.

(2) Maintains for at least seven years, records of the consultation required in subparagraph (1) and the findings of the consultation.

e. The radiation machine is used according to the department rules on patient radiation exposure and radiation dose levels.

f. The radiation machine is operated only by an individual who can demonstrate to the department that the individual is specifically trained in mammography and meets the standards established in this section, or an individual who is a physician or an osteopathic physician.

3. The department may issue a nonrenewable

temporary authorization for a radiation machine for use for mammography if additional time is needed to allow submission of evidence satisfactory to the department that the radiation machine meets the standards set forth in subsection 2 for approval for mammography. A temporary authorization granted under this subsection shall be effective for no more than twelve months. The department may withdraw a temporary authorization prior to its expiration if the radiation machine does not meet one or more of the standards set forth in subsection 2.

4. To obtain authorization from the department to use a radiation machine for mammography, the person who owns or leases the radiation machine or an authorized agent of the person shall apply to the department for mammography authorization on an application form provided by the department and shall provide all of the information required by the department as specified on the application form. A person who owns or leases more than one radiation machine used for mammography shall obtain authorization for each radiation machine. The department shall process and respond to an application within thirty days after the date of receipt of the application. Upon determining to grant mammography authorization for a radiation machine, the department shall issue a certificate of registration specifying mammography authorization for each authorized radiation machine. A mammography authorization is effective for three years.

5. No later than sixty days after initial mammography authorization of a radiation machine under this section, the department shall inspect the radiation machine. After that initial inspection, the department shall annually inspect the radiation machine and may inspect the radiation machine more frequently. The department shall make reasonable efforts to coordinate the inspections under this section with the department's other inspections of the facility in which the radiation machine is located.

6. After each satisfactory inspection by the department, the department shall issue a certificate of radiation machine inspection or a similar document identifying the facility and radiation machine inspected and providing a record of the date the radiation machine was inspected. The facility shall post the certificate or other document near the inspected radiation machine.

7. The department may withdraw the mammography authorization for a radiation machine if it does not meet one or more of the standards set forth in subsection 2.

8. The department shall provide an opportunity for a hearing in connection with a denial or withdrawal of mammography authorization.

9. Upon a finding that a deficiency in a radiation machine used for mammography or a violation of this section or the rules adopted pursuant to this section seriously affects the health, safety, and welfare of individuals upon whom the radiation machine is used for mammography, the department may issue an emergency order summarily withdrawing the mammography authorization of the radiation machine. The department shall incorporate its findings in the order and shall provide an opportunity for a hearing within five working days after issuance of the order. The order shall be effective during the proceedings.

10. If the department withdraws the mammography authorization of a radiation machine, the radiation machine shall not be used for mammography. An application for reinstatement of a mammogra-

phy authorization shall be filed and processed in the same manner as an application for mammography authorization under subsection 4, except that the department shall not issue a reinstated certificate of mammography registration until the department inspects the radiation machine and determines that it meets the standards set forth in subsection 2. The department shall conduct an inspection required under this subsection no later than sixty days after receiving a proper application for reinstatement of a mammography authorization.

11. The department shall establish fees pursuant to section 136C.10 for the application for authorization and the inspection related to a radiation machine used for mammography.

93 Acts, ch 139, §4  
Subsection 2, paragraph d stricken and former paragraphs e, f, and g relettered as d, e, and f

## CHAPTER 139C

### EXPOSURE-PRONE PROCEDURES

#### 139C.1 Definitions.

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

1. “*Department*” means the Iowa department of public health.

2. “*Exposure-prone procedure*” means a procedure performed by a health care provider which presents a recognized risk of percutaneous injury to the health care provider and if such an injury occurs, the health care provider’s blood is likely to contact a patient’s body cavity, subcutaneous tissues, or mucous membranes, or “*exposure-prone procedure*” as defined subsequently by the centers for disease control of the United States department of health and human services.

3. “*HBV*” means hepatitis B virus.

4. “*Health care facility*” means a health care facility as defined in section 135C.1, an ambulatory surgical center, or a clinic.

5. “*Health care provider*” means a person licensed to practice medicine and surgery, osteopathic medicine and surgery, osteopathy, chiropractic, podiatry, nursing, dentistry, optometry, or as a physician assistant, dental hygienist, or acupuncturist.

6. “*HIV*” means HIV as defined in section 141.21.

7. “*Hospital*” means hospital as defined in section 135B.1.

93 Acts, ch 86, §11  
Subsection 5 amended

## CHAPTER 141

### ACQUIRED IMMUNE DEFICIENCY SYNDROME (AIDS)

#### 141.23 Confidentiality of records.

1. A person possessing information regulated by this chapter shall not disclose the identity of any other person upon whom an HIV-related test is performed or the results of such a test in a manner which would permit identification of another person

and a person shall not be compelled to disclose the identity of any person upon whom an HIV-related test is performed, or the results of the test in a manner which permits identification of the subject of the test, except to any of the following persons:

a. The subject of the test or the subject’s legal

guardian subject to the provisions of section 141.22, subsection 6, when applicable.

b. Any person who secures a written release of test results executed by the subject of the test or the subject's legal guardian.

c. An authorized agent or employee of a health facility or health care provider if the health facility or health care provider ordered or participated in the testing or is otherwise authorized to obtain the test results, the agent or employee provides patient care or handles or processes specimens of body fluids or tissues, and the agent or employee has a medical need to know such information.

d. Licensed medical personnel providing care to the subject of the test, when knowledge of the test results is necessary to provide care or treatment.

e. The department in accordance with reporting requirements for an HIV-related condition.

f. A health facility or health care provider which procures, processes, distributes, or uses a human body part from a deceased person with respect to medical information regarding that person, or semen provided prior to July 1, 1988, for the purpose of artificial insemination.

g. A person allowed access to a record by a court order which is issued in compliance with the following provisions:

(1) There is a court finding that the person seeking the test results has demonstrated a compelling need for the test results which cannot be accommodated by other means. In assessing compelling need, the court shall weigh the need for disclosure against the privacy interest of the test subject and the public interest which may be disserved by disclosure due to its deterrent effect on future testing or due to its effect in leading to discrimination.

(2) Pleadings pertaining to disclosure of test results shall substitute a pseudonym for the true name of the subject of the test. The disclosure to the parties of the subject's true name shall be communicated confidentially, in documents not filed with the court.

(3) Before granting an order, the court shall provide the person whose test results are in question with notice and a reasonable opportunity to participate in the proceedings if the person is not already a party.

(4) Court proceedings as to disclosure of test results shall be conducted in camera unless the subject of the test agrees to a hearing in open court or unless the court determines that a public hearing is necessary to the public interest and the proper administration of justice.

(5) Upon the issuance of an order to disclose test results, the court shall impose appropriate safeguards against unauthorized disclosure, which shall specify the persons who may gain access to the information, the purposes for which the information shall be used, and appropriate prohibitions on future disclosure.

h. An employer, if the test is authorized to be required under any other provision of law.

i. The convicted offender, the physician or other practitioner who orders the test of the convicted offender, the victim, the parent, guardian, or custodian of the victim if the victim is a minor, the physician of the victim, the victim counselor or person requested by the victim who is authorized to provide the counseling required pursuant to section 141.22, and the victim's spouse, persons with whom the victim has engaged in vaginal, anal, or oral intercourse subsequent to the sexual assault, or members of the victim's family within the fourth degree of consanguinity.

2. A person to whom the results of an HIV-related test have been disclosed pursuant to subsection 1 shall not disclose the test results to another person except as authorized by subsection 1, or by a court order issued pursuant to subsection 1.

3. If disclosure is made pursuant to this section, the disclosure shall be accompanied by a statement in writing which includes the following or substantially similar language: "This information has been disclosed to you from records whose confidentiality is protected by state law. State law prohibits you from making any further disclosure of the information without the specific written consent of the person to whom it pertains, or as otherwise permitted by law. A general authorization for the release of medical or other information is not sufficient for this purpose." An oral disclosure shall be accompanied or followed by such a notice within ten days.

93 Acts, ch 140, §5  
Subsection 1, NEW paragraph 1

## CHAPTER 142B

### SMOKING PROHIBITIONS

Capitol building, rotunda not to be designated a smoking area,  
93 Acts, ch 172, §54

## CHAPTER 144

### VITAL STATISTICS

Four-year project for modernizing vital records, temporary fee  
increase, 93 Acts, ch 55, §1

#### 144.13 Birth certificates.

1. Certificates of births shall be filed as follows:

a. A certificate of birth for each live birth which occurs in this state shall be filed with the county registrar of the county in which the birth occurs within ten days after the birth and shall be registered by the registrar if it has been completed and filed in accordance with this chapter. However, when a birth occurs in a moving conveyance, a birth certificate shall be filed in the county in which the child was first removed from the conveyance.

b. When a birth occurs in an institution, the person in charge of the institution or the person's designated representative shall obtain the personal data, prepare the certificate, secure the signatures required by the certificate, and file the certificate with the county registrar. The physician in attendance or the person in charge of the institution or the person's designee shall certify to the facts of birth and provide the medical information required by the certificate within six days after the birth.

c. When a birth occurs outside an institution, the certificate shall be prepared and filed by one of the following in the indicated order of priority:

- (1) The physician in attendance at or immediately after the birth.
- (2) Any other person in attendance at or immediately after the birth.
- (3) The father or the mother.
- (4) The person in charge of the premises where the birth occurred.

d. In the case of a child born out of wedlock, the certificate shall be filed directly with the state registrar. On a monthly basis, the state registrar shall transmit to the appropriate county boards of health such birth certificates for the sole purpose of identifying those children in need of inoculations.

e. In the case of a child born out of wedlock, an affidavit of paternity filed pursuant to section 252A.3A shall be filed directly with the state registrar.

2. If the mother was married either at the time of conception or birth, the name of the husband shall be entered on the certificate as the father of the child

unless paternity has been determined otherwise by a court of competent jurisdiction, in which case the name of the father as determined by the court shall be entered by the department.

3. If the mother was not married either at the time of conception or birth, the name of the father shall not be entered on the certificate of birth without the written consent of the mother and the person to be named as the father, unless a determination of paternity has been made pursuant to section 252A.3, in which case the name of the father as established shall be entered by the department.

4. The division shall make available to the child support recovery unit, upon request, a copy of a child's birth certificate, the social security numbers of the mother and the father, and a copy of the affidavit of paternity if provided pursuant to section 252A.3A.

93 Acts, ch 79, §9; 93 Acts, ch 116, §1  
See Code editor's note to §6A.10  
Section amended

#### 144.32 Burial-transit permit.

If a person other than a funeral director assumes custody of a dead body or fetus, the person shall secure a burial-transit permit. To be valid, the burial-transit permit must be issued by the county medical examiner, a funeral director, or the county registrar of the county where the certificate of death or fetal death was filed. The permit shall be obtained prior to the removal of the body or fetus from the place of death and the permit shall accompany the body or fetus to the place of final disposition.

To transfer a dead body or fetus outside of this state, the funeral director who first assumes custody of the dead body or fetus shall obtain a burial-transit permit prior to the transfer. The permit shall accompany the dead body or fetus to the place of final disposition.

A dead body or fetus brought into this state for final disposition shall be accompanied by a burial-transit permit under the law of the state in which the death occurred.

A burial-transit permit shall not be issued to a person other than a funeral director when the cause of

death is or is suspected to be a communicable disease as defined by rule of the department.

93 Acts, ch 139, §5  
NEW section

#### 144.40 Paternity of children out of wedlock.

Upon request and receipt of a sworn acknowledgment of paternity of a child born out of wedlock signed by both parents including an affidavit of pa-

ternity completed and filed pursuant to section 252A.3A, the state registrar shall amend a certificate of birth to show paternity if paternity is not shown on the birth certificate. Upon written request of the parents, the surname of the child may be changed on the certificate to that of the father. The certificate shall not be marked "amended".

93 Acts, ch 79, §10  
Section amended

## CHAPTER 145

### HEALTH DATA COMMISSION

Community health management information system, legislative findings and definitions, 93 Acts, ch 62, §1, 4  
Chapter 145 repealed effective July 1, 1994, §145 1A

#### 145.1A Repeal.

This chapter is repealed effective July 1, 1994.

93 Acts, ch 170, §9  
NEW section

#### 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, and to provide data to the health facilities council as requested by the Iowa department of public health. 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 third-party payers, including but not limited to licensed insurers, medical and hospital service corporations, health maintenance organizations, and self-funded employee health plans, provide hospital inpatient and outpatient claims data and corresponding physician claims data to the commission pursuant to section 505.8. This data shall include the patient's age, sex, zip code, third-party coverage, date of admission, procedure and discharge date, principal and other diagnoses, principal and other procedures, total charges and components of those charges, attending physician identification number, and hospital identification number. However, in accordance with rules adopted by the commission, an exemption from the data submission requirements of this paragraph may be provided to a third-party payer with a low volume of claims or premiums which would cause compliance with the requirements to be unduly burdensome.

*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, 1994. Prior to July 1, 1994, a hospital with one hundred beds or more shall not be required to submit additional data beyond the data required to be submitted from the computerized severity-of-illness system as of January 1, 1993, and such a hospital shall not be required to expend additional moneys beyond the cost of operating a computerized severity-of-illness system as of January 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 including but not limited to occupancy rates reported on a quarterly basis by health care facilities as defined in section 135C.1.

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. The health data commission may, however, contract to purchase from the Iowa hospital association a tape containing data from all in-patient admissions to Iowa hospitals. The health data commission shall develop the specifications for data contained on a tape to ensure the utility of the tape for the production of health data commission reports.

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.

93 Acts, ch 170, §8  
Subsection 4, paragraph d amended

## CHAPTER 147

### GENERAL PROVISIONS, HEALTH-RELATED PROFESSIONS

#### 147.13 Designation of boards.

The examining boards provided in section 147.12 shall be designated as follows:

1. For medicine and surgery, osteopathy, osteopathic medicine and surgery, and acupuncture, 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 arts and sciences, cosmetology arts and sciences 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.

93 Acts, ch 86, §12  
Subsection 1 amended

#### 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 use the prefix "Dr." or "Doctor", and shall add after the person's name the letters, "M. D."

3. An osteopath or osteopathic physician and surgeon may use the prefix "Dr." or "Doctor", and shall add after the person's name the letters, "D. O.", 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. A massage therapist licensed under chapter 152C may use the words "licensed massage therapist" or the initials "L.M.T." after the person's name.

18. An acupuncturist registered under chapter 148E may use the words "registered acupuncturist" after the person's name.

19. No other practitioner licensed to practice a profession under any of the provisions of this subtitle shall be entitled to use the prefix "Dr." or "Doctor".

#### 147.80 License — examination — fees.

An examining board shall set the fees for the examination of applicants, which fees shall be based upon the cost of administering the examinations. An examining board shall set the license fees and renewal fees 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, osteopathic medicine and surgery, or osteopathy and 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 assistant 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 arts and sciences issued upon the basis of an examination given by the board of cosmetology arts and sciences examiners, license to practice cosmetology arts and sciences under a reciprocal agreement, renewal of a license to practice cosmetology arts and sciences, temporary permit to practice as a cosmetology arts and sciences trainee, original license to conduct a school of cosmetology arts and sciences, renewal of license to conduct a school of cosmetology arts and sciences, original license to operate a salon, renewal of a license to operate a salon, original license to practice manicuring, renewal of a license to practice manicuring, annual inspection of a school of cosmetology arts and sciences, annual inspection of a salon, original cosmetology arts and sciences school instructor's license, and renewal of cosmetology arts and sciences 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. Registration to practice acupuncture, registration to practice acupuncture under a reciprocal agreement, or renewal of registration to practice acupuncture.

25. For a certified statement that a licensee is licensed in this state.

26. 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.

93 Acts, ch 86, §14  
 NEW subsection 24 and former subsections 24 and 25 renumbered as 25 and 26

**147.111 Report of treatment of wounds and other injuries.**

Any person licensed under the provisions of this subtitle, excluding chapters 152B and 152C, who shall administer any treatment to any person suffering a gunshot or stab wound or other serious bodily injury, as defined in section 702.18, which appears to have been received in connection with the commission of a criminal offense, or to whom an application is made for treatment of any nature because of any such gunshot or stab wound or other serious injury, as defined in section 702.18, shall at once but not later than twelve hours thereafter, report that fact to the law enforcement agency within whose jurisdiction the treatment was administered or an application therefor was made, or if ascertainable, to the law enforcement agency in whose jurisdiction the gunshot or stab wound or other serious bodily injury occurred, stating the name of such person, the person's residence if ascertainable, and giving a brief descrip-

tion of the gunshot or stab wound or other serious bodily injury. Any provision of law or rule of evidence relative to confidential communications is suspended insofar as the provisions of this section are concerned.

93 Acts, ch 100, §2  
 Section amended

**147.112 Investigation and report by law enforcement agency.**

The law enforcement agency who has received any report required by this chapter and who has any reason to believe that the person injured was involved in the commission of any crime, either as perpetrator or victim, shall at once commence an investigation into the circumstances of the gunshot or stab wound or other serious bodily injury and make a report of the investigation to the county attorney in whose jurisdiction the gunshot or stab wound or other serious bodily injury occurred. Law enforcement personnel shall not divulge any information received under the provisions of this section and section 147.111 to any person other than a law enforcing officer, and then only in connection with the investigation of the alleged commission of a crime.

93 Acts, ch 100, §3  
 Section amended

**CHAPTER 147A**

**ADVANCED EMERGENCY MEDICAL CARE — PARAMEDICS**

**147A.1 Definitions.**

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

1. "Advanced emergency medical care" means such medical procedures as:
  - a. Administration of intravenous solutions.
  - b. Intubation.
  - c. Performance of cardiac defibrillation and synchronized cardioversion.
  - d. Administration of emergency drugs as provided by rule by the department.
  - e. Any other medical procedure approved by the department, by rule, as appropriate to be performed by advanced emergency medical care providers who have been trained in that procedure.
2. "Advanced emergency medical care provider" means an individual trained to provide advanced emergency medical care at the first-responder-defibrillation, EMT-defibrillation, EMT-intermediate, EMT-paramedic level or other certification levels adopted by rule by the department, who has been issued a certificate by the department.
3. "Board" means the board of medical examiners appointed pursuant to section 147.14, subsection 2.

4. "Department" means the Iowa department of public health.

5. "Director" means the director of the Iowa department of public health.

6. "EMT" is an abbreviation used in lieu of the term "emergency medical technician".

7. "Physician" means an individual licensed under chapter 148, 150, or 150A.

93 Acts, ch 58, §7  
 Name change applied in subsections 1 and 2

**147A.1A Lead agency.**

The department is designated as the lead agency for coordinating and implementing the provision of emergency medical services in this state.

93 Acts, ch 58, §2  
 NEW section

**147A.4 Rulemaking authority.**

1. The department shall adopt rules required or authorized by this chapter pertaining to the operation of ambulance, rescue, and first response services which have received authorization under section 147A.5 to utilize the services of certified advanced emergency medical care providers. These rules shall

include, but need not be limited to, requirements concerning physician supervision, necessary equipment and staffing, and reporting by ambulance, rescue, and first response services which have received the authorization pursuant to section 147A.5.

2. The department shall adopt rules required or authorized by this chapter pertaining to the examination and certification of advanced emergency medical care providers. These rules shall include, but need not be limited to, requirements concerning prerequisites, training, and experience for advanced emergency medical care providers and procedures for determining when individuals have met these requirements. The department shall consult with the board concerning these rules.

3. The department shall establish the fee for the examination of the advanced emergency medical care providers to cover the administrative costs of the examination program.

93 Acts, ch 58, §3  
Subsection 2 divided and amended

#### **147A.6 Advanced emergency medical care provider certificates — renewal.**

1. The department, upon application and receipt of the prescribed fee, shall issue a certificate attesting to the qualifications of an individual who has met all of the requirements for advanced emergency medical care provider certification established by the rules adopted under section 147A.4, subsection 2.

2. Advanced emergency medical care provider certificates are valid for the multiyear period determined by the department, unless sooner suspended or revoked. The certificate shall be renewed upon application of the holder and receipt of the prescribed fee if the holder has satisfactorily completed continuing medical education programs as required by rule.

93 Acts, ch 58, §7  
Name change applied

#### **147A.7 Denial, suspension or revocation of certificates — hearing — appeal.**

1. The board may deny an application for issuance or renewal of an advanced emergency medical care provider certificate, or suspend or revoke the certificate when it finds that the applicant or certificate holder is guilty of any of the following acts or offenses:

- a. Negligence in performing authorized services.
- b. Failure to follow the directions of the supervising physician.
- c. Rendering treatment not authorized under this chapter.
- d. Fraud in procuring certification.
- e. Professional incompetency.
- f. Knowingly making misleading, deceptive, untrue or fraudulent representation in the practice of a profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.
- g. Habitual intoxication or addiction to the use of drugs.

h. Fraud in representations as to skill or ability.

i. Willful or repeated violations of this chapter or of rules adopted pursuant to this chapter.

j. Violating a statute of this state, another state, or the United States, without regard to its designation as either a felony or misdemeanor, which relates to the practice of an advanced emergency medical care provider. A copy of the record of conviction or plea of guilty is conclusive evidence of the violation.

k. Having certification to practice as an advanced emergency medical care provider revoked or suspended, or having other disciplinary action taken by a licensing or certifying authority of another state, territory, or country. A certified copy of the record or order of suspension, revocation, or disciplinary action is conclusive or prima facie evidence.

2. If clinical issues are involved, the matter shall be referred to the board for completion of the investigation and the conduct of any disciplinary proceeding pursuant to chapter 17A. The findings of the board shall be the final decision for purposes of section 17A.15 and shall be enforced by the department.

3. A determination of mental incompetence by a court of competent jurisdiction automatically suspends a certificate for the duration of the certificate unless the department orders otherwise.

4. A denial, suspension or revocation under this section shall be effected, and may be appealed in accordance with the rules of the department established pursuant to chapter 272C.

93 Acts, ch 58, §4, 7  
NEW subsection 2 and former subsections 2 and 3 renumbered as 3 and 4  
Name change applied in subsections 3 and 4

#### **147A.8 Authority of certified advanced emergency medical care provider.**

An advanced emergency medical care provider properly certified under this chapter may:

1. Render advanced emergency medical care, rescue, and lifesaving services in those areas for which the advanced emergency medical care provider is certified, as defined and approved in accordance with the rules of the department, at the scene of an emergency, during transportation to a hospital or while in the hospital emergency department, and until care is directly assumed by a physician or by authorized hospital personnel.

2. Function in any hospital when:

- a. Enrolled as a student or participating as a preceptor in a training program approved by the department; or
- b. Fulfilling continuing education requirements as defined by rule; or
- c. Employed by or assigned to a hospital as a member of an authorized ambulance, rescue, or first response service, by rendering lifesaving services in the facility in which employed or assigned pursuant to the advanced emergency medical care provider's certification and under the direct supervision of a physician, physician assistant, or registered nurse. An advanced emergency medical care provider shall not routinely function without the direct supervision

of a physician, physician assistant, or registered nurse. However, when the physician, physician assistant, or registered nurse cannot directly assume emergency care of the patient, the advanced emergency medical care provider may perform without direct supervision advanced emergency medical care procedures for which that individual is certified if the life of the patient is in immediate danger and such care is required to preserve the patient's life; or

*d.* Employed by or assigned to a hospital as a member of an authorized ambulance, rescue, or first response service to perform nonlifesaving procedures for which those individuals have been trained and are designated in a written job description. Such procedures may be performed after the patient is observed by and when the advanced emergency medical care provider is under the supervision of the physician, physician assistant, or registered nurse and where the procedure may be immediately abandoned without risk to the patient.

The department shall consult with the board concerning rules and training requirements related to this section.

93 Acts, ch 58, §5, 7, 93 Acts, ch 107, §1  
Name change applied in subsections 1 and 2  
Subsection 2, paragraphs c and d amended  
NEW unnumbered paragraph 2

**147A.9 Remote supervision of advanced emergency medical care providers — emergency communication failure — authorization of immediate lifesaving procedures.**

1. When voice contact or a telemetered electrocardiogram is monitored by a physician, physician's designee, or physician assistant, and direct communication is maintained, an advanced emergency medical care provider may upon order of the monitoring physician or upon standing orders of a physician transmitted by the monitoring physician's designee or physician assistant perform any advanced emergency medical care procedure for which that advanced emergency medical care provider is certified.

2. If communications fail during an emergency situation, the advanced emergency medical care provider may perform any advanced emergency medical care procedure for which that individual is certified and which is included in written protocols if in the judgment of the advanced emergency medical care provider the life of the patient is in immediate danger and such care is required to preserve the patient's life.

3. The department shall adopt rules to authorize the institution of lifesaving procedures in accordance with written protocols in instances where the establishment of communication in lieu of immediate action may cause patient harm or death.

4. The department shall consult with the board concerning rules related to this section.

93 Acts, ch 58, §6, 7, 93 Acts, ch 107, §2  
Subsection 1 amended  
Name change applied in subsection 3  
NEW subsection 4

**147A.10 Exemptions from liability in certain circumstances.**

1. A physician, physician's designee, or physician assistant, who gives orders, either directly or via communications equipment from some other point, to an appropriately certified advanced emergency medical care provider at the scene of an emergency, and an appropriately certified advanced emergency medical care provider following the orders, are not subject to criminal liability by reason of having issued or executed the orders, and are not liable for civil damages for acts or omissions relating to the issuance or execution of the orders unless the acts or omissions constitute recklessness.

2. A physician, physician's designee, physician assistant, or advanced emergency medical care provider shall not be subject to civil liability solely by reason of failure to obtain consent before rendering emergency medical, surgical, hospital or health services to any individual, regardless of age, when the patient is unable to give consent for any reason and there is no other person reasonably available who is legally authorized to consent to the providing of such care.

3. An act of commission or omission of any appropriately certified advanced emergency medical care provider or physician assistant while rendering advanced emergency medical care under the responsible supervision and control of a physician to a person who is deemed by them to be in immediate danger of serious injury or loss of life, shall not impose any liability upon the certified advanced emergency medical care provider or physician assistant, the supervising physician, or any hospital, or upon the state, or any county, city or other political subdivision, or the employees of any of these entities; provided that this section shall not relieve any person of liability for civil damages for any act of commission or omission which constitutes recklessness.

93 Acts, ch 107, §3  
Section amended

**147A.13 Physician assistant exception.**

This chapter does not restrict a physician assistant, licensed pursuant to chapter 148C, from staffing an authorized ambulance, rescue, or first response service if the physician assistant can document equivalency through education and additional skills training essential in the delivery of pre-hospital emergency care. The equivalency shall be accepted when:

1. Documentation has been reviewed and approved at the local level by the medical director of the ambulance, rescue, or first response service in accordance with the rules of the board of physician assistant examiners.

2. Authorization has been granted to that ambulance, rescue, or first response service by the department.

93 Acts, ch 107, §4  
NEW section

## CHAPTER 148E

### ACUPUNCTURE

#### 148E.1 Definitions.

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

1. "Acupuncture" means promoting, maintaining, or restoring health based on traditional oriental medical concepts of treating specific areas of the human body, known as acupuncture points or meridians, by performing any of the following practices:
  - a. Inserting acupuncture needles.
  - b. Moxibustion.
  - c. Applying manual, conductive thermal, or electrical stimulation through use of acupuncture needles or any other secondary therapeutic technique except for use of other electromagnetic or ultrasound energy sources.
2. "Acupuncturist" means a person who is engaged in the practice of acupuncture.
3. "Board" means the board of medical examiners established in chapter 147.
4. "Department" means the Iowa department of public health.

93 Acts, ch 86, §1  
NEW section

#### 148E.2 Registration and renewal required.

A person shall not engage in the practice of acupuncture unless the person has registered with the board and received a certificate of registration pursuant to this chapter. Registration shall be renewed annually. The board shall charge a fee for renewal.

93 Acts, ch 86, §2  
NEW section

#### 148E.3 Registration requirements and reciprocal agreements.

1. A person shall be registered as an acupuncturist and issued a certificate of registration by the board, if the person does all of the following:
  - a. Submits a completed application form as provided by the board and the application fee as required by the board.
  - b. Successfully completes and passes the certification and examination process required by the board.
  - c. Successfully completes a training program which conforms to standards established by the board.
2. The board may register a person as an acupuncturist and issue a certificate of registration based upon a reciprocal agreement pursuant to chapter 147.

93 Acts, ch 86, §3  
NEW section

#### 148E.4 Display of certificate and disclosure of information to patients.

An acupuncturist shall display the certificate of registration issued pursuant to section 148E.3 in a conspicuous place in the acupuncturist's place of business. An acupuncturist shall provide to each patient upon initial contact with the patient the following information in written form:

1. The name, business address, and business phone number of the acupuncturist.
2. A fee schedule.
3. A listing of the acupuncturist's education, experience, degrees, certificates, or credentials related to acupuncture awarded by professional acupuncture organizations, the length of time required to obtain the degrees or credentials, and experience.
4. A statement indicating any license, certificate, or registration in a health care occupation which was revoked by any local, state, or national health care agency.
5. A statement that the acupuncturist is complying with rules adopted by the department or the board, including a statement that only presterilized, disposable needles are used by the acupuncturist.
6. A statement indicating that the practice of acupuncture is regulated by the department.

93 Acts, ch 86, §4  
NEW section

#### 148E.5 Use and disposal of needles.

An acupuncturist shall use only presterilized, disposable needles, and shall provide for adequate disposal of used needles.

93 Acts, ch 86, §5  
NEW section

#### 148E.6 Revocation or suspension of certificate and registration.

In addition to the grounds for revocation or suspension referred to in section 147.55, the registration and certificate of registration to practice acupuncture shall be revoked or suspended when the acupuncturist is guilty of any of the following acts or offenses:

1. Failure to provide information as required in section 148E.4 or provision of false information to patients.
2. Acceptance of remuneration for referral of a patient to other health professionals.
3. Offering of or giving of remuneration for the referral of patients, not including paid advertisements or marketing services.

4. Failure to comply with this chapter, rules adopted pursuant to this chapter, or applicable provisions of chapter 147.

5. Engaging in sexual activity or genital contact with a patient while acting or purporting to act within the scope of practice, whether or not the patient consented to the sexual activity or genital contact.

6. Disclosure of confidential information regarding the patient.

93 Acts, ch 86, §6  
NEW section

**148E.7 Accident and health insurance coverage.**

This chapter shall not be construed to require accident and health insurance coverage for acupuncture services under an existing or future contract or policy for insurance issued or issued for delivery in this state, unless otherwise provided by the contract or policy.

93 Acts, ch 86, §7  
NEW section

**148E.8 Scope of chapter.**

This chapter does not apply to a person otherwise

licensed to practice medicine and surgery, osteopathy, osteopathic medicine and surgery, chiropractic, podiatry, or dentistry.

93 Acts, ch 86, §8  
NEW section

**148E.9 Standard of care.**

A person registered under this chapter shall be held to the same standard of care as a person licensed to practice medicine and surgery, osteopathy, or osteopathic medicine and surgery.

93 Acts, ch 86, §9  
NEW section

**148E.10 Evaluation of condition required.**

A person registered under this chapter shall not engage in the performance of acupuncture upon another person until the person's condition has been evaluated by a person licensed to practice medicine and surgery, osteopathy, osteopathic medicine and surgery, chiropractic, podiatry, or dentistry, and the person has been referred to the acupuncturist by the medical evaluator.

93 Acts, ch 86, §10  
NEW section

**CHAPTER 152**

**NURSING**

**152.11 Investigators for nurses.**

The board of nursing may appoint investigators, who shall not be members of the board, to administer and aid in the enforcement of the provisions of law related to those licensed to practice nursing. The amount of compensation for the investigators shall

be determined pursuant to chapter 19A. Investigators authorized by the board of nursing have the powers and status of peace officers when enforcing this chapter and chapters 147 and 272C.

93 Acts, ch 41, §1  
NEW section

**CHAPTER 152C**

**MASSAGE THERAPY**

Temporary licenses for existing practitioners, deadline for application,  
92 Acts, ch 1137, §8, 93 Acts, ch 71, §2

**152C.3 Requirements for licensure.**

1. The department shall adopt rules pursuant to chapter 17A establishing a procedure for licensing of massage therapists. License requirements shall include the following:

a. Completion of a curriculum of massage education at a school approved by the department which

requires for admission a diploma from an accredited high school or the equivalent and requires completion of at least five hundred hours of supervised academic instruction. However, educational requirements under this paragraph are subject to reduction by the department if, after public notice and hearing, the department determines that the welfare of the

public may be adequately protected with fewer hours of education.

b. Passage of an examination given or approved by the department.

c. Payment of a reasonable fee required by the department which shall compensate and be retained by the department for the costs of administering this chapter.

2. In addition to provisions for licensure, the rules shall include the following:

a. Requirements regarding completion of at least twelve hours of continuing education annually regarding subjects concerning massage and related techniques or the health and safety of the public, subject to reduction by the department if, after public notice and hearing, the department determines

that the welfare of the public may be adequately protected with fewer hours.

b. Requirements for issuance of a reciprocal license to licensees of states with license requirements equal to or exceeding those of this chapter. The rules shall provide for issuance of a temporary reciprocal license for licensees of states with lower requirements.

3. The department shall present all proposed rules, changes to rules, and proposed action for disciplinary reasons to the board for recommendation prior to implementation.

4. A massage therapist licensed pursuant to this chapter shall be issued a license number and a license certificate.

93 Acts, ch 71, §1  
Subsection 1, paragraph a amended

## CHAPTER 153

### DENTISTRY

#### 153.33 Powers of board.

Subject to the provisions of this chapter, any provision of this subtitle to the contrary notwithstanding, the board shall exercise the following powers:

1. To initiate investigations of and conduct hearings on all matters or complaints relating to the practice of dentistry or dental hygiene or pertaining to the enforcement of any provision of this chapter, to provide for mediation of disputes between licensees and their patients when specifically recommended by the board, to revoke or suspend licenses or the renewal thereof issued under this or any prior chapter, to provide for restitution to patients, and to otherwise discipline licensees.

Subsequent to an investigation by the board, the board may appoint a disinterested third party to mediate disputes between licensees and patients. Referral of a matter to mediation shall not preclude the board from taking disciplinary action against the affected licensee.

2. To appoint investigators, who shall not be members of the examining board, to administer and aid in the enforcement of the provisions of law relating to those persons licensed to practice dentistry and dental hygiene. The amount of compensation for the investigators shall be determined pursuant to chapter 19A. Investigators authorized by the board of dental examiners have the powers and status of peace officers when enforcing this chapter and chapters 147 and 272C.

3. All employees needed to administer this chapter shall be appointed pursuant to the merit system.

4. To initiate in its own name or cause to be initiated in a proper court appropriate civil proceedings

against any person to enforce the provisions of this chapter or this subtitle relating to the practice of dentistry, and the board may have the benefit of counsel in connection therewith. Any such judicial proceeding as may be initiated by the board shall be commenced and prosecuted in the same manner as any other civil action and injunctive relief may be granted therein without proof of actual damage sustained by any person but such injunctive relief shall not relieve the person so enjoined from criminal prosecution by the attorney general or county attorney for violation of any provision of this chapter or this subtitle relating to the practice of dentistry.

5. In any investigation made or hearing conducted by the board on its own motion, or upon written complaint filed with the board by any person, pertaining to any alleged violation of this chapter or the accusation against any licensee, the following procedure and rules so far as material to such investigation or hearing shall obtain:

a. The accusation of such person against any licensee shall be reduced to writing, verified by some person familiar with the facts therein stated, and three copies thereof filed with the board.

b. If the board shall deem the charges sufficient, if true, to warrant suspension or revocation of license, it shall make an order fixing the time and place for hearing thereon and requiring the licensee to appear and answer thereto, such order, together with a copy of the charges so made to be served upon the accused at least twenty days before the date fixed for hearing, either personally or by certified or registered mail, sent to the licensee's last known post-office address as shown by the records of the board.



c. At the time and place fixed in said notice for said hearing, or at any time and place to which the said hearing shall be adjourned, the board shall hear the matter and may take evidence, administer oaths, take the deposition of witnesses, including the person accused, in the manner provided by law in civil cases, compel the appearance of witnesses before it in person the same as in civil cases by subpoena issued over the signature of the chairperson of the board and in the name of the state of Iowa, require answers to interrogatories and compel the production of books, papers, accounts, documents and testimony pertaining to the matter under investigation or relating to the hearing.

d. In all such investigations and hearings pertaining to the suspension or revocation of licenses, the board and any person affected thereby may have the benefit of counsel, and upon the request of the licensee or the licensee's counsel the board shall issue subpoenas for the attendance of such witnesses in behalf of the licensee, which subpoenas when issued shall be delivered to the licensee or the licensee's counsel. Such subpoenas for the attendance of witnesses shall be effective if served upon the person named therein anywhere within this state, provided, that at the time of such service the fees now or hereafter provided by law for witnesses in civil cases in district court shall be paid or tendered to such person.

e. In case of disobedience of a subpoena lawfully served hereunder, the board or any party to such hearing aggrieved thereby may invoke the aid of the district court in the county where such hearing is being conducted to require the attendance and testimony of such witnesses. Such district court of the county within which the hearing is being conducted may, in case of contumacy or refusal to obey such subpoena, issue an order requiring such person to appear before said board, and if so ordered give evidence touching the matter involved in the hearing. Any failure to obey such order of the court may be punished by such court as a contempt thereof.

f. If the licensee pleads guilty, or after hearing shall be found guilty by the board of any of the charges made, it may suspend for a limited period or revoke the license and the last renewal thereof, and shall enter the order on its records and notify the accused of the revocation or suspension of the person's license, as the case may be, who shall thereupon forthwith surrender that license to the board. Any such person whose license has been so revoked or suspended shall not thereafter and while such revocation or suspension is in force and effect practice dentistry or dental hygiene within this state.

g. The findings of fact made by the board acting within its power shall, in the absence of fraud, be conclusive, but the district court shall have power to review questions of law involved in any final decision or determination of the board; provided, that application is made by the aggrieved party within thirty days after such determination by certiorari, mandamus or such other method of review or appeal per-

mitted under the laws of this state, and to make such further orders in respect thereto as justice may require.

h. Pending the review and final disposition thereof by the district court, the action of the board suspending or revoking such license shall not be stayed.

6. To adopt rules regarding infection control in dental practice which are consistent with standards of the federal Occupational Safety and Health Act of 1970, 29 U.S.C. § 651-678, and recommendations of the centers for disease control.

7. To promulgate rules as may be necessary to implement the provisions of this chapter.

93 Acts, ch 41, §2

NEW subsection 2 and former subsections 2-6 renumbered as 3-7

### 153.34 Discipline.

The board may issue an order to discipline a licensed dentist or dental hygienist for any of the grounds set forth in this chapter, chapter 272C, or title IV. Notwithstanding section 272C.3, licensee discipline may include a civil penalty not to exceed ten thousand dollars. Pursuant to this section, the board may discipline a licensee for any of the following reasons:

1. For fraud or deceit in procuring the license or the renewal thereof to practice dentistry or dental hygiene.

2. For being guilty of willful and gross malpractice or willful and gross neglect in the practice of dentistry or dental hygiene.

3. For fraud in representation as to skill or ability.

4. For willful or repeated violations of this chapter, this subtitle, or the rules of the state board of dentistry.

5. For obtaining any fee by fraud or misrepresentation.

6. For having failed to pay license fees as provided herein.

7. For gross immorality or dishonorable or unprofessional conduct in the practice of dentistry or dental hygiene.

8. For the use of the name "clinic", "institute", or other title of similar import that may suggest a public or semipublic activity to designate what is in fact an individual or group private practice.

9. For failure to maintain a reasonably satisfactory standard of competency in the practice of dentistry or dental hygiene.

10. For the conviction of a felony in the courts of this state or another state, territory, or country. Conviction as used in this subsection includes a conviction of an offense which if committed in this state would be a felony without regard to its designation elsewhere, and includes a finding or verdict of guilt made or returned in a criminal proceeding even if the adjudication of guilt is withheld or not entered. A certified copy of the final order or judgment of conviction or plea of guilty in this state or in another state constitutes conclusive evidence of the conviction.

11. For a violation of a law of this state, another state, or the United States, without regard to its designation as either a felony or misdemeanor, which law relates to the practice of dentistry or dental hygiene. A certified copy of the final order or judgment of conviction or plea of guilty in this state or in another state constitutes conclusive evidence of the conviction.

12. The revocation or suspension of a license to practice dentistry or dental hygiene or other disciplinary action taken by a licensing authority of another state, territory, or country. A certified copy of the record or order of suspension, revocation, or disciplinary action is conclusive or prima facie evidence.

13. Knowingly aiding, assisting, procuring, or advising a person to unlawfully practice dentistry or dental hygiene.

14. For an adjudication of mental incompetence by a court of competent jurisdiction. Such adjudication shall automatically suspend a license for the duration of the license unless the board orders otherwise.

15. Inability to practice dentistry or dental hygiene with reasonable skill and safety by reason of illness, drunkenness, or habitual or excessive use of drugs, intoxicants, narcotics, chemicals, or other types of materials or as a result of a mental or physical condition. At reasonable intervals following suspension or revocation under this subsection, a dentist or a dental hygienist shall be afforded an opportunity to demonstrate that the dentist or the dental hygienist can resume the competent practice of dentistry or dental hygiene with reasonable skill and safety to patients.

16. For being a party to or assisting in any violation of any provision of this chapter.

93 Acts, ch 41, §3  
Unnumbered paragraph 1 stricken and rewritten

### 153.37 Dental college and dental hygiene program faculty permits.

The state board of dental examiners may issue to members of the faculty of the college of dentistry a faculty permit entitling the holder to practice dentistry or dental hygiene within the college of dentistry or a dental hygiene program and affiliated teaching facilities as an adjunct to the faculty members' teaching positions, associated responsibilities, and functions. The dean of the college of dentistry or chairperson of a dental hygiene program shall certify to the state board of dental examiners those bona fide members of the college's or a dental hygiene program's faculty who are not licensed and registered to practice dentistry or dental hygiene in Iowa. Any faculty member so certified shall, prior to commencing the member's duties in the college of dentistry or a dental hygiene program, make written application to the state board of dental examiners for a permit. The permit shall expire on the first day of July next following the date of issuance and may at the discretion of the state board of dental examiners, be renewed on a yearly basis. The fee for the faculty permit and the renewal shall be set by the state board of dental examiners based upon the administrative cost of issuance of the permit. The fee shall be deposited in the same manner as fees provided for in section 147.82. The faculty permit shall be valid during the time the holder remains a member of the faculty of the college of dentistry and shall subject the holder to all provisions of this chapter.

93 Acts, ch 41, §4  
Section amended

## CHAPTER 155A

### PHARMACY

#### 155A.3 Definitions.

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

1. "Administer" means the direct application of a prescription drug, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by one of the following:

a. A practitioner or the practitioner's authorized agent.

b. The patient or research subject at the direction of a practitioner.

2. "Authorized agent" means an individual desig-

nated by a practitioner who is under the supervision of the practitioner and for whom the practitioner assumes legal responsibility.

3. "Board" means the board of pharmacy examiners.

4. "Brand name" or "trade name" means the registered trademark name given to a drug product or ingredient by its manufacturer, labeler, or distributor.

5. "College of pharmacy" means a school, university, or college of pharmacy that satisfies the accreditation standards of the American council on phar-

maceutical education as adopted by the board, or that has degree requirements which meet the standards of accreditation adopted by the board.

6. “*Controlled substance*” means a drug substance, immediate precursor, or other substance listed in division II of chapter 124.

7. “*Controlled substances Act*” means chapter 124.

8. “*Deliver*” or “*delivery*” means the actual, constructive, or attempted transfer of a prescription drug or device or controlled substance from one person to another, whether or not for a consideration.

9. “*Demonstrated bioavailability*” means the rate and extent of absorption of a drug or drug ingredient from a specified dosage form, as reflected by the time-concentration curve of the drug or drug ingredient in the systemic circulation.

10. “*Device*” means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component part or accessory, that is required under federal or state law to be ordered or prescribed by a practitioner.

11. “*Dispense*” means to deliver a prescription drug or controlled substance to an ultimate user or research subject by or pursuant to the lawful prescription drug order or medication order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery.

12. “*Distribute*” means the delivery of a prescription drug or device.

13. “*Drug*” means one or more of the following:

a. A substance recognized as a drug in the current official United States Pharmacopoeia and National Formulary, official Homeopathic Pharmacopoeia, or other drug compendium or any supplement to any of them.

b. A substance intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals.

c. A substance, other than food, intended to affect the structure or any function of the body of humans or other animals.

d. A substance intended for use as a component of any substance specified in paragraph “a”, “b”, or “c”.

e. A controlled substance.

14. “*Drug product selection*” means the act of selecting the source of supply of a drug product.

15. “*Drug sample*” means a drug that is distributed without consideration to a pharmacist or practitioner.

16. “*Generic name*” means the official title of a drug or drug ingredient published in the current official United States Pharmacopoeia and National Formulary, official Homeopathic Pharmacopoeia, or other drug compendium published by the United States pharmacopoeial convention or any supplement to any of them.

17. “*Internship*” means a practical experience program approved by the board for persons training to become pharmacists.

18. “*Label*” means written, printed, or graphic matter on the immediate container of a drug or device.

19. “*Labeling*” means the process of preparing and affixing a label including information required by federal or state law or regulation to a drug or device container. The term does not include the labeling by a manufacturer, packer, or distributor of a nonprescription drug or commercially packaged prescription drug or device or unit dose packaging.

20. “*Medication order*” means a written order from a practitioner or an oral order from a practitioner or the practitioner’s authorized agent for administration of a drug or device.

21. “*Pharmacist*” means a person licensed by the board to practice pharmacy.

22. “*Pharmacist in charge*” means the pharmacist designated on a pharmacy license as the pharmacist who has the authority and responsibility for the pharmacy’s compliance with laws and rules pertaining to the practice of pharmacy.

23. “*Pharmacist-intern*” means an undergraduate student enrolled in the professional sequence of a college of pharmacy approved by the board, or a graduate of a college of pharmacy, who is participating in a board-approved internship under the supervision of a preceptor.

24. “*Pharmacy*” means a location where prescription drugs are compounded, dispensed, or sold by a pharmacist and where prescription drug orders are received or processed in accordance with the pharmacy laws.

25. “*Pharmacy license*” means a license issued to a pharmacy or other place where prescription drugs or devices are dispensed to the general public pursuant to a prescription drug order.

26. “*Practice of pharmacy*” is a dynamic patient-oriented health service profession that applies a scientific body of knowledge to improve and promote patient health by means of appropriate drug use and related drug therapy.

27. “*Practitioner*” means a physician, dentist, podiatrist, veterinarian, or other person licensed or registered to distribute or dispense a prescription drug or device in the course of professional practice in this state or a person licensed by another state in a health field in which, under Iowa law, licensees in this state may legally prescribe drugs.

28. “*Preceptor*” means a pharmacist in good standing licensed in this state to practice pharmacy and approved by the board to supervise and be responsible for the activities and functions of a pharmacist-intern in the internship program.

29. “*Prescription drug*” means any of the following:

a. A substance for which federal or state law requires a prescription before it may be legally dispensed to the public.

b. A drug or device that under federal law is required, prior to being dispensed or delivered, to be labeled with either of the following statements:

(1) Caution: Federal law prohibits dispensing without a prescription.

(2) Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian.

c. A drug or device that is required by any applicable federal or state law or regulation to be dispensed on prescription only, or is restricted to use by a practitioner only.

30. "Prescription drug order" means a written order from a practitioner or an oral order from a practitioner or the practitioner's authorized agent who communicates the practitioner's instructions, to a pharmacist for a prescription drug or device to be dispensed.

31. "Proprietary medicine" means a nonnarcotic drug or device that may be sold without a prescription and that is labeled and packaged in compliance with applicable state or federal law.

32. "Ultimate user" means a person who has lawfully obtained and possesses a prescription drug or device 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.

33. "Unit dose packaging" means the packaging

of individual doses of a drug in containers which preserve the identity and integrity of the drug from the point of packaging to administration and which are properly labeled pursuant to rules of the board.

34. "Wholesaler" means a person operating or maintaining, either within or outside this state, a manufacturing plant, wholesale distribution center, wholesale business, or any other business in which prescription drugs, medicinal chemicals, medicines, or poisons are sold, manufactured, compounded, dispensed, stocked, exposed, or offered for sale at wholesale in this state. "Wholesaler" does not include those wholesalers who sell only proprietary medicines.

35. "Wholesale salesperson" or "manufacturer's representative" means an individual who takes purchase orders on behalf of a wholesaler for prescription drugs, medicinal chemicals, medicines, or poisons. "Wholesale salesperson" or "manufacturer's representative" does not include an individual who sells only proprietary medicines.

Section not amended  
Subsection 7, reference to transferred chapter corrected editorially

## CHAPTER 157

### COSMETOLOGY

#### 157.1 Definitions.

For purposes of this chapter:

1. "Board" means the board of cosmetology arts and sciences examiners.

2. "Cosmetologist" means a person who performs the practice of cosmetology, or otherwise by the person's occupation claims to have knowledge or skill particular to the practice of cosmetology. Cosmetologists shall not represent themselves to the public as being primarily in the practice of haircutting unless that function is, in fact, their primary specialty.

3. "Cosmetology" means all of the following practices:

a. Arranging, dressing, curling, waving, shampooing, cutting, singeing, bleaching, coloring, or similar works, upon the hair of any person; or upon a wig or hairpiece when done in conjunction with haircutting or hairstyling by any means.

b. Massaging, cleansing, stimulating, exercising, beautifying, or similar techniques upon the scalp, face, neck, arms, hands, or upper part of the body of any person with the hands or mechanical or electrical apparatus or appliances or with the use of cosmetic preparations, antiseptics, tonics, lotions, creams, or other preparations.

c. Manicuring the nails of any person.

d. Electrology.

e. Esthetics.

f. Nail technology.

4. "Cosmetology arts and sciences" means any or all of the following practices, performed with or without compensation by a licensee:

a. Cosmetology.

b. Electrology.

c. Esthetics.

d. Nail technology.

5. "Department" means the Iowa department of public health.

6. "Electrologist" means a person who performs the practice of electrology.

7. "Electrology" means the removal of superfluous hair of a person by the use of an electric needle or other electronic process.

8. "Esthetician" means a person who performs the practice of esthetics.

9. "Esthetics" means the following:

a. Beautifying, massaging, cleansing, or stimulating the skin of a person, except the scalp, by the use of cosmetic preparations, antiseptics, tonics, lotions, or creams or any device, electrical or otherwise, for the care of the skin.

b. Applying makeup or eyelashes to a person, tinting eyelashes or eyebrows, or lightening hair on the body except the scalp.

c. Removing superfluous hair from the body of a person by the use of depilatories, waxing, or tweezers.

10. "Instructor" means a person licensed for the purpose of teaching cosmetology arts and sciences.

11. "Manicuring" means the practice of cleansing, shaping, or polishing the fingernails and massaging the hands and lower arms of a person. "Manicuring" does not include the application of sculptured nails or nail extensions to the fingernails or toenails of a person, and does not include the practice of pedicuring.

12. "Manicurist" means a person who performs the practice of manicuring.

13. "Nail technologist" means a person who performs the practice of nail technology.

14. "Nail technology" means all of the following:

a. Applying sculptured nails, nail extensions, wraps, overlays, nail art, or any other nail technique to the fingernails and toenails of a person.

b. Massaging the hands, arms, ankles, and feet of a person.

c. Removing superfluous hair from hands, arms, feet, or legs of a person by the use of wax or a tweezer.

d. Manicuring the nails of a person.

15. "Salon" means a fixed establishment or place where one or more persons engage in the practice of cosmetology arts and sciences, including, but not limited to, a retail establishment where cosmetologists engage in the practice of cosmetology arts and sciences.

16. "School of cosmetology arts and sciences" means an establishment licensed for the purpose of teaching cosmetology arts and sciences.

93 Acts, ch 61, §1  
Subsection 16 amended

### 157.2 Prohibitions — exceptions.

1. It is unlawful for a person to practice cosmetology arts and sciences with or without compensation unless the person possesses a license issued

under section 157.3. However, practices listed in 157.1 when performed by the following persons are not defined as the practice of cosmetology arts and sciences:

a. Licensed physicians and surgeons, osteopaths, osteopathic physicians and surgeons, nurses, dentists, podiatrists, optometrists, chiropractors, and physical therapists, when exclusively engaged in the practice of their respective professions.

b. Licensed barbers who practice barbering as defined in section 158.1.

c. Students enrolled in licensed schools of cosmetology arts and sciences or barber schools who are practicing under the instruction or immediate supervision of an instructor.

d. Persons who perform without compensation any of the practices listed in section 157.1 on an emergency basis or on a casual basis.

e. Employees and residents of hospitals, health care facilities, orphans' homes, juvenile homes, and other similar facilities who shampoo, arrange, dress, or curl the hair of any resident without receiving direct compensation from the person receiving the service.

f. Persons who perform any of the practices listed in section 157.1 on themselves or on a member of the person's immediate family.

g. Employees of a licensed barbershop when manicuring fingernails, if permitted under section 158.14, subsection 2.

h. Persons who apply samples of makeup, nail polish or other nail care products, cosmetics, or other cosmetology or esthetics preparations to persons to demonstrate the products in the regular course of business.

2. Cosmetologists shall not represent themselves to the public as electrologists, estheticians, or nail technologists unless the cosmetologist has completed the additional course study for the respective practice as prescribed by the board pursuant to section 157.10.

93 Acts, ch 61, §2, 3  
Unnumbered paragraph 1 numbered as subsection 1 and former subsections 1-7 renumbered as paragraphs a-g  
NEW paragraph h  
NEW subsection 2

## CHAPTER 159A

### RENEWABLE FUEL

#### 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 fuel.

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 renewable 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.

e. Review the distribution of ethanol production incentive payments to qualified persons, pursuant to section 159A.8.

92 Acts, ch 1099, §2, 10

Subsection 5, paragraph e, to be repealed effective July 1, 1998, 92 Acts, ch 1099, § 11

Subsection 5, paragraph e added by 92 Acts, ch 1099, §2, effective July 1, 1993

#### 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. Moneys in the fund shall be deposited into the renewable fuel activities account or the ethanol production incentive account. 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.

Moneys in the fund shall be used only to administer this chapter.

2. Moneys in the renewable fuel activities account 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 shall be deposited in the ethanol production incentive account as provided in section 423.24. One percent of the moneys deposited in the account during each quarter shall be allocated to the department for administration of the office. Remaining moneys shall be allocated to provide financial incentives to support the increased production of ethanol derived from an organic compound, including a photosynthate, as provided in section 159A.8.

4. Moneys in the fund are subject to an annual audit by the auditor of state. The fund is subject to warrants by the director of revenue and finance, drawn upon the written requisition of the coordinator.

5. 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 accounts, from 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 accounts.

6. Section 8.33 does not apply to moneys in the renewable fuel activities account. Income received by investment of moneys in the account shall remain in that account. Moneys appropriated for a state fiscal year to the ethanol production incentive account which remain unobligated and unencumbered on July 31 of the following state fiscal year shall be credited to the road use tax fund as provided in section 423.24.

92 Acts, ch 1099, §4, 10; 93 Acts, ch 180, §74

1992 amendments are to be repealed effective July 1, 1998; use and reversion of funds in ethanol production incentive account at that time, 92 Acts, ch 1099, § 11

Section amended by 92 Acts, ch 1099, §4, effective July 1, 1993

Subsection 3 amended

## CHAPTER 160

### STATE APIARIST

**160.1A Definitions.**

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

1. "Apiary" means a place where one or more bee colonies are maintained.
2. "Bee" means a honeybee belonging to the genus *apis*.
3. "Colony" means a queen bee and more than one worker bee located on beeswax combs and enclosed in a container.
4. "Package" means a shipping cage exclusively containing adult bees, without beeswax combs.

93 Acts, ch 21, § 1, 2

Subsection 2 stricken and former subsections 3 and 4 renumbered as 2 and 3

NEW subsection 4

**160.2 Duties.**

The state apiarist shall do all of the following:

1. Give lectures and demonstrations in the state on the production of honey, the care of the apiary, the marketing of honey, and upon other kindred subjects relative to the care of bees and the profitable production of honey.
2. Examine bees, combs, and equipment in any locality which the apiarist may suspect of being African in origin or infested with a parasite or foulbrood or any other contagious or infectious disease common to bees.
3. Regulate bees, combs, and used equipment moving across state borders.

93 Acts, ch 21, § 3  
Section amended

**160.5 Instructions — hives — imported bees.**

If upon examination the apiarist finds bees to be diseased or infested with parasites, the apiarist shall furnish the owner or person in charge of the apiary with full written instructions as to the nature of the disease or infestation and the best methods of treatment, which information shall be furnished without cost to the owner.

It shall be unlawful to keep bees in any containers except hives with movable frames permitting ready examination in those counties where area clean-up inspection is in progress as may be proclaimed in official regulation.

A person who desires to move a colony, package, or used equipment with combs into this state shall apply to the state apiarist for a written entry permit at least sixty days prior to the proposed entry date. A statement must accompany each application for an entry permit describing each offense related to beekeeping for which the person has been subject to

a penalty by a state, federal, or foreign government. The written entry permit must accompany all such shipments when they enter the state. Entry into this state without a permit is unlawful and is punishable pursuant to section 160.14. However, entry requirements of this section shall not apply to a package shipped by the United States postal service.

At least ten days before entry a person who has applied for an entry permit must meet both of the following conditions:

1. A valid Iowa certificate of inspection must be on file with the department or a valid certificate of inspection or certificate of health dated within the last sixty days must have been submitted by the state apiarist or inspector of the state of origin. A certificate must indicate the absence of any contagious diseases, parasites, or Africanized bees in the colony or package to be shipped.

2. A completed apiary registration form with locations of apiaries in Iowa indicated along with any fees required for nonresidents must have been submitted. Descriptions of locations shall include all of the following:

- a. The name of the landowner.
- b. Number of colonies to be kept at that location.
- c. The county, township, section number and quarter section, or street address if located within the city limits.

93 Acts, ch 21, § 4, 5  
Unnumbered paragraph 3 amended  
Subsection 1 amended

**160.6 Notice to treat, disinfect, remove, or destroy.**

The state apiarist shall provide a notice in writing to an owner of bees or bee equipment infested with contagious diseases, parasites, or Africanized bees to treat, disinfect, destroy, or remove a colony or equipment in a manner and by a time specified by the state apiarist in the order.

93 Acts, ch 21, § 6  
Section amended

**160.7 Apiarist to disinfect or destroy — costs.**

If the owner fails to comply with the notice provided in section 160.6, the state apiarist shall declare the diseased, parasite-infested or Africanized colonies a nuisance, and administer the destruction or disinfection of the bee colonies or equipment required to eliminate the source of the disease, parasites, or Africanized bees. The state apiarist shall keep an account of costs related to the destruction.

93 Acts, ch 21, § 7  
Section amended

**160.9 Rules.**

The state apiarist shall adopt rules relating to the inspection, regulation of movement, sale, and clean-up of bee colonies and used beekeeping equipment that is infested with a contagious disease, harmful parasites, or an undesirable subspecies of honey bees.

93 Acts, ch 21, §8  
Section amended

**160.10 Orders prohibiting movement.** Repealed by 93 Acts, ch 21, § 10.

**160.14 Penalties — injunctions.**

1. A person who knowingly sells, barter, gives away, moves, or allows to be moved, a diseased or parasite-infested colony, package, equipment, or combs without the consent of the state apiarist, or exposes infected honey or infected equipment to the bees, or who willfully fails or neglects to give proper treatment to a diseased or parasite-infested colony, or who interferes with the state apiarist or the apiarist's assistants in the performance of official duties or who refuses to permit the examination of bees or their destruction as provided in this chapter or violates another provision of this chapter, except as provided in subsection 2, is guilty of a simple misdemeanor.

2. A person who knowingly moves or causes to be moved into this state a colony, package, used equipment, or combs in violation of section 160.5, is guilty of a serious misdemeanor.

3. Each day a colony, package, used equipment, or combs moved into this state in violation of section 160.5 remain in this state constitutes a separate offense. A colony, package, used equipment, or combs brought into this state in violation of section 160.5 may be declared a nuisance. The department shall provide written notice to the person owning the land where the colony, package, used equipment, or combs are located, and, if known, to the person owning the colony, package, used equipment, or combs. The notice shall state that the owner of the colony, package, used equipment, or combs must remove the colony, package, used equipment, or combs from this state within five days of the notification. After the five days have lapsed the department may seize the colony, package, used equipment, or combs. The department may secure a warrant if the owner of the land objects to the seizure. The department shall maintain the seized property until a court, upon petition by the department, determines the disposition of the property. The court shall render a decision concerning the disposition of the property by the court within ten days of the filing of the petition. Upon conviction of a violation of section 160.5, a person shall forfeit all interest in property moved in violation of that section and the department may immediately destroy the property.

4. The attorney general or persons designated by the attorney general may institute suits on behalf of the state apiarist to obtain injunctive relief to restrain and prevent violations of this chapter.

93 Acts, ch 21, §9  
Subsections 1, 2, and 3 amended

## CHAPTER 161A

### SOIL AND WATER CONSERVATION

**161A.6 Appointment, qualifications and tenure of commissioners.**

The commissioners of each soil and water conservation district shall convene on the first day of January that is not a Sunday or holiday in each odd-numbered year. Those commissioners whose term of office begins on that day shall take the oath of office prescribed by section 63.10. The commissioners shall then organize by election of a chairperson and a vice chairperson.

The commissioners of the respective districts shall submit to the department such statements, estimates, budgets, and other information at such times and in such manner as the department may require.

A commissioner shall receive no compensation for the commissioner's services but the commissioner may be paid expenses, including traveling expenses, necessarily incurred in the discharge of the commis-

sioner's duties, if funds are available for that purpose.

The commissioners may call upon the attorney general of the state for such legal services as they may require. The commissioners may delegate to their chairperson, to one or more commissioners or to one or more agents, or employees, such powers and duties as they may deem proper. The commissioners shall furnish to the division of soil conservation, upon request, copies of such ordinances, rules, regulations, orders, contracts, forms, and other documents as they shall adopt or employ, and such other information concerning their activities as it may require in the performance of its duties under this chapter.

The commissioners shall provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property; shall pro-



vide for the keeping of a full and accurate record of all proceedings and of all resolutions, regulations, and orders issued or adopted; and shall regularly report to the division a summary of financial information regarding moneys controlled by the commissioners, which are not audited by the state, according to rules adopted by the division.

The commissioners may invite the legislative body of any municipality or county located near the territory comprised within the district to designate a representative to advise and consult with the commissioners of the district on all questions of program and policy which may affect the property, water supply, or other interests of such municipality or county.

93 Acts, ch 176, §33  
Unnumbered paragraph 5 amended

### **161A.7 Powers of districts and commissioners.**

A soil and water conservation district organized under this chapter has the following powers, in addition to others granted in other sections of this chapter:

1. To conduct surveys, investigations, and research relating to the character of soil erosion and erosion, floodwater, and sediment damages, and the preventive and control measures needed, to publish the results of such surveys, investigations or research, and to disseminate information concerning such preventive and control measures; provided, however, that in order to avoid duplication of research activities, no district shall initiate any research program except in co-operation with the Iowa agricultural experiment station located at Ames, Iowa, and pursuant to a co-operative agreement entered into between the Iowa agricultural experiment station and such district.

2. To conduct demonstrational projects within the district on lands owned or controlled by this state or any of its agencies, with the consent and co-operation of the agency administering and having jurisdiction thereof, and on any other lands within the district upon obtaining the consent of the owner or occupier of such lands or the necessary rights or interests in such lands, in order to demonstrate by example the means, methods, and measures by which soil and soil resources may be conserved, and soil erosion in the form of soil blowing and soil washing may be prevented and controlled; provided, however, that in order to avoid duplication of agricultural extension activities, no district shall initiate any demonstrational projects, except in co-operation with the Iowa agricultural extension service whose offices are located at Ames, Iowa, and pursuant to a co-operative agreement entered into between the Iowa agricultural extension service and such district.

3. To carry out preventive and control measures within the district, including, but not limited to, crop rotations, engineering operations, methods of cultivation, the growing of vegetation, changes in use of land, and the measures listed in section 161A.2, on lands owned or controlled by this state or any of its

agencies, with the consent and co-operation of the agency administering and having jurisdiction thereof, and on any other lands within the district, upon obtaining the consent of the owner or occupier of such lands or the necessary rights or interests in such lands. Any approval or permits from the council required under other provisions of law shall be obtained by the district prior to initiation of any construction activity.

4. To co-operate, or enter into agreements with, and within the limits of appropriations duly made available to it by law, to furnish financial or other aid to any agency, governmental or otherwise, or any owner or occupier of lands within the district, in the carrying on of erosion-control and watershed protection and flood prevention operations within the district, subject to such conditions as the commissioners may deem necessary to advance the purposes of this chapter.

5. To obtain options upon and to acquire, by purchase, exchange, lease, gift, grant, bequest, devise or otherwise, any property, real or personal, or rights or interests therein; to maintain, administer, and improve any properties acquired, to receive income from such properties and to expend such income in carrying out the purposes and provisions of this chapter; and to sell, lease or otherwise dispose of any of its property or interests therein in furtherance of the purposes and provisions of this chapter.

6. To make available on such terms as it shall prescribe, to landowners or occupiers within the district, agricultural and engineering machinery and equipment, fertilizer, lime, and such other material or equipment as will assist such landowners or occupiers to carry on operations upon their lands for the conservation of soil resources and for the prevention and control of soil erosion and for the prevention of erosion, floodwater, and sediment damages.

7. To construct, improve, and maintain such structures as may be necessary or convenient for the performance of any of the operations authorized in this chapter. Any approval or permits from the council required under other provisions of law shall be obtained by the district prior to initiation of any construction activity.

8. To develop comprehensive plans for the conservation of soil resources and for the control and prevention of soil erosion and for the prevention of erosion, floodwater, and sediment damages within the district, which plans shall specify in such detail as may be possible, the acts, procedures, performances, and avoidances which are necessary or desirable for the effectuation of such plans, including the specification of engineering operations, methods of cultivation, the growing of vegetation, cropping programs, tillage practices, and changes in use of land; and to publish such plans and information and bring them to the attention of owners and occupiers of lands within the district.

9. To sue and be sued in the name of the district; to have a seal, which seal shall be judicially noticed; to have perpetual succession unless terminated as

hereinafter provided; to make and execute contracts and other instruments, necessary or convenient to the exercise of its powers; to make, and from time to time amend and repeal, rules not inconsistent with this chapter, to carry into effect its purposes and powers.

10. To accept donations, gifts, and contributions in money, services, materials, or otherwise, from the United States or any of its agencies, or from this state or any of its agencies, and to use or expend such moneys, services, materials, or other contributions in carrying on its operations.

11. As a condition to the extending of any benefits under this chapter to, or the performance of work upon, any lands not owned or controlled by this state or any of its agencies, the commissioners may require contributions in money, services, materials, or otherwise to any operations conferring such benefits, and may require landowners or occupiers to enter into and perform such agreements or covenants as to the permanent use of such lands as will tend to prevent or control erosion thereon.

12. No provisions with respect to the acquisition, operation, or disposition of property by other public bodies shall be applicable to a district organized hereunder unless the legislature shall specifically so state.

13. After the formation of any district under the provisions of this chapter, all participation hereunder shall be purely voluntary, except as specifically stated herein.

14. Subject to the approval of the state soil conservation committee, to change the name of the soil and water conservation district.

15. Reserved.

16. The commissioners shall, as a condition for the receipt of any state cost-sharing funds for permanent soil conservation practices, require the owner of the land on which the practices are to be established to covenant and file, in the office of the soil and water conservation district of the county in which the land is located, an agreement identifying the particular lands upon which the practices for which state cost-sharing funds are to be received will be established, and providing that the project will not be removed, altered, or modified so as to lessen its effectiveness without the consent of the commissioners, obtained in advance and based on guidelines drawn up by the state soil conservation committee, for a period of twenty years after the date of receiving payment. The commissioners shall assist the division in the enforcement of this subsection. The agreement does not create a lien on the land, but is a charge personally against the owner of the land at the time of removal, alteration, or modification if an administrative order is made under section 161A.61, subsection 3.

17. To encourage local school districts to provide instruction in the importance of and in some of the basic methods of soil conservation, as a part of course work relating to conservation of natural resources and environmental awareness required in rules adopted by the state board of education pursuant to section 256.11, subsections 3 and 4, and to offer technical assistance to schools in developing such instructional programs.

18. To develop a soil and water resource conservation plan for the district.

a. The district plan shall contain a comprehensive long-range assessment of soil and surface water resources in the district consistent with rules approved by the committee under section 161A.4. In developing the plan the district may receive technical support from the United States department of agriculture's soil conservation service and the county board of supervisors in the county where the district is located. The division and the Iowa cooperative extension service in agriculture and home economics may provide technical support to the district. The support may include, but is not limited to, the following: assessing the condition of soil and surface water in the district, including an evaluation of the type, amount, and quality of soil and water, the threat of soil erosion and erosion, floodwater, and sediment damages, and necessary preventative and control measures; developing methods to maintain or improve soil and water condition; and cooperating with other state and federal agencies to carry out this support.

b. The title page of the district plan and a notification stating where the plan may be reviewed shall be recorded with the recorder in the county in which the district is located, and updated as necessary, after the committee approves and the administrator of the division signs the district plan. The commissioners shall provide notice of the recording and may provide a copy of the approved district plan to the county board of supervisors in the county where the district is located. The district plan shall be filed with the division as part of the state soil and water resource conservation plan provided in section 161A.4.

19. To enter into agreements pursuant to chapter 161C with the owner or occupier of land within the district or cooperating districts, or any other private entity or public agency, in carrying out water protection practices, including district and multidistrict projects to protect this state's groundwater and surface water from point and nonpoint sources of contamination, including but not limited to agricultural drainage wells, sinkholes, sedimentation, and chemical pollutants.

93 Acts, ch 109, §1

Subsection 18, paragraph b amended

## CHAPTER 161D

### LOESS HILLS DEVELOPMENT AND CONSERVATION AUTHORITY

#### **161D.1 Loess hills development and conservation authority created — membership and duties.**

1. A loess hills development and conservation authority is created. The counties of Lyon, Sioux, Plymouth, Cherokee, Woodbury, Ida, Sac, Monona, Crawford, Carroll, Harrison, Shelby, Audubon, Pottawattamie, Cass, Adair, Mills, Montgomery, Adams, Fremont, Page, and Taylor are entitled to one voting member each on the authority, but membership or participation in projects of the authority is not required. Each member of the authority shall be appointed by the respective board of supervisors for a term to be determined by each board of supervisors, but the term shall not be for less than one year. An appointee shall serve without compensation, but an appointee may be reimbursed for actual expenses incurred while performing the duties of the authority as determined by each board of supervisors. The authority shall meet, organize, and adopt rules of procedures as deemed necessary to carry out its duties. The authority may appoint working committees that include other individuals in addition to voting members.

2. The mission of the authority is to develop and coordinate plans for projects related to the unique natural resource, rural development, and infrastructure problems of counties in the deep loess region of western Iowa. The erosion and degradation of stream channels in the deep loess soils has occurred due to historic channelization of the Missouri river and straightening stream channels of its tributaries. This erosion of land has damaged the rural infrastructure of this area, destroyed public roads and bridges, adversely impacted stream water quality and riparian habitat, and affected other public and private improvements. Stabilization of stream channels is necessary to protect the rural infrastructure in the deep loess soils area of the state. The authority shall cooperate with the division of soil conservation of the department of agriculture and land stewardship, the affected soil and water conservation districts, the department of natural resources, and the state department of transportation in carrying out its mission and duties. The authority shall also coop-

erate with appropriate federal agencies, including the United States environmental protection agency, the United States department of interior, and the soil conservation service of the United States department of agriculture. The authority shall make use of technical resources available through member counties and cooperating agencies.

3. The authority shall administer the loess hills development and conservation fund created under section 161D.2 and shall deposit and expend moneys in the fund for the planning, development, and implementation of development and conservation activities or measures in the member counties.

4. This section is not intended to affect the authority of the department of natural resources in its acquisition, development, and management of public lands within the counties represented by the authority.

93 Acts, ch 136, §1  
NEW section

#### **161D.2 Loess hills development and conservation fund.**

A loess hills development and conservation fund is created in the state treasury, to be administered by the loess hills development and conservation authority. The proceeds of the fund shall be used for the purposes specified in section 161D.1. The loess hills development and conservation authority may accept gifts, bequests, other moneys including, but not limited to, state or federal moneys, and in-kind contributions for deposit in the fund. The gifts, grants, 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 161D.1. Notwithstanding section 8.33, any unexpended or unencumbered moneys remaining in the fund at the end of the fiscal year shall not revert to the general fund of the state, but the moneys shall remain available for expenditure by the authority in succeeding fiscal years.

93 Acts, ch 136, §2  
NEW section

## CHAPTER 162

## CARE OF ANIMALS IN COMMERCIAL ESTABLISHMENTS

**162.20 Sterilization.**

1. A pound or animal shelter shall not transfer ownership of a dog or cat by sale or adoption, unless the dog or cat is subject to sterilization. The sterilization shall involve a procedure which permanently destroys the capacity of a dog or cat to reproduce, either by the surgical removal or alteration of its reproductive organs, or by the injection or ingestion of a serum. The pound or animal shelter shall not relinquish custody until it provides for one of the following:

*a.* Sterilization performed by a veterinarian licensed pursuant to chapter 169.

*b.* The execution of an agreement with a person intended to be the permanent custodian of the dog or cat. The agreement must provide that the custodian shall have the dog or cat sterilized by a veterinarian licensed pursuant to chapter 169.

2. The pound or animal shelter maintaining custody of the dog or cat may require that a person being transferred ownership of the dog or cat reimburse the pound or animal shelter for the amount in expenses incurred by the pound or animal shelter in sterilizing the dog or cat, if the dog or cat is sterilized prior to the transfer of ownership of the dog or cat to the person.

3. *a.* The sterilization agreement may be on a form which shall be prescribed by the department. The agreement shall contain the signature and address of the person receiving custody of the dog or cat, and the signature of the representative of the pound or animal shelter.

*b.* The sterilization shall be completed as soon as practicable, but prior to the transfer of the ownership of the dog or cat by the pound or animal shelter. The pound or animal shelter may grant an extension of the period required for the completion of the sterilization if the extension is based on a reasonable determination by a licensed veterinarian.

*c.* A pound or animal shelter shall transfer ownership of a dog or cat, conditioned upon the confirmation that the sterilization has been completed by a licensed veterinarian who performed the procedure. The confirmation shall be a receipt furnished by the office of the attending veterinarian.

*d.* A person who fails to satisfy the terms of the sterilization agreement shall return the dog or cat within twenty-four hours following receipt of a demand letter which shall be delivered to the person by the pound or animal shelter personally or by certified mail.

4. *a.* A person who does not comply with the provisions of a sterilization agreement is guilty of a simple misdemeanor.

*b.* A person who fails to return a dog or cat upon receipt of a demand letter is guilty of a simple misdemeanor.

*c.* A pound or animal shelter which knowingly fails to provide for the sterilization of a dog or cat is subject to a civil penalty of up to two hundred dollars. The department may enforce and collect civil penalties according to rules which shall be adopted by the department. Each violation shall constitute a separate offense. Moneys collected from civil penalties shall be deposited into the general fund of the state and are appropriated on July 1 of each year in equal amounts to each track licensed to race dogs to support the racing dog adoption program as provided in section 99D.27. Upon the third offense, the department may suspend or revoke a certificate of registration issued to the pound or animal shelter pursuant to this chapter. The department may bring an action in district court to enjoin a pound or animal shelter from transferring animals in violation of this section. In bringing the action, the department shall not be required to allege facts necessary to show, or tending to show, a lack of adequate remedy at law, that irreparable damage or loss will result if the action is brought at law, or that unique or special circumstances exist.

5. This section shall not apply to the following:

*a.* The return of a dog or cat to its owner by a pound or animal shelter.

*b.* The transfer of a dog or cat by a pound or animal shelter which has obtained an enforcement waiver issued by the department. The pound or shelter may apply for an annual waiver each year as provided by rules adopted by the department. The department shall grant a waiver, if it determines that the pound or animal shelter is subject to an ordinance by a city or county which includes stricter requirements than provided in this section. The department shall not charge more than ten dollars as a waiver application fee. The fees collected by the department shall be deposited in the general fund of the state.

*c.* The transfer of a dog or cat to an institution as defined in section 145B.1, a research facility as defined in section 162.2, or a person licensed by the United States department of agriculture as a class B dealer pursuant to 9 C.F.R. subchapter A, part 2. However, a class B dealer who receives an unsterilized dog or cat from a pound or animal shelter shall either sterilize the dog or cat or transfer the unsterilized dog or cat to an institution or research facility provided in this paragraph. The class B dealer shall not transfer a dog to an institution or research facility, if the dog is a greyhound registered with the national greyhound association and the dog raced at a

track associated with pari-mutuel racing, unless the class B dealer receives written approval of the transfer from a person who owned an interest in the dog

while the dog was racing.

93 Acts, ch 134, §1  
NEW section

## CHAPTER 173

### STATE FAIR

#### 173.9 Secretary.

The board shall appoint a secretary who shall serve at the pleasure of the board. The secretary shall do all of the following:

1. Administer the policies set by the board.
2. Employ other employees and agents as the secretary deems necessary for carrying out the policies of the board and to conduct the affairs of the state fair. The secretary may fix the duties and compensation of any employees or agents with the approval of the board.
3. Keep a complete record of the annual convention and of all meetings of the board.
4. Draw all warrants on the treasurer of the board and keep a correct account of them.
5. Perform other duties as the board directs.

93 Acts, ch 176, §34  
Unnumbered paragraph 1 stricken and rewritten

**[173.22 — CONTINGENT EFFECTIVENESS OF 1993 AMENDMENTS. See 1993 Acts, chapter 144, section 6, and Code editor's note to section 422.12A concerning provision making the effectiveness of the 1993 amendments contingent upon the enactment of certain appropriations.]**

#### 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 appropriated or available to and obtained or accepted by the foundation. The foundation fund shall include moneys credited to the fund as provided in section 422.12D. 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 public moneys or 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. Section 8.33 does not apply to moneys 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.

93 Acts, ch 144, §1  
See Code editor's note to §422.12A  
Unnumbered paragraphs 1 and 2 amended

## CHAPTER 181

### BEEF CATTLE PRODUCERS ASSOCIATION

#### 181.18A Not a state agency.

The Iowa beef cattle producers association is not

an agency of state government.

93 Acts, ch 102, §1  
NEW section

## CHAPTER 182

### IOWA SHEEP AND WOOL PROMOTION BOARD

**182.13A Not a state agency.**  
The Iowa sheep and wool promotion board is not

an agency of state government.

93 Acts, ch 102, §2  
NEW section

## CHAPTER 192

### GRADE A MILK INSPECTION

**192.110 Rating required to receive or retain a permit.**

A person shall not receive or retain a permit under section 192.107, unless both of the following conditions are satisfied:

1. The person has a pasteurized milk and milk products sanitation compliance rating of ninety percent or more as 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". 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.

2. The facilities and equipment used to produce, store, or transport milk or milk products comply with requirements of the "Grade 'A' Pasteurized Milk Ordinance, 1989 Revision" as provided in section 192.102.

93 Acts, ch 132, §1  
Section amended

**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.

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, beginning on July 1, 1991, 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.

93 Acts, ch 131, §5  
Restrictions on use of moneys deposited in state general fund, see § 8 60  
Subsection 3, paragraph c amended

## 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 beginning on July 1, 1991, but shall be deposited into the general fund of the state.

93 Acts, ch 131, §6

Restrictions on use of moneys deposited in state general fund, see § 8 60  
Unnumbered paragraph 2 amended

## CHAPTER 196A

### EXCISE TAX ON EGG SALES

#### 196A.14A Not a state agency.

The Iowa egg council is not an agency of state government.

93 Acts, ch 102, §3  
NEW section

## CHAPTER 198

### COMMERCIAL FEED

#### 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 representatives and senate standing committees on agriculture.

Notwithstanding the provisions of this subsection directing that fees collected be deposited into the commercial feed fund, beginning on July 1, 1991, all fees collected shall be deposited into the general fund of the state.

93 Acts, ch 131, §7

Restrictions on use of moneys deposited in state general fund, see § 860  
Subsection 3, unnumbered paragraph 4 amended

## CHAPTER 199

### AGRICULTURAL SEEDS

#### 199.11 Authority of the department.

1. For the purpose of carrying out the provisions of this chapter, the department shall do all of the following:

a. Sample, inspect, analyze, and test agricultural seed, if the agricultural seed is transported, sold, offered, or exposed for sale within this state for sowing. The department shall perform these duties at a time and place and to an extent necessary to determine whether the agricultural seed is in compliance with this chapter. The department shall promptly notify the person who transported, sold, offered, or exposed the seed for sale, of a violation.

b. Adopt rules governing methods of sampling, inspecting, analyzing, testing, and examining agricultural seed. The rules shall include tolerances to be followed in the administration of this chapter, which shall be in general accord with officially prescribed practice in interstate commerce under the federal seed Act and other rules or regulations necessary for the efficient enforcement of this chapter.

2. For the purpose of carrying out the provisions of this chapter, the department may:

a. Enter upon public or private premises during regular business hours in order to have access to

commercial seed, subject to this chapter and departmental rules.

b. Issue and enforce a written or printed "stop sale" order to the owner or custodian of any lot of agricultural seed which the department believes is in violation of this chapter or departmental rules. The order shall prohibit further sale of the seed until the department has evidence of compliance. However, the owner or custodian of the seed shall be permitted to remove the seed from a salesroom open to the public. Judicial review of the order may be sought in accordance with chapter 17A. However, notwithstanding chapter 17A, petitions for judicial review may be filed in the district court. This subsection does not limit the right of the department to proceed as authorized by other sections of this chapter.

c. Establish and maintain or make provision for seed testing facilities essential to the enforcement of this chapter. The department may employ qualified persons, and incur expenses necessary to comply with these provisions.

d. Cooperate with the United States department of agriculture in seed law enforcement.

93 Acts, ch 40, §1, 2

Subsection 1, paragraphs a and b amended  
Subsection 2, paragraphs a and b 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, beginning on July 1, 1991, 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.

93 Acts, ch 131, §8

Restrictions on use of moneys deposited in state general fund, see § 8 60  
Availability of state general fund for payment of expenses, see 91 Acts, ch 264, § 905, 93 Acts, ch 131, § 28

Unnumbered paragraph 2 amended

## CHAPTER 203C

### WAREHOUSES FOR AGRICULTURAL PRODUCTS

#### 203C.11 Suspension or revocation for insufficient evidence of financial responsibility — notice.

1. When the department determines that insurance is not fully provided as required under section 203C.15, it may require the licensed warehouse operator to provide additional evidence of insurance coverage so that the insurance conforms with the requirements of this chapter. If additional insurance is not provided within thirty days after receipt by the licensee of notice by certified mail, the license of the warehouse operator concerned shall be automatically suspended. If additional insurance is not filed within another ten days, the warehouse license shall be automatically revoked. When a license is revoked, the department shall notify each holder of an outstanding warehouse receipt and all known persons who have grain retained in open storage of the revocation. The department shall further notify each receipt holder and all known persons who have grain retained in open storage that the grain must be removed from the warehouse not later than the thirtieth day following the revocation. The notice shall be sent by ordinary mail to the last known address of each person having grain in storage as provided in this subsection.

2. If the department determines that the net

worth of a licensed warehouse operator is not in compliance with the requirements of section 203C.6, the department shall issue a notice to the warehouse operator and shall suspend the warehouse operator's license if the warehouse operator does not provide evidence of compliance within thirty days of the issuance of the notice. The department shall inspect the warehouse at the end of the thirty-day period. If evidence of compliance is not provided within sixty days of the issuance of the notice, the department shall revoke the warehouse operator's license, and shall again inspect the warehouse. If a license is revoked, the department shall give notice of the revocation to each holder of an outstanding warehouse receipt and to all known persons who have grain retained in open storage. The revocation notice shall state that the grain must be removed from the warehouse not later than the thirtieth day after the issuance of the revocation notice. The revocation notice shall be sent by ordinary mail to the last known address of each person having grain in storage as provided in this subsection. The department shall conduct a final inspection of the warehouse at the end of the thirty-day period following the issuance of the revocation notice.

3. When the department receives notice that a deficiency bond or irrevocable letter of credit is being

canceled by the issuer, and determines that upon the cancellation the warehouse operation will not be in compliance with section 203C.6, the department shall suspend the warehouse operator's license if a new deficiency bond or irrevocable letter of credit is not received by the department within sixty days of receipt by the department of the notice of cancellation. If a new deficiency bond or irrevocable letter of credit is not received by the department within thirty days following suspension, the warehouse operator's license shall be revoked. When a license is revoked, the department shall notify each holder of an

outstanding warehouse receipt and all known persons who have grain retained in open storage of the revocation, and shall further notify each receipt holder and all known persons who have grain retained in open storage that the grain must be removed from the warehouse not later than the thirtieth day following revocation. The notice shall be sent by ordinary mail to the last known address of each person having grain in storage as provided in this subsection.

Section not amended

Subsection 3, reference to transferred section corrected editorially

## CHAPTER 206

### PESTICIDES

#### 206.5 Certification requirements — rules.

1. A commercial or public applicator shall not apply any pesticide and a person shall not apply any restricted use pesticide without first complying with the certification requirements of this chapter and such other restrictions as determined by the secretary.

2. The secretary shall adopt, by rule, requirements for the examination, reexamination, and certification of applicants.

3. *a.* A commercial applicator shall choose between a one-year certification for which the applicator shall pay a thirty dollar fee or a three-year certification for which the applicator shall pay a seventy-five dollar fee. A public applicator shall choose between a one-year certification for which the applicator shall pay a ten dollar fee or a three-year certification for which the applicator shall pay a fifteen dollar fee. A private applicator shall pay a fifteen dollar fee for a three-year certification.

*b.* To be initially certified as a commercial, public, or private applicator, a person must complete an educational program which shall consist of an examination required to be passed by the person. After initial certification the commercial, public, or private applicator must renew the certification by completing the educational program which shall consist of either an examination or continuing instructional courses. The commercial, public, or private applicator must pass the examination each third year following initial certification or may elect to attend two hours of continuing instructional courses each year.

The department shall adopt rules providing for the program requirements which shall at least include the safe handling, application, and storage of pesticides, the correct calibration of equipment used for the application of pesticides, and the effects of pesticides upon the groundwater. The department

shall adopt by rule criteria for allowing a person required to be certified to complete either a written or oral examination. The department shall administer the instructional courses, by either teaching the courses or selecting persons to teach the courses, according to criteria as provided by rules adopted by the department. The department shall, to the extent possible, select persons to teach the courses in each county. The department is not required to compensate persons selected to teach the courses. In selecting persons, the department shall rely upon organizations interested in the application of pesticides, including associations representing pesticide applicators and associations representing agricultural producers. The Iowa cooperative extension service in agriculture and home economics of Iowa state university of science and technology shall cooperate with the department in administering the instructional courses. The Iowa cooperative extension service may teach courses, train persons selected to teach courses, or distribute informational materials to persons teaching the courses.

*c.* A commercial, public, or private applicator is not required to be certified to apply pesticides for a period of twenty-one days from the date of initial employment if the commercial, public, or private applicator is under the direct supervision of a certified applicator. For the purposes of this section, "*under the direct supervision of*" means that the application of a pesticide is made by a competent person acting under the instructions and control of a certified applicator who is physically present, by being in sight or hearing distance of the supervised person.

4. A commercial applicator who applies pesticides to agricultural land may, in lieu of the requirement of direct supervision, elect to be exempt from the certification requirements for a commercial applicator for a period of twenty-one days, if the applicator meets the requirements of a private applicator.

5. A person employed by a farmer not solely as a pesticide applicator who applies restricted use pesticides as an incidental part of the person's general duties or a person who applies restricted use pesticides as an incidental part of a custom farming operation is required to meet the certification requirements of a private applicator.

6. A commercial, private, or public applicator shall not apply a pesticide as part of chemigation without first complying with the certification requirements of section 206A.5. The applicator shall pay the certification fee required in section 206A.5 in addition to the fee required in this section.

7. An employee of a food processing and distribution establishment is exempt from the certification requirements of this section provided that at least one person holding a supervisory position is certified and provided that the employer provides a program, approved by the department, for training, testing, and certification of personnel who apply, as an incidental part of their duties, any pesticide on property owned or rented by the employer. The secretary shall adopt rules to administer the provisions of this paragraph.

8. The secretary may adopt rules to provide for license and certification adjustments, including fees, which may be necessary to provide for an equitable transition for licenses and certifications issued prior to January 1, 1989. The rules shall also include a provision for renewal of certification and for a thirty-day renewal grace period. The secretary shall also adopt rules which allow for an exemption from certification for a person who uses certain services and is not solely a pesticide applicator, but who uses the services as an incidental part of the person's duties.

93 Acts, ch 176, §35, 36  
Subsections 3 and 4 amended

**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. This section shall not apply to either of the following:

a. A pesticide applicator who applies pesticides which are owned and furnished to the pesticide applicator by another person, if the pesticide applicator does not charge for the sale of the pesticides.

b. A federal, state, county, or municipal governmental entity 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.

93 Acts, ch 176, §37  
Subsection 3 stricken and rewritten

### 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 physician 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, beginning on July 1, 1991, 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 natu-

ral 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.

93 Acts, ch 131, §9  
Restrictions on use of moneys deposited in state general fund, see § 8 60  
Availability of state general fund for payment of expenses, see 91 Acts, ch 264, § 905, 93 Acts, ch 131, § 28  
Subsection 3, unnumbered paragraph 2 amended

**206.19 Rules.**

The department shall, by rule, after public hearing following due notice:

1. Declare as a pest any form of plant or animal life or virus which is unduly injurious to plants, humans, domestic animals, articles, or substances.

2. Determine the proper use of pesticides including but not limited to their formulations, times and methods of application, and other conditions of use.

3. Determine in cooperation with municipalities, the proper notice to be given by a commercial or public applicator to occupants of adjoining properties in urban areas prior to or after the exterior application of pesticides, establish a schedule to determine the periods of application least harmful to living beings, and adopt rules to implement these provisions. Municipalities shall cooperate with the department by reporting infractions and in implementing this subsection.

4. Adopt rules providing guidelines for public bodies to notify adjacent property occupants regarding the application of herbicides to noxious weeds or other undesirable vegetation within highway rights-of-way.

5. Establish, assess, and collect civil penalties for violations by commercial applicators. In determining the amount of the civil penalty, the department shall consider all of the following factors:

- a. The willfulness of the violation.
- b. The actual or potential danger of injury to the public health or safety, or damage to the environment caused by the violation.
- c. The actual or potential cost of the injury or damage caused by the violation to the public health or safety, or to the environment.
- d. The actual or potential cost incurred by the

department in enforcing this chapter and rules adopted pursuant to this chapter against the violator.

- e. The remedial action required of the violator.
- f. The violator's previous history of complying with orders or decisions of the department.

The amount of the civil penalty shall not exceed five hundred dollars for each offense.

93 Acts, ch 130, §1  
Subsection 5 amended

### **206.23A Commercial pesticide applicator peer review panel.**

1. The department shall establish a commercial pesticide applicator peer review panel to assist the department in assessing or collecting a civil penalty pursuant to section 206.19. The secretary shall appoint the following members:

a. A person actively engaged in the business of applying pesticides by use of an aircraft and who is licensed as an aerial commercial applicator in this state pursuant to section 206.6.

b. A person actively engaged in the business of applying pesticides in urban areas on lawns and gardens, and who is licensed as a commercial applicator pursuant to section 206.6.

c. A person actively engaged in the business of applying pesticides within structures used for residential or commercial purposes, and who is licensed as a commercial applicator pursuant to section 206.6.

d. A person actively engaged in the business of applying pesticides on agricultural land used for farming and who is licensed as a commercial applicator pursuant to section 206.6.

e. A person certified as a public applicator pursuant to section 206.5.

2. a. The members appointed pursuant to this section shall serve four-year terms beginning and ending as provided in section 69.19. However, the secretary shall appoint initial members to serve for less than four years to ensure that members serve staggered terms. A member is eligible for reappointment. A vacancy on the panel shall be filled for the unexpired portion of the regular term in the same manner as regular appointments are made.

b. The panel shall elect a chairperson who shall serve for a term of one year. The panel 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 members. Three voting members constitute a quorum and the affirmative vote of a majority of the members present is necessary for any substantive action to be taken by the panel. 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 panel.

c. Notwithstanding section 7E.6, the members shall only receive reimbursement for actual expenses for performance of their official duties, as provided by the department.

d. The panel shall be staffed by the department.

3. The panel shall make recommendations to the department regarding the establishment of civil penalties and procedures to assess and collect penalties, as provided in section 206.19. The panel may propose a schedule of penalties for minor and serious violations. The department may adopt rules based on the recommendations of the panel as approved by the secretary.

4. The panel shall review cases of persons required to be licensed as commercial applicators who are subject to civil penalties as provided in section 206.19 according to rules adopted by the department. A review shall be performed upon request by the secretary or the person subject to the civil penalty. The panel may establish procedures for the review and establish a system of prioritizing cases for review, consistent with rules adopted by the department. The rules may exclude review of minor violations. The review may also include the manner of assessing and collecting the civil penalty. The findings and recommendations of the panel shall be included in a response delivered to the department and the person subject to the penalty. The response may include a recommendation that a proposed civil penalty be modified or suspended, that an alternative method of collection be instituted, or that conditions be placed upon the license of a commercial applicator.

5. The department shall adopt rules establishing a period for the review and response by the panel which must be completed prior to a contested case hearing under chapter 17A. A hearing shall not be delayed after the required period for review and response, except as provided in chapter 17A.

6. This section does not apply to a license revocation proceeding. This section does not require the department to delay the prosecution of a case if immediate action is necessary to reduce the risk of harm to the environment or public health or safety. This section also does not require a review or response if the department refers a violation of this chapter for criminal prosecution, or for an action involving a stop order issued pursuant to section 206.16. The department shall consider any available response by the panel, but is not required to change findings of an investigation, a penalty sought to be assessed, or a manner of collection.

7. An available response by the panel may be used as evidence in an administrative hearing, or a civil or criminal case, except to the extent that information is considered confidential pursuant to section 22.7.

93 Acts, ch 130, §2  
NEW section

## CHAPTER 216A

### DEPARTMENT OF HUMAN RIGHTS

Chapter repealed effective July 1, 1997, §216A.5  
Intermediate criminal sanctions task force, duties of division  
of criminal and juvenile justice planning, 93 Acts, ch 171, §6, 11

#### **216A.5 Repeal.**

This chapter is repealed effective July 1, 1997.

93 Acts, ch 170, §10  
NEW section

#### **216A.94 Community action agency board.**

1. A recognized community action agency shall be governed by a board of directors composed of at least nine members. The board membership shall be as follows:

a. One-third of the members of the board shall be elected public officials currently holding office or their representatives. However, if the number of elected officials available and willing to serve is less than one-third of the membership of the board, the membership of the board consisting of appointive public officials may be counted as fulfilling the requirement that one-third of the members of the board be elected public officials.

b. At least one-third of the members of the board shall be chosen in accordance with procedures established by the community action agency to assure representation of the poor in an area served by the agency.

c. The remainder of the members of the board shall be members of business, industry, labor, religious, welfare, education, or other major groups or interests in the community.

2. Notwithstanding subsection 1, a public agency shall establish an advisory board or may contract with a delegate agency to assist the governing board. The advisory board or delegate agency board shall be composed of the same type of membership as a board of directors for community action agencies under subsection 1. However, the public agency acting as the community action agency shall determine annual program budget requests.

93 Acts, ch 56, §1  
1993 amendment to subsection 1 retroactive to January 1, 1993, 93 Acts, ch 56, §2  
Subsection 1, unnumbered paragraph 1 amended

#### **216A.103 Iowa affordable heating program established.**

1. The division shall establish an Iowa affordable heating program for the purpose of assisting low-income persons in paying for primary heating fuel costs.

2. In order to be eligible for participation in the Iowa affordable heating program, an applicant must meet all of the following requirements:

a. Meet the income guidelines established pursuant to the federal low-income home energy assis-

tance program, with income at or below one hundred ten percent of the federal poverty income guidelines established by the office of management and budget. The division may adjust the income threshold by rule as necessitated by budgetary restrictions.

b. Participate in annual level payment plans for both gas and electric services if such plans are available to the participant. The division shall develop an alternative plan for participants whose energy providers do not provide such plans.

c. Participate in the weatherization assistance program, if eligible.

d. Have insufficient finances, as determined by rule, which prohibit the payment of the entire cost of the heating of the applicant's home.

e. Submit to the administering agency within thirty days of application for participation in the program third-party verification of all of the following:

(1) The gross income of all of the members of the applicant's household in accordance with the rules adopted for the low-income home energy assistance program.

(2) The applicant's unreimbursed medical expenses for the time period corresponding to that used for the income calculation with proof of personal responsibility for these expenses.

f. Participate in counseling, provided by the administering agency, regarding energy efficiency.

3. In determination of the amount of the affordable heating payment for which the participant is eligible, the following formula shall be used:

a. An annual adjusted income amount shall be calculated.

(1) To be eligible, an applicant must also apply and be eligible for participation in the low-income home energy assistance program. A participant's income shall be determined as the amount verified on a low-income home energy assistance program application.

(2) A participant's adjusted income shall be determined by subtracting from the verified income, the actual costs incurred for each of the following:

(a) Annual rental or mortgage payments, real estate taxes, and real estate insurance payments not to exceed a maximum established by division rule based on the statewide low-income housing cost average.

(b) Annual unreimbursed medical expenses, not to exceed two thousand four hundred dollars.

(c) Annual child support and alimony payments.

(d) The annual costs of water, basic local tele-

phone, and nonheating electric services as defined by division rule.

(e) Annual child care costs incurred by a participant due to employment or participation in an academic or job-training program.

b. A predicted heating cost shall be calculated.

(1) When applicable, the predicted heating costs shall be the annual total calculated under section 216A.103, subsection 2, paragraph "b", for level payment plans.

(2) Where subsection 3, paragraph "b", subparagraph (1) does not apply, the predicted heating cost shall be based upon, but is not limited to, primary heating fuel usage incurred during the twelve-month period immediately preceding application, first adjusted for weather and then adjusted for rate changes occurring during the twelve-month period immediately preceding application.

c. Following the calculation of the participant's adjusted income and predicted heating cost, the participant's adjusted heating cost shall be calculated by:

(1) Adding the predicted heating cost figure to any scheduled repayment of an arrearage which has been negotiated between the participant and the primary heating fuel provider. The arrearage shall not exceed three hundred dollars annually. Any remaining arrearage shall be considered in subsequent years.

(2) Subtracting from the figure determined under paragraph "b" the federal low-income home energy assistance program grant, if a grant is received.

d. The division shall promulgate rules to establish a standard percentage not to exceed twenty-five percent of household heating costs to adjusted income, taking into consideration household family size. For each participant, the administering agency shall determine the percentage of adjusted heating cost to adjusted income. If the participant's percentage exceeds the standard percentage, an affordable heating payment shall be made as prescribed by rule. The payment shall be made to the participant's primary heating fuel provider and credited to the participant's heating account for the year in which the participant is eligible.

(1) When offered by the primary heating fuel provider, the provider shall calculate or recalculate the participant's annual level payment plan after all forms of assistance are credited. A monthly level payment shall be established. However, each level payment shall not be less than a monthly minimum as established by division rule.

(2) Reconciliation shall occur as prescribed in the rules of the Iowa utilities board or, at a minimum, annually, for unregulated heating fuel providers.

4. A participant in the Iowa affordable heating program who maintains the monthly level payment shall be protected from disconnection of service by the participant's primary heating fuel provider.

5. The administrator shall adopt rules pursuant

to chapter 17A which establish the criteria under which a participant in the Iowa affordable heating program would be determined ineligible for continued participation in the program. The criteria shall include but are not limited to a requirement that the participant maintains the monthly level payment in order to maintain eligibility in the program.

5A. Any moneys appropriated for the Iowa affordable heating program which are not expended by April 30 of each fiscal year shall be used to fund the low-income energy assistance program.

90 Acts, ch 1242, §7, 92 Acts, ch 1087, §7, 8  
Subsection 6 stricken effective July 1, 1993

#### **216A.112 Commission created.**

A commission on the deaf is established, consisting of seven members appointed by the governor, subject to confirmation by the senate. Lists of nominees for appointment to membership on the commission may be submitted by the Iowa association of the deaf, the Iowa state registry of interpreters for the deaf, the Iowa school for the deaf, and the commission of persons with disabilities. At least four members shall be persons who cannot hear human speech with or without use of amplification. All members shall reside in Iowa. The members of the commission shall appoint the chairperson of the commission. A majority of the members of the commission constitutes a quorum.

Terms of office are three years and shall begin and end pursuant to section 69.19. The commission shall adopt rules concerning programs and services for deaf and hard-of-hearing persons.

Commission members shall be reimbursed for actual expenses incurred in performance of their duties. Members may also be eligible to receive compensation as provided in section 7E.6.

93 Acts, ch 75, §3  
Unnumbered paragraph 2 amended

#### **216A.114 Duties of commission.**

The commission shall:

1. Interpret to communities and to interested persons the needs of the deaf and hard-of-hearing and how their needs may be met through the use of service providers.

2. Obtain without additional cost to the state available office space in public and private agencies which service providers may utilize in carrying out service projects for deaf and hard-of-hearing persons. However, if space is not available in a specific service area without additional cost to the state, the commission may obtain other office space which is located with other public or private agencies. The space shall be obtained at the lowest cost available and the terms of the lease must be approved by the director of the department of general services.

3. Establish service projects for deaf and hard-of-hearing persons throughout the state. Projects shall not be undertaken by service providers for compensation which would duplicate existing services when those services are available to deaf and hard-of-hearing persons through paid interpreters or



other persons able to communicate with deaf and hard-of-hearing persons.

As used in this section, “*service projects*” includes interpretation services for persons who are deaf and hard-of-hearing, referral and counseling services for deaf and hard-of-hearing persons in the areas of adult education, legal aid, employment, medical, finance, housing, recreation, and other personal assistance and social programs.

“*Service providers*” are persons who, for compensation or on a volunteer basis, carry out service projects.

4. Identify agencies, both public and private, which provide community services, evaluate the extent to which they make services available to deaf and hard-of-hearing persons, and cooperate with the agencies in coordinating and extending these services.

5. Collect information concerning deafness or hearing loss and provide for the dissemination of the information.

6. Provide for the mutual exchange of ideas and information on services for deaf and hard-of-hearing persons between federal, state, and local governmental agencies and private organizations and individuals.

7. Pursuant to section 216A.2, be responsible for budgeting and personnel decisions for the commission and division.

93 Acts, ch 75, §4  
Section amended

**216A.137 Correctional policy project.**

The division shall maintain an Iowa correctional policy project for the purpose of conducting analyses of major correctional issues affecting the criminal and juvenile justice system. The council shall identify and prioritize the issues and studies to be addressed by the division through this project and shall report project plans and findings annually along with the report required in section 216A.135. Issues and studies to be considered by the council shall include, but are not limited to a review of the information systems available to assess corrections trends and program effectiveness, the development of an evaluation plan for assessing the impact of corrections expenditures, a study of the desirability and feasibility of changing the state’s sentencing practices, a public opinion survey to assess the public’s view of possible changes in current corrections practices, and the development of parole guidelines.

The division may form subcommittees for the purpose of addressing major correctional issues affecting the criminal and juvenile justice system. The division shall establish a subcommittee to address issues specifically affecting the juvenile justice system.

Section not amended  
Unnumbered paragraph 1, reference to transferred section corrected editorially

**CHAPTER 216B**

**DEPARTMENT FOR THE BLIND**

**216B.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, up-

keep, 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 12C.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. The commission shall, whenever technically feasible, purchase and use degradable loose foam packing material manufactured from grain starches or other renewable resources, unless the cost of the packing material is more than ten percent greater than the cost of packing material made from nonrenewable resources. For the purposes of this subsection, "packing material" means material, other than an exterior packing shell, that is used to stabilize, protect, cushion, or brace the contents of a package.

14. 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.

15. 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.

16. 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. However, the sticker is not required to be affixed to an unmarked vehicle used for purposes of providing law enforcement or security.

17. Comply with the requirements for the purchase of lubricating oils and industrial oils as established pursuant to section 18.22.

93 Acts, ch 26, §2, 93 Acts, ch 176, §38  
NEW subsection 13 and former subsections 13 16 renumbered as 14-17  
Subsection 16 amended

## CHAPTER 216C

### RIGHTS OF BLIND, PARTIALLY BLIND AND PHYSICALLY DISABLED PERSONS

#### 216C.1 Participation by persons with disabilities.

It is the policy of this state to encourage and enable the blind, the partially blind and the physically disabled to participate fully in the social and economic life of the state and to engage in remunerative employment.

To encourage participation by the disabled, it is the policy of this state to ensure compliance with federal requirements concerning persons with disabilities.

93 Acts, ch 95, §6  
NEW unnumbered paragraph 2

#### 216C.9 Curb cutouts and ramps for persons with disabilities.

1. Curbs constructed along any public street in this state, when the street is paralleled or intersected by sidewalks, or when city ordinances or other lawful regulations will require the construction of sidewalks in parallel to or intersecting the street, shall be constructed with not less than two curb cuts or ramps per lineal block which shall be located on or near the crosswalks at intersections. Each curb cut or ramp shall be at least thirty inches wide, shall be sloped at not greater than one inch of rise per twelve inches lineal distance, except that a slope no greater than one inch of rise per eight inches lineal distance may be used where necessary, shall have a nonskid sur-

face, and shall otherwise be so constructed as to allow reasonable access to the crosswalk for physically handicapped persons using the sidewalk.

2. The requirements of subsection 1 shall apply after January 1, 1975 to all new curbs constructed and to all replacement curbs constructed at any point along a public street which gives reasonable access to a crosswalk.

3. Curbs constructed that are subject to the requirements of this section shall comply with federal requirements concerning persons with disabilities.

93 Acts, ch 95, §7  
NEW subsection 3

#### 216C.10 Use of hearing dog.

A deaf or hard-of-hearing person has the right to be accompanied by a hearing dog, under control and especially trained at a recognized training facility to assist the deaf or hard-of-hearing by responding to sound, in any place listed in sections 216C.3 and 216C.4 without being required to make additional payment for the hearing dog. A landlord shall waive lease restrictions on the keeping of dogs for a deaf or hard-of-hearing person with a hearing dog. The deaf or hard-of-hearing person is liable for damage done to any premise or facility by a hearing dog.

A person who denies or interferes with the right of a deaf or hard-of-hearing person under this section is, upon conviction, guilty of a simple misdemeanor.

93 Acts, ch 75, §5  
Section amended

## CHAPTER 217

### DEPARTMENT OF HUMAN SERVICES

Annual plan for use of federal social services  
block grant funds, 93 Acts, ch 168, §11

Analysis of "Iowa Works" welfare reform initiative, 93 Acts, ch 97, §11

#### 217.8 Division of child and family services.

The administrator of the division of child and family services shall be qualified by training, experience, and education in the field of welfare and social problems. The administrator is charged with the administration of programs involving neglected, dependent and delinquent children, child welfare, family investment program, and aid to disabled persons and shall administer and be in control of other related programs established for the general welfare of families, adults and children as directed by the director.

93 Acts, ch 97, §24  
Section amended

#### 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 family investment 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.

93 Acts, ch 97, §25  
Subsection 8 amended

#### 217.12 Council duties.

The family development and self-sufficiency council shall:

1. Identify the factors and conditions that place Iowa families at risk of long-term dependency upon the family investment program. The council shall seek to use relevant research findings and national and Iowa specific data on the family investment program.

2. Identify the factors and conditions that place Iowa families at risk of family instability and foster care placement. The council shall seek to use relevant research findings and national and Iowa specific data on the foster care system.

3. Subject to the availability of funds for this purpose, award demonstration grants to public or private organizations submitting grant proposals to provide family development services to families at risk of long-term welfare dependency. Grant proposals shall include the following elements:

- a. Designation of families to be served that meet some criteria of being at risk of long-term welfare dependency, and agreement to serve clients that are referred by the department of human services from the family investment program which meet the criteria. The criteria may include, but are not limited to, factors such as educational level, work history, family structure, age of the youngest child in the family, previous length of stay on the family investment program, and participation in the family investment program or the foster care program while the head of a household was a child. Grant proposals shall also establish the number of families to be served under the demonstration program.

- b. Designation of the services to be provided for the families served, including assistance regarding job-seeking skills, family budgeting, nutrition, self-esteem, health and hygiene, child rearing, child education preparation, and goal setting. Grant proposals shall indicate the support groups and support systems to be developed for the families served during the transition between the need for assistance and self-sufficiency.

- c. Designation of the manner in which other needs of the families will be provided including, but not limited to, day care assistance, transportation, substance abuse treatment, support group counseling, food, clothing, and housing.

- d. Designation of the training and recruitment of the staff which provides services, and the appropri-

ateness of the training for the purposes of meeting family development and self-sufficiency goals of the families being served.

e. Designation of the support available within the community for the program and for meeting subsequent needs of the clients, and the manner in which community resources will be made available to the families being served.

f. Designation of the manner in which the program will be subject to audit and to evaluation.

Not more than five percent of any funds appropriated by the general assembly for the purposes of this subsection may be used for staffing and administration of the grants.

4. In cooperation with the legislative fiscal bureau, develop measures to independently evaluate the effectiveness of any demonstration program funded, that include measurement of the program's effectiveness in meeting its goals in a quantitative sense through reduction in length of stay on welfare programs or a reduced need for other state child and family welfare services. Families referred to the demonstration programs shall be randomly selected from those meeting the criteria established in the demonstration programs as being at risk.

5. Seek to enlist research support from the Iowa research community in meeting the duties outlined in subsections 1 through 4.

6. Seek additional support for the funding of demonstration grants, including but not limited to, demonstration funds available through the federal government in serving families at risk of long-term welfare dependency, and private foundation grants.

7. Make recommendations to the governor and the general assembly on the effectiveness of early intervention programs in Iowa and throughout the country that provide family development services that lead to self-sufficiency for families at risk of long-term welfare dependency.

8. Evaluate and make recommendations regarding the costs and benefits of the expansion of the services provided under the special needs program of the family investment program to include tuition for parenting skills programs, family support and counseling services, child development services, and transportation and child care expenses associated with the programs and services.

93 Acts, ch 97, §26  
 Subsection 1 amended  
 Subsection 3, paragraph a amended  
 Subsection 8 amended

### **217.30 Confidentiality of records — report of recipients.**

1. The following information relative to individuals receiving services or assistance from the department shall be held confidential:

a. Names and addresses of individuals receiving services or assistance from the department, and the types of services or amounts of assistance provided, except as otherwise provided in subsection 4.

b. Information concerning the social or econom-

ic conditions or circumstances of particular individuals who are receiving or have received services or assistance from the department.

c. Agency evaluations of information about a particular individual.

d. Medical or psychiatric data, including diagnosis and past history of disease or disability, concerning a particular individual.

2. Information described in subsection 1 shall not be disclosed to or used by any person or agency except for purposes of administration of the programs of services or assistance, and shall not in any case, except as otherwise provided in subsection 4, paragraph "b", be disclosed to or used by persons or agencies outside the department unless they are subject to standards of confidentiality comparable to those imposed on the department by this division.

3. Nothing in this section shall restrict the disclosure or use of information regarding the cost, purpose, number of persons served or assisted by, and results of any program administered by the department, and other general and statistical information, so long as the information does not identify particular individuals served or assisted.

4. a. The general assembly finds and determines that the use and disclosure of information as provided in this subsection are for purposes directly connected with the administration of the programs of services and assistance referred to in this section and are essential for their proper administration.

b. Confidential information described in subsection 1, paragraphs "a," "b" and "c" shall be disclosed to public officials, for use in connection with their official duties relating to law enforcement, audits and other purposes directly connected with the administration of such programs, upon written application to and with approval of the director or the director's designee.

c. The department shall prepare and file in its office on or before the thirtieth day of each January, April, July, and October a report showing the names and last known addresses of all recipients of assistance under sections 249.2 to 249.4 and chapters 239 or 249A, together with the amount paid to or for each recipient during the preceding calendar quarter. The report shall contain a separate section for each county, including all such recipients whose last known addresses are in the county. The department shall prepare and file in the office of each county board of supervisors a copy of the county section of each report for that county, on or before the same day specified in this paragraph. Each report shall be securely fixed in a record book to be used only for such reports. Each record book shall be a public record, open to public inspection at all times during the regular office hours of the office where filed. Each person who examines the record shall first sign a written agreement that the signer will not use any information obtained from the record for commercial or political purposes.

d. It shall be unlawful for any person to solicit,

disclose, receive, use, or to authorize or knowingly permit, participate in, or acquiesce in the use of any information obtained from any such report or record for commercial or political purposes.

e. The department may disclose information described in subsection 1 to other state agencies or to any other person who is not subject to the provisions of chapter 17A and is providing services to recipients under chapter 239 who are participating in the federal-state job opportunities and basic skills program administered under chapter 249C, if necessary for the recipients to receive the services.

5. If it is definitely established that any provision of this section would cause any of the programs of services or assistance referred to in this section to be ineligible for federal funds, such provision shall be limited or restricted to the extent which is essential to make such program eligible for federal funds. The department shall adopt, pursuant to chapter 17A, any rules necessary to implement this subsection.

6. The provisions of this section shall apply to recipients of assistance under chapter 252. The reports required to be prepared by the department under this section shall, with respect to such assistance or services, be prepared by the person or officer charged with the oversight of the poor.

7. Violation of this section shall constitute a serious misdemeanor.

8. The provisions of this section shall take precedence over section 17A.12, subsection 7.

93 Acts, ch 54, §1; 93 Acts, ch 97, §8

Subsection 4, paragraph c amended and NEW paragraph e

### **217.43 County cluster boards.**

1. A county cluster board shall be established in each cluster. The purpose of a cluster board is to improve communication and coordination between the department and the counties, advise the department on the placement of field service staff serving the cluster based on criteria of funded client caseweight, client need, utilization of existing space within each of the county offices, and effective service delivery. In addition, the board shall make recommendations to the county boards of supervisors concerning the equitable distribution of support costs of departmental staff.

2. Not more than five cluster board members shall be appointed for one-year terms by each of the county boards of supervisors of the counties com-

prising the county cluster. The following requirements apply to the appointments made by a county board of supervisors: the membership shall be appointed in accordance with section 69.16, relating to political affiliation, and section 69.16A, relating to gender balance; not more than three members shall be members of the board of supervisors; and appointments shall be made on the basis of interest in public affairs, good judgment, and knowledge and ability in the field of human services. Appointments shall be made a part of the regular proceedings of the board of supervisors and shall be filed with the county auditor and the county cluster administrator. A vacancy on the board shall be filled in the same manner as the original appointment. The boards of supervisors shall develop and agree to other organizational provisions involving the cluster board including reporting requirements.

3. The department shall determine the community in which the county office will be located. The county board of supervisors shall determine the location of the office space for the county office. The county board of supervisors shall make reasonable efforts to collocate the office with other state and local governmental or private entity offices in order to maintain the offices in a cost-effective location that is convenient to the public.

4. The county cluster board shall act in an advisory capacity on programs within the jurisdiction of the department. The board shall review policies and procedures of the local departments of human services and make recommendations for changes to ensure that effective services are provided in the respective communities. The board may also make recommendations for new programs which it is believed could meet needs in the community. The board shall not duplicate the efforts of other county planning entities required by the state by performing reviews and developing recommendations concerning services to persons with mental illness, mental retardation, developmental disabilities, and brain injury. The department shall establish a procedure to ensure that county cluster board recommendations receive appropriate review at the level of policy determination. In addition, a county cluster board shall perform emergency relief functions in accordance with section 251.5.

93 Acts, ch 54, §2

NEW subsection 4

## CHAPTER 218

### INSTITUTIONS GOVERNED BY HUMAN SERVICES DEPARTMENT

**218.22 Record privileged.**

Except with the consent of the administrator in charge of an institution, or on an order of a court of record, the record provided in section 218.21 shall be accessible only to the administrator of the division of the department of human services in control of such institution, the director of the department of human services and to assistants and proper clerks authorized by such administrator or the administrator's director. The administrator of the division of

such institution is authorized to permit the division of libraries and information services of the department of education and the historical division of the department of cultural affairs to copy or reproduce by any photographic, photostatic, microfilm, micro-card or other process which accurately reproduces a durable medium for reproducing the original and to destroy in the manner described by law such records of residents designated in section 218.21.

93 Acts, ch 48, §11  
Section amended

## CHAPTER 222

### MENTALLY RETARDED PERSONS

**222.78 Parents and others liable for support.**

The father and mother of any person admitted or committed to a hospital-school or to a special unit, as either an inpatient or an outpatient, and any person, firm, or corporation bound by contract hereafter made for support of the person shall be and remain liable for the support of the person. The person and those legally bound for the support of the person shall be liable to the county for all sums advanced by the county to the state under the provisions of sections 222.60 and 222.77. The liability of any person, other than the patient, who is legally bound for the support of any patient under eighteen years of age in a hospital-school or a special unit shall in no instance exceed the average minimum cost of the care of a normally intelligent, nonhandicapped minor of the same age and sex as the minor patient. The ad-

ministrator shall establish the scale for this purpose but the scale shall not exceed the standards for personal allowances established by the state division under the family investment program. Provided further that the father or mother of the person shall not be liable for the support of the person after the person attains the age of eighteen years and that the father or mother shall incur liability only during any period when the father or mother either individually or jointly receive a net income from whatever source, commensurate with that upon which they would be liable to make an income tax payment to this state. Nothing in this section shall be construed to prevent a relative or other person from voluntarily paying the full actual cost as established by the administrator for caring for the person with mental retardation.

93 Acts, ch 97, §27  
Section amended

## CHAPTER 225C

### MENTAL HEALTH, MENTAL RETARDATION, AND DEVELOPMENTAL DISABILITIES

**225C.18 County mental health and mental retardation coordinating board.** Repealed effective July 1, 1993, by 92 Acts, ch 1247, § 19.

**225C.19 Mental health, mental retardation, and developmental disabilities advisory committee.** Repealed effective July 1, 1993, by 92 Acts, ch 1247, § 19.

**225C.20 Responsibilities of counties for individual case management services.**

Individual case management services funded under medical assistance shall be provided by the department except when a county or a consortium of counties contracts with the department to provide the services. A county or consortium of counties may contract to be the provider at any time and the de-

partment shall agree to the contract so long as the contract meets the standards for case management adopted by the department. The county or consortium of counties may subcontract for the provision of case management services so long as the subcontract meets the same standards. A county board of supervisors may change the provider of individual case management services at any time. If the current or proposed contract is with the department, the county board of supervisors shall provide written notification of a proposed change to the department on or before August 15 and written notification of an approved change on or before November 15 in the fiscal year which precedes the fiscal year in which the change will take effect.

93 Acts, ch 172, §31  
Section amended

## CHAPTER 229

### HOSPITALIZATION OF MENTALLY ILL PERSONS

**229.19 Advocates — duties — compensation — state and county liability.**

The district court in each county with a population of under three hundred thousand inhabitants and the board of supervisors in each county with a population of three hundred thousand or more inhabitants shall appoint an individual who has demonstrated by prior activities an informed concern for the welfare and rehabilitation of the mentally ill, and who is not an officer or employee of the department of human services nor of any agency or facility providing care or treatment to the mentally ill, to act as advocate representing the interests of patients involuntarily hospitalized by the court, in any matter relating to the patients' hospitalization or treatment under section 229.14 or 229.15. The court or, if the advocate is appointed by the county board of supervisors, the board shall assign the advocate appointed from a patient's county of legal settlement to represent the interests of the patient. If a patient has no county of legal settlement, the court or, if the advocate is appointed by the county board of supervisors, the board shall assign the advocate appointed from the county where the hospital or facility is located to represent the interests of the patient. The advocate's responsibility with respect to any patient shall begin

at whatever time the attorney employed or appointed to represent that patient as respondent in hospitalization proceedings, conducted under sections 229.6 to 229.13, reports to the court that the attorney's services are no longer required and requests the court's approval to withdraw as counsel for that patient. However, if the patient is found to be seriously mentally impaired at the hospitalization hearing, the attorney representing the patient shall automatically be relieved of responsibility in the case and an advocate shall be assigned to the patient at the conclusion of the hearing unless the attorney indicates an intent to continue the attorney's services and the court so directs. If the court directs the attorney to remain on the case the attorney shall assume all the duties of an advocate. The clerk shall furnish the advocate with a copy of the court's order approving the withdrawal and shall inform the patient of the name of the patient's advocate. With regard to each patient whose interests the advocate is required to represent pursuant to this section, the advocate's duties shall include all of the following:

1. To review each report submitted pursuant to sections 229.14 and 229.15.
2. If the advocate is not an attorney, to advise the court at any time it appears that the services of



an attorney are required to properly safeguard the patient's interests.

3. To make the advocate readily accessible to communications from the patient and to originate communications with the patient within five days of the patient's commitment.

4. To visit the patient within fifteen days of the patient's commitment and periodically thereafter.

5. To communicate with medical personnel treating the patient and to review the patient's medical records pursuant to section 229.25.

6. To file with the court quarterly reports, and additional reports as the advocate feels necessary or as required by the court, in a form prescribed by the court. The reports shall state what actions the advocate has taken with respect to each patient and the amount of time spent.

The hospital or facility to which a patient is committed shall grant all reasonable requests of the advocate to visit the patient, to communicate with medical personnel treating the patient and to review the patient's medical records pursuant to section 229.25. An advocate shall not disseminate information from a patient's medical records to any other person unless done for official purposes in connection with the advocate's duties pursuant to this chapter or when required by law.

The court or, if the advocate is appointed by the county board of supervisors, the board shall prescribe reasonable compensation for the services of the advocate. The compensation shall be based upon the reports filed by the advocate with the court. The advocate's compensation shall be paid by the county in which the court is located, either on order of the court or, if the advocate is appointed by the county board of supervisors, on the direction of the board. If the advocate is appointed by the court, the advocate is an employee of the state for purposes of chapter 669. If the advocate is appointed by the county board of supervisors, the advocate is an employee of the county for purposes of chapter 670.

93 Acts, ch 83, §1  
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 6B.15, 447.7, 487.402, subsection 5, paragraph "b", 487.705, 597.6, 600B.21, 614.8,

614.19, 614.22, 614.24, 614.27, 622.6, and 633.244 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.

Section not amended  
Subsection 1, reference to transferred section corrected editorially

## CHAPTER 231B

### ELDER GROUP HOMES

Legislative findings, see 93 Acts, ch 72, §1

#### 231B.1 Definitions.

1. "Ambulatory" means the condition of a person who immediately and without aid of another is physically and mentally capable of traveling a normal path to safety, including the ascent and descent of stairs.

2. "Department" means the department of elder affairs or the department's designee.

3. "Elder" means a person sixty years of age or older.

4. "Elder group home" means a single-family residence that is a residence of a person who is providing room, board, and personal care to three through five elders who are not related to the person providing the service within the third degree of consanguinity or affinity.

5. "Personal care" means assistance with the essential activities of daily living which the recipient can perform personally only with difficulty. "Personal care" may include bathing, personal hygiene, dressing, grooming, and the supervision of self-administered medications, but does not include the administration of medications.

93 Acts, ch 72, §2  
NEW section

#### 231B.2 Certification of elder group homes.

1. The department shall establish by rule in accordance with chapter 17A a special classification for elder group homes. An elder group home established pursuant to this subsection is exempt from the requirements of section 135.63.

2. The department shall adopt rules to establish requirements for certification of elder group homes. The requirements shall include but are not limited to all of the following:

a. Certification shall be for three years, unless revoked for good cause by the department.

b. An elder group home shall be inspected at the time of certification and subsequently upon receipt of a complaint.

c. An elder group home shall be owner-occupied, or owned by a nonprofit corporation and occupied by a resident manager. A resident manager shall reside in and provide services for no more than one elder group home.

d. An elder group home shall be located in an area zoned for single-family or multiple-family housing or in an unincorporated area and shall be constructed in compliance with applicable local housing codes and the rules adopted for the special classification by the state fire marshal. In the absence of local building codes, the facility shall comply with the

state plumbing code established pursuant to section 135.11 and the state building code established pursuant to chapter 103A.

e. A minimum private space shall be required for each resident sufficient for sleeping and dressing.

f. A minimum level of training shall be required for persons providing personal care.

g. The commission of elder affairs shall adopt by rule procedures for appointing members of care review committees for elder group homes.

h. Notwithstanding any other requirements relating to performance of visitations or meetings of a care review committee, a care review committee appointed for an elder group home shall perform no more than four visitations, annually, to fulfill the duties of the care review committee in relation to the elder group home.

i. Elder group home tenants shall have reasonable access to community resources and shall have opportunities for integrated interaction with the community.

3. An elder group home established pursuant to this chapter shall be certified by the department.

4. A provider under the special classification shall comply with the rules adopted by the department for an elder group home.

5. Inspections and certification services shall be provided by the department. However, beginning July 1, 1994, the department may enter into contracts with the area agencies on aging to provide these services.

93 Acts, ch 72, §3  
NEW section

#### 231B.3 Referral to uncertified elder group home prohibited.

1. A person shall not place, refer, or recommend the placement of another person in an elder group home that is not certified pursuant to this chapter.

2. A person who has knowledge that an elder group home is operating without certification shall report the name and address of the home to the department. The department shall investigate a report made pursuant to this section.

93 Acts, ch 72, §4  
NEW section

#### 231B.4 Applicability.

This chapter shall not be construed to require that a facility, currently licensed or licensed as a different type of facility and serving persons sixty years of age or older, also comply with the requirements of this chapter.

93 Acts, ch 72, §5  
NEW section

## 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. If the child is interested in pursuing higher education, the plan shall provide for the child's participation in the college student aid commission's program of assistance in applying for federal and state aid under section 261.2.

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.

o. In whose body there is an illegal drug present as a direct and foreseeable consequence of the acts or omissions of the child's parent, guardian, or custodian.

7. "*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.

8. "*Court*" means the juvenile court established under section 602.7101.

9. "*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. "*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.

15. "*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.

16. "*Detention hearing*" means a hearing at which the court determines whether it is necessary to place or retain a child in detention.

17. "*Director*" means the director of the department of human services or that person's designee.

18. "*Dismissal of complaint*" means the termination of all proceedings against a child.

19. "*Dispositional hearing*" means a hearing held after an adjudication to determine what dispositional order should be made.

20. "*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.

21. "*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.

22. "*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".

23. "*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.

24. *“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.

25. *“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.

26. *“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.

27. *“Intake officer”* means a juvenile court officer or other officer appointed by the court to perform the intake function.

28. *“Judge”* means the judge of a juvenile court.

29. *“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.

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 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.

32. *“Juvenile detention home”* means a physically restricting facility used only for the detention of children.

33. *“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.

34. *“Juvenile shelter care home”* means a physically unrestricting facility used only for the shelter care of children.

35. *“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.

36. *“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.

37. *“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.

38. *“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.

39. *“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.

40. *“Peace officer”* means a law enforcement officer or a person designated as a peace officer by a provision of the Code.

41. *“Petition”* means a pleading the filing of which initiates formal judicial proceedings in the juvenile court.

42. *“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.

43. *“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.

44. *“Predisposition report”* is a report furnished to the court which contains the information collected during a predisposition investigation.

45. *“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.

46. *“Registry”* means the central registry for child abuse information as established under chapter 235A.

47. *“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.

48. *“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.

49. "Sexual abuse" means the commission of a sex offense as defined by the penal law.

50. "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.

51. "Shelter care hearing" means a hearing at which the court determines whether it is necessary to place or retain a child in shelter care.

52. "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.

53. "Social report" means a report furnished to the court which contains the information collected during a social investigation.

54. "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.

55. "Termination hearing" means a hearing held to determine whether the court should terminate a parent-child relationship.

56. "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.

57. "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.

58. "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.

93 Acts, ch 93, §1  
Subsection 6, NEW paragraph c

### 232.68 Definitions.

As used in sections 232.67 through 232.77 and 235A.12 through 235A.23, unless the context otherwise requires:

1. "Child" means any person under the age of eighteen years.

2. "Child abuse" or "abuse" means:

a. Any nonaccidental physical injury, or injury which is at variance with the history given of it, suffered by a child as the result of the acts or omissions of a person responsible for the care of the child.

b. Any mental 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 as the result of the acts or omissions of a person responsible for the care of the child,

if the impairment is diagnosed and confirmed by a licensed physician or qualified mental health professional as defined in section 622.10.

c. The commission of a sexual offense with or to a child pursuant to chapter 709, section 726.2, or section 728.12, subsection 1, as a result of the acts or omissions of the person responsible for the care of the child. Notwithstanding section 702.5, the commission of a sexual offense under this paragraph includes any sexual offense referred to in this paragraph with or to a person under the age of eighteen years.

d. The failure on the part of a person responsible for the care of a child to provide for the adequate food, shelter, clothing or other care necessary for the child's health and welfare when financially able to do so or when offered financial or other reasonable means to do so. A parent or guardian legitimately practicing religious beliefs who does not provide specified medical treatment for a child for that reason alone shall not be considered abusing the child, however this provision shall not preclude a court from ordering that medical service be provided to the child where the child's health requires it.

e. The acts or omissions of a person responsible for the care of a child which allow, permit, or encourage the child to engage in acts prohibited pursuant to section 725.1. Notwithstanding section 702.5, acts or omissions under this paragraph include an act or omission referred to in this paragraph with or to a person under the age of eighteen years.

f. An illegal drug is present in a child's body as a direct and foreseeable consequence of the acts or omissions of the child's parent, guardian, or custodian.

3. "Confidential access to a child" means access to a child, during an investigation of an alleged act of child abuse, who is alleged to be the victim of the child abuse. The access may be accomplished by interview, observation, or examination of the child. As used in this subsection:

a. "Interview" means the verbal exchange between the department investigator and the child for the purpose of developing information necessary to protect the child. A department investigator is not precluded from recording visible evidence of abuse.

b. "Observation" means direct physical viewing of a child under the age of four by the department investigator where the viewing is limited to the child's body other than the genitalia and pubes. "Observation" also means direct physical viewing of a child age four or older by the department investigator without touching the child or removing an article of the child's clothing, and doing so without the consent of the child's parent, custodian, or guardian. A department investigator is not precluded from recording evidence of abuse obtained as a result of a child's voluntary removal of an article of clothing without inducement by the investigator. However, if prior consent of the child's parent or guardian, or an ex parte court order, is obtained, "observation" may include viewing the child's unclothed body other than the genitalia and pubes.

c. "Examination" means direct physical viewing, touching, and medically necessary manipulation of any area of the child's body by a physician licensed under chapter 148 or 150A.

4. "Department" means the state department of human services and includes the local, county and regional offices of the department.

5. "Health practitioner" includes a licensed physician and surgeon, osteopath, osteopathic physician and surgeon, dentist, optometrist, podiatrist or chiropractor; a resident or intern in any of such professions; a licensed dental hygienist, a registered nurse or licensed practical nurse; and a basic emergency medical care provider certified under section 147.161 or an advanced emergency medical care provider certified under section 147A.6.

6. "Mental health professional" means a person who meets the following requirements:

a. Holds at least a master's degree in a mental health field, including, but not limited to, psychology, counseling, nursing, or social work; or is licensed to practice medicine pursuant to chapter 148, 150, or 150A.

b. Holds a license to practice in the appropriate profession.

c. Has at least two years of postdegree experience, supervised by a mental health professional, in assessing mental health problems and needs of individuals used in providing appropriate mental health services for those individuals.

7. "Person responsible for the care of a child" means:

a. A parent, guardian, or foster parent.

b. A relative or any other person with whom the child resides, without reference to the length of time or continuity of such residence.

c. An employee or agent of any public or private facility providing care for a child, including an institution, hospital, health care facility, group home, mental health center, residential treatment center, shelter care facility, detention center, or child care facility.

d. Any person providing care for a child, but with whom the child does not reside, without reference to the duration of the care.

8. "Registry" means the central registry for child abuse information established in section 235A.14.

93 Acts, ch 76, §1, 93 Acts, ch 93, §2  
Subsection 2, NEW paragraph b and former paragraphs b, c, and d relettered as c, d, and e  
Subsection 2, NEW paragraph f

**232.71 Duties of the department upon receipt of report.**

1. If a report is determined to constitute a child abuse allegation, the department of human services shall promptly commence an appropriate investigation. The primary purpose of this investigation shall be the protection of the child named in the report. The department, within five working days of commencing the investigation, shall provide written notification of the investigation to the child's parents. However, if the department shows the court to the

court's satisfaction that notification is likely to endanger the child or other persons, the court shall issue an emergency order restraining the notification. If a report is determined to not constitute a child abuse allegation, but a criminal act harming a child is alleged, the department shall immediately refer the matter to the appropriate law enforcement agency.

2. The investigation shall include:

a. Identification of the nature, extent and cause of the injuries, if any, to the child named in the report;

b. The identification of the person or persons responsible therefor;

c. The name, age and condition of other children in the same home as the child named in the report;

d. An evaluation of the home environment and relationship of the child named in the report and any other children in the same home as the parents or other persons responsible for their care.

e. An interview of the person alleged to have committed the child abuse, if the person's identity and location are known, to afford the person the opportunity to address the allegations of the child abuse report. The interview shall be conducted, or an opportunity for an interview shall be provided, prior to a determination of child abuse being made. The court may waive the requirement of the interview for good cause.

3. The investigation may, with the consent of the parent or guardian, include a visit to the home of the child named in the report and an interview or observation of the child may be conducted. If permission to enter the home to interview or observe the child is refused, the juvenile court or district court upon a showing of probable cause may authorize the person making the investigation to enter the home and interview or observe the child. The department may utilize a multidisciplinary team in investigations of child abuse.

4. Based on an investigation of alleged child abuse by an employee of a facility providing care to a child, the department shall notify the licensing authority for the facility, the governing body of the facility, and the administrator in charge of the facility of any of the following:

a. A violation of facility policy noted in the investigation.

b. An instance in which facility policy or lack of facility policy may have contributed to the alleged child abuse.

c. An instance in which general practice in the facility appears to differ from the facility's written policy.

The licensing authority, the governing body, and the administrator in charge of the facility shall take any lawful action which may be necessary or advisable to protect children residing in the facility.

5. The department of human services may request information from any person believed to have knowledge of a child abuse case. The county attorney, any law enforcement or social services agency in

the state, and any mandatory reporter, whether or not the reporter made the specific child abuse report, shall cooperate and assist in the investigation upon the request of the department of human services. The county attorney and appropriate law enforcement agencies shall also take any other lawful action which may be necessary or advisable for the protection of the child.

6. The investigation may include a visit to a facility providing care to the child named in the report or to any public or private school subject to the authority of the department of education where the child named in the report is located. The administrator of a facility, or a public or private school shall cooperate with the investigator by providing confidential access to the child named in the report for the purpose of interviewing the child, and shall allow the investigator confidential access to other children for the purpose of conducting interviews in order to obtain relevant information. The investigator may observe a child named in a report in accordance with the provisions of section 232.68, subsection 3, paragraph "b". A witness shall be present during an observation of a child. Any child age ten years of age or older can terminate contact with the investigator by stating or indicating the child's wish to discontinue the contact. The immunity granted by section 232.73 applies to acts or omissions in good faith of such administrators and their facilities or school districts for cooperating in an investigation and allowing confidential access to a child. The department may utilize a multidisciplinary team to conduct investigations of child abuse involving employees or agents of a facility providing care for a child.

7. The department, upon completion of its investigation, shall make a preliminary report of its investigation as required by subsection 2. A copy of this report shall be transmitted to juvenile court within four regular working days after the department initially receives the abuse report unless the juvenile court grants an extension of time for good cause shown. If the preliminary report is not a complete report, a complete report shall be filed within ten working days of the receipt of the abuse report, unless the juvenile court grants an extension of time for good cause shown. The department shall notify a subject of the report of the result of the investigation, of the subject's right to correct the information pursuant to section 235A.19, and of the procedures to correct the information. The juvenile court shall notify the registry of any action it takes with respect to a suspected case of child abuse.

8. The department of human services shall transmit a copy of the report of its investigation, including actions taken or contemplated, to the registry. The department of human services shall make periodic follow-up reports thereafter in a manner prescribed by the registry so that the registry is kept up-to-date and fully informed concerning the handling of a suspected case of child abuse.

9. The department of human services shall also transmit a copy of the report of its investigation to

the county attorney. The county attorney shall notify the registry of any actions or contemplated actions with respect to a suspected case of child abuse so that the registry is kept up-to-date and fully informed concerning the handling of such a case.

10. Based on the investigation conducted pursuant to this section, the department shall offer to the family of any child believed to be the victim of abuse such services as are available and appear appropriate for either the child, the family, or both, if it is explained that the department has no legal authority to compel the family to accept the services.

11. If, upon completion of the investigation, the department of human services determines that the best interests of the child require juvenile court action, the department shall take the appropriate action to initiate such action under this chapter. The county attorney shall assist the county department of human services as provided under section 232.90, subsection 2.

12. The department of human services shall assist the juvenile court or district court during all stages of court proceedings involving a suspected child abuse case in accordance with the purposes of this chapter.

13. The department of human services shall provide for or arrange for and monitor services for abused children and their families on a voluntary basis or under a final or intermediate order of the juvenile court. The department shall adopt rules defining services which the local planning groups authorized to develop plans may recommend.

14. In every case involving child abuse which results in a child protective judicial proceeding, whether or not the proceeding arises under this chapter, a guardian ad litem shall be appointed by the court to represent the child in the proceedings. Before a guardian ad litem is appointed pursuant to this section, the court shall require the person responsible for the care of the child to complete under oath a detailed financial statement. If, on the basis of that financial statement, the court deems that the person responsible for the care of the child is able to bear the cost of the guardian ad litem, the court shall so order. In cases where the person responsible for the care of the child is unable to bear the cost of the guardian ad litem, the expense shall be paid out of the county treasury.

15. If a fourth report is received from the same person who made three earlier unfounded reports which identified the same child as the abused child and the same person responsible for the child as the alleged abuser, the department may determine that the report is again unfounded due to the report's spurious or frivolous nature and may in its discretion terminate its investigation.

16. The department may request criminal history data from the department of public safety on any person believed to be responsible for an injury to a child which, if confirmed, would constitute child abuse. The department shall establish procedures for determining when a criminal history records check under this subsection is necessary.



17. In each county or multicounty area in which more than fifty child abuse reports are made per year, the department shall establish a multidisciplinary team, as defined in section 235A.13, subsection 7. Upon the department's request, a multidisciplinary team shall assist the department in the assessment, diagnosis, and disposition of a child abuse report.

Footnote added  
 For amendments to subsections 3, 6, and 17 effective July 1, 1994, see 93 Acts, ch 172, §32, 33, 56  
 Transfer of functions authorized effective July 1, 1993, 93 Acts, ch 172, §50

**232.77 Photographs, X rays, and medically relevant tests.**

1. Any person who is required to report a case of child abuse may take or cause to be taken, at public expense, photographs or X rays of the areas of trauma visible on a child. Any health practitioner may, if medically indicated, cause to be performed radiological examination of the child. Any person who takes any photographs or X rays pursuant to this section shall notify the department of human services that such photographs or X rays have been taken, and shall retain such photographs or X rays for a reasonable time thereafter. Whenever such person is required to report under section 232.69, in that person's capacity as a member of the staff of a medical or other private or public institution, agency or facility, that person shall immediately notify the person in charge of such institution, agency, or facility or that person's designated delegate of the need for photographs or X rays.

2. If a health practitioner discovers in a child physical or behavioral symptoms of the effects of exposure to cocaine, heroin, amphetamine, methamphetamine, or other illegal drugs, or combinations or derivatives thereof, which were not prescribed by a health practitioner, or if the health practitioner has determined through examination of the natural mother of the child that the child was exposed in utero, the health practitioner may perform or cause to be performed a medically relevant test, as defined in section 232.73, on the child. The practitioner shall report any positive results of such a test on the child to the department. The department shall begin an investigation pursuant to section 232.71 upon receipt of such a report. A positive test result shall not be used for the criminal prosecution of a parent for acts and omissions resulting in intrauterine exposure of the child to an illegal drug.

93 Acts, ch 93, §3  
 Subsection 2 amended

**232.116 Grounds for termination.**

1. Except as provided in subsection 3, the court may order the termination of both the parental rights with respect to a child and the relationship between the parent and the child on any of the following grounds:

a. The parents voluntarily and intelligently consent to the termination of parental rights and the parent-child relationship and for good cause desire the termination.

b. The court finds that there is clear and convincing evidence that the child has been abandoned or deserted.

c. The court finds that both of the following have occurred:

(1) The court has previously adjudicated the child to be a child in need of assistance after finding the child to have been physically or sexually abused or neglected as the result of the acts or omissions of one or both parents, or the court has previously adjudicated a child who is a member of the same family to be a child in need of assistance after such a finding.

(2) Subsequent to the child in need of assistance adjudication, the parents were offered or received services to correct the circumstance which led to the adjudication, and the circumstance continues to exist despite the offer or receipt of services.

d. The court finds that all of the following have occurred:

(1) The child has been adjudicated a child in need of assistance pursuant to section 232.96.

(2) The child has been removed from the physical custody of the child's parents for a period of at least six consecutive months.

(3) There is clear and convincing evidence that the parents have not maintained significant and meaningful contact with the child during the previous six consecutive months and have made no reasonable efforts to resume care of the child despite being given the opportunity to do so.

e. The court finds that all of the following have occurred:

(1) The child is four years of age or older.

(2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.

(3) The child has been removed from the physical custody of the child's parents for at least twelve of the last eighteen months, or for the last twelve consecutive months and any trial period at home has been less than thirty days.

(4) There is clear and convincing evidence that at the present time the child cannot be returned to the custody of the child's parents as provided in section 232.102.

f. The court finds that all of the following have occurred:

(1) The child has been adjudicated a child in need of assistance pursuant to section 232.96.

(2) The court has terminated parental rights pursuant to section 232.117 with respect to another child who is a member of the same family.

(3) There is clear and convincing evidence that the parent continues to lack the ability or willingness to respond to services which would correct the situation.

(4) There is clear and convincing evidence that an additional period of rehabilitation would not correct the situation.

g. The court finds that all of the following have occurred:

(1) The child is three years of age or younger.

(2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.

(3) The child has been removed from the physical custody of the child's parents for at least six months of the last twelve months, or for the last six consecutive months and any trial period at home has been less than thirty days.

(4) There is clear and convincing evidence that the child cannot be returned to the custody of the child's parents as provided in section 232.102 at the present time.

*h.* The court finds that both of the following have occurred:

(1) The child meets the definition of child in need of assistance based on a finding of physical or sexual abuse or neglect as a result of the acts or omissions of one or both parents.

(2) There is clear and convincing evidence that the circumstances surrounding the abuse or neglect of the child, despite the receipt of services, constitutes imminent danger to the child.

*i.* The court finds that both of the following have occurred:

(1) The child has been adjudicated a child in need of assistance pursuant to section 232.96 and custody has been transferred from the child's parents for placement pursuant to section 232.102.

(2) The parent has been imprisoned for a crime against the child, the child's sibling, or another child in the household, or the parent has been imprisoned and it is unlikely that the parent will be released from prison for a period of five or more years.

*j.* The court finds that all of the following have occurred:

(1) The child has been adjudicated a child in need of assistance pursuant to section 232.96 and custody has been transferred from the child's parents for placement pursuant to section 232.102.

(2) The parent has a chronic mental illness and has been repeatedly institutionalized for mental illness, and presents a danger to self or others as evidenced by prior acts.

(3) There is clear and convincing evidence that the parent's prognosis indicates that the child will not be able to be returned to the custody of the parent within a reasonable period of time considering the child's age and need for a permanent home.

*k.* The court finds that all of the following have occurred:

(1) The child has been adjudicated a child in need of assistance pursuant to section 232.96 and custody has been transferred from the child's parents for placement pursuant to section 232.102.

(2) The parent has a severe, chronic substance abuse problem, and presents a danger to self or others as evidenced by prior acts.

(3) There is clear and convincing evidence that the parent's prognosis indicates that the child will not be able to be returned to the custody of the parent within a reasonable period of time considering the child's age and need for a permanent home.

*l.* The court finds that both of the following have occurred:

(1) The child has been adjudicated a child in need of assistance pursuant to section 232.96 after finding that the child has been physically or sexually abused or neglected as a result of the acts or omissions of a parent.

(2) The parent found to have physically or sexually abused or neglected the child has been convicted of a felony and imprisoned for physically or sexually abusing or neglecting the child, the child's sibling, or any other child in the household.

2. In considering whether to terminate the rights of a parent under this section, the court shall give primary consideration to the physical, mental, and emotional condition and needs of the child. Such consideration may include any of the following:

*a.* Whether the parent's ability to provide the needs of the child is affected by the parent's mental capacity or mental condition or the parent's imprisonment for a felony.

*b.* For a child who has been placed in foster family care by a court or has been voluntarily placed in foster family care by a parent or by another person, whether the child has become integrated into the foster family to the extent that the child's familial identity is with the foster family, and whether the foster family is able and willing to permanently integrate the child into the foster family. In considering integration into a foster family, the court shall review the following:

(1) The length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining that environment and continuity for the child.

(2) The reasonable preference of the child, if the court determines that the child has sufficient capacity to express a reasonable preference.

*c.* For a child who has been placed in foster family care, any relevant testimony or written statement provided by the child's foster parents.

3. The court need not terminate the relationship between the parent and child if the court finds any of the following:

*a.* A relative has legal custody of the child.

*b.* The child is over ten years of age and objects to the termination.

*c.* There is clear and convincing evidence that the termination would be detrimental to the child at the time due to the closeness of the parent-child relationship.

*d.* It is necessary to place the child in a hospital, facility, or institution for care and treatment and the continuation of the parent-child relationship is not preventing a permanent family placement for the child.

*e.* The absence of a parent is due to the parent's admission or commitment to any institution, hospital, or health facility or due to active service in the state or federal armed forces.

**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 Iowa exchange, the department adoption worker or the private agency worker shall register the pertinent information concerning the child on the exchange. A photo of the child and other necessary information shall be forwarded to the department to be included in the photo-listing book which shall be updated regularly. The department adoption worker or the private agency worker who places a child on the exchange shall update the registration information within ten working days after a change in the information 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, additional extensions of the deferral may be granted until ninety days after the date of the final decision regarding the appeal.

93 Acts, ch 22, §1  
Subsection 3 amended

**232.141 Expenses.**

1. Except as otherwise provided by law, the court shall inquire into the ability of the child or the child's parent to pay expenses incurred pursuant to subsection 2 and subsection 4 and, after giving the parent a reasonable opportunity to be heard, the court may order the parent to pay all or part of the costs of the child's care, examination, treatment, legal expenses, or other expenses. An order entered under this section does not obligate a parent paying child support under a custody decree, except that part of the monthly support payment may be used to satisfy the obligations imposed by the order entered pursuant to this section. If a parent fails to pay as ordered, without good reason, the court may proceed against the parent for contempt and may inform the county attorney who shall proceed against the parent to collect the unpaid amount. Any payment ordered by the court shall be a judgment against each of the child's parents and a lien as provided in section 624.23. If all or part of the amount that the parents are ordered to pay is subsequently paid by the county or state, the judgment and lien shall thereafter be against each of the parents in favor of the county to the extent of the county's payments and in favor of the state to the extent of the state's payments.

2. Upon certification of the court, all of the following expenses are a charge upon the county in which the proceedings are held, to the extent provided in subsection 3:

- a. The fees and mileage of witnesses and the expenses of officers serving notices and subpoenas.
- b. Reasonable compensation for an attorney appointed by the court to serve as counsel or guardian ad litem.

3. Costs incurred under subsection 2 shall be paid as follows:

a. A county shall be required to pay for the fiscal year beginning July 1, 1989, an amount equal to the county's base cost for witness and mileage fees and attorney fees established pursuant to section 232.141, subsection 8, paragraph "d", Code 1989, for the fiscal year beginning July 1, 1988, plus an amount equal to the percentage rate of change in the consumer price index as tabulated by the federal bureau of labor statistics for the current year times the county's base cost.

b. A county's base cost for a fiscal year plus the percentage rate of change amount as computed in paragraph "a" is the county's base cost for the succeeding fiscal year. The amount to be paid in the succeeding year by the county shall be computed as provided in paragraph "a".

c. Costs incurred under subsection 2 which are not paid by the county under paragraphs "a" and "b"

shall be reimbursed by the state. A county shall apply for reimbursement to the department of inspections and appeals which shall prescribe rules and forms to implement this subsection.

4. Upon certification of the court, all of the following expenses are a charge upon the state to the extent provided in subsection 5:

a. The expenses of transporting a child to or from a place designated by the court for the purpose of care or treatment.

b. Expenses for mental or physical examinations of a child if ordered by the court.

c. The expenses of care or treatment ordered by the court.

5. If no other provision of law requires the county to reimburse costs incurred pursuant to subsection 4, the department shall reimburse the costs as follows:

a. The department shall prescribe by administrative rule all services eligible for reimbursement pursuant to subsection 4 and shall establish an allowable rate of reimbursement for each service.

b. The department shall receive billings for services provided and, after determining allowable costs, shall reimburse providers at a rate which is not greater than allowed by administrative rule. Reimbursement paid to a provider by the department shall be considered reimbursement in full unless a county voluntarily agrees to pay any difference between the reimbursement amount and the actual cost. When there are specific program regulations prohibiting supplementation those regulations shall be applied to providers requesting supplemental payments from a county. Billings for services not listed in administrative rule shall not be paid. However, if the court orders a service not currently listed in administrative rule, the department shall review the order and, if reimbursement for the service of the department is not in conflict with other law or administrative rule, and meets the criteria of subsection 4, the department shall reimburse the provider.

6. If a child is given physical or mental examinations or treatment relating to a child abuse investigation with the consent of the child's parent, guardian, or legal custodian and no other provision of law otherwise requires payment for the costs of the examination and treatment, the costs shall be paid by the state. Reimbursement for costs of services described in this subsection is subject to subsection 5.

7. A county charged with the costs and expenses under subsections 2 and 3 may recover the costs and expenses from the county where the child has legal settlement by filing verified claims which are payable as are other claims against the county. A detailed statement of the facts upon which a claim is based shall accompany the claim. Any dispute involving the legal settlement of a child for which the court has ordered payment under this section shall be settled pursuant to sections 252.22 and 252.23.

8. This subsection applies only to placements in a juvenile shelter care home which is publicly owned, operated as a county or multicounty shelter care

home, organized under a chapter 28E agreement, or operated by a private juvenile shelter care home. If the actual and allowable costs of a child's shelter care placement exceed the amount the department is authorized to pay in accordance with law and administrative rule, the unpaid costs may be recovered from the child's county of legal settlement. However, the maximum amount of the unpaid costs which may be recovered under this subsection is limited to the difference between the amount the department is authorized to pay and the statewide average of the actual and allowable rates in effect in May of the preceding fiscal year for reimbursement of juvenile shelter care homes. In no case shall the home be reimbursed for more than the home's actual and allowable costs. The unpaid costs are payable pursuant to filing of verified claims against the county of legal settlement. A detailed statement of the facts upon which a claim is based shall accompany the claim. Any dispute between counties arising from filings of claims pursuant to this subsection shall be settled in the manner provided to determine legal settlement in section 230.12.

93 Acts, ch 76, §15, 93 Acts, ch 172, §34  
See Code editor's note  
Subsection 8 stricken and rewritten

### **232.143 Regional group foster care target.**

1. A statewide target for the average number of children in group foster care placements on any day of a fiscal year, which placements are a charge upon or are paid for by the state, shall be established annually by the general assembly. The department and the judicial department shall jointly develop a formula for allocating a portion of the statewide target established by the general assembly to each of the department's regions. The formula shall be based upon the region's proportion of the state population of children and of the statewide number of children placed in group foster care in the previous five completed fiscal years. The number determined in accordance with the formula shall be the group foster care placement target for that region.

2. For each of the department's regions, representatives appointed by the department and the juvenile court shall establish a plan for containing the number of children placed in group foster care ordered by the court within the target allocated to that region pursuant to subsection 1. The plan shall include monthly targets and strategies for developing alternatives to group foster care placements in order to contain expenditures for services provided to children within the amount appropriated by the general assembly for that purpose. Each regional plan shall be established in advance of the fiscal year to which the regional plan applies. To the extent possible, the department and the juvenile court shall coordinate the planning required under this subsection with planning for services paid under section 232.141, subsection 4. The department's regional administrator shall communicate regularly, as specified in the regional plan, with the juvenile courts within that region concerning the current status of the regional plan's implementation.

3. State payment for group foster care placements shall be limited to those placements which are in accordance with the regional plans developed pursuant to subsection 2.

Statewide target for 1993-1994 fiscal year, exceptions, conditions, other factors in allocation formula, 93 Acts, ch 172, § 11  
Footnote updated, section not amended

**232.147 Confidentiality of juvenile court records.**

1. Juvenile court records shall be confidential. They shall not be inspected and their contents shall not be disclosed except as provided in this section.

2. Official juvenile court records in cases alleging delinquency shall be public records, subject to sealing under section 232.150. If the court has excluded the public from a hearing under division II of this chapter, the transcript of the proceedings shall not be deemed a public record and inspection and disclosure of the contents of the transcript shall not be permitted except pursuant to court order or unless otherwise provided in this chapter.

3. Official juvenile court records in all cases except those alleging delinquency may be inspected and their contents shall be disclosed to the following without court order:

- a. The judge and professional court staff, including juvenile court officers.
- b. The child and the child's counsel.
- c. The child's parent, guardian or custodian, court-appointed special advocate, and guardian ad litem.
- d. The county attorney and the county attorney's assistants.
- e. An agency, association, facility or institution which has custody of the child, or is legally responsible for the care, treatment or supervision of the child.
- f. A court, court professional staff, and adult probation officers in connection with the preparation of a presentence report concerning a person who prior thereto had been the subject of a juvenile court proceeding.

g. The foster care review committee selected to review recommendations regarding the child's placement in foster care pursuant to section 234.42.

4. Pursuant to court order official records may be inspected by and their contents may be disclosed to:

- a. A person conducting bona fide research for research purposes under whatever conditions the court may deem proper, provided that no personal identifying data shall be disclosed to such a person.
- b. Persons who have a direct interest in a proceeding or in the work of the court.

5. Inspection of social records and disclosure of their contents shall not be permitted except pursuant to court order or unless otherwise provided in this subsection or chapter.

If an informal adjustment of a complaint is made pursuant to section 232.29, the intake officer shall disclose to the victim of the delinquent act, upon the request of the victim, the name and address of the child who committed the delinquent act.

6. All juvenile court records shall be made available for inspection and their contents shall be disclosed to any party to the case and the party's counsel and to any trial or appellate court in connection with an appeal pursuant to division VI of this chapter.

7. The clerk of the district court shall enter information from the juvenile record on the judgment docket and lien index, but only as necessary to record support judgments.

8. The state agency designated to enforce support obligations may release information as necessary in order to meet statutory responsibilities.

Footnote added  
For amendment striking subsection 3, paragraph g, effective July 1, 1994, see 93 Acts, ch 172, §35, 56

**232.182 Initial determination.**

1. Upon the filing of a petition, the court shall fix a time for an initial determination hearing and give notice of the hearing to the child's parent, guardian, or custodian, counsel or guardian ad litem, and the department.

2. A parent who does not have custody of the child may petition the court to be made a party to proceedings under this division.

3. An initial determination hearing is open to the public unless the court, on the motion of any of the parties or upon the court's own motion, excludes the public. The court shall exclude the public from a hearing only if the court determines that the possibility of damage or harm to the child outweighs the public's interest in having an open hearing. Upon closing the hearing to the public, the court may admit those persons who have direct interest in the case or in the work of the court.

4. The hearing shall be informal and all relevant and material evidence shall be admitted.

5. After the hearing is concluded, the court shall make and file written findings as to whether reasonable efforts, as defined in section 232.102, subsection 9, have been made and whether the voluntary foster care placement is in the child's best interests. The court shall order foster care placement in the child's best interests if the court finds that all of the following conditions exist:

- a. The child has an emotional, physical, or intellectual disability which requires care and treatment.
- b. The child's parent, guardian, or custodian has demonstrated a willingness or ability to fulfill the responsibilities defined in the case permanency plan.
- c. Reasonable efforts have been made and the placement is in the child's best interests.
- d. A determination that services or support provided to the family of a child with mental retardation, other developmental disability, or organic mental illness will not enable the family to continue to care for the child in the child's home.

If the court finds that reasonable efforts have not been made and that services or support are available to prevent the placement, the court may order the services or support to be provided to the child and the child's family. If the court finds that the foster

care placement is necessary and the child's parent, guardian, or custodian has not demonstrated a commitment to fulfill the responsibilities defined in the child's case permanency plan, the court shall cause a child in need of assistance petition to be filed.

5A. If the court orders placement of the child into foster care, the court or the department shall establish a support obligation for the costs of the placement pursuant to section 234.39.

6. The hearing may be waived and the court may issue the findings and order required under subsection 5 on the basis of the department's written report if all parties agree to the hearing's waiver and the department's written report.

7. The court shall not order group foster care placement of the child which is a charge upon the state if that placement is not in accordance with the regional plan for group foster care established pursuant to section 232.143 for the departmental region in which the court is located.

93 Acts, ch 78, §1  
Subsection 5A amended

### 232.183 Dispositional hearing.

1. Following an entry of an initial determination order pursuant to section 232.182, the court shall hold a dispositional hearing in order to determine the future status of the child based on the child's best interests. Notice of the hearing shall be given to the child and the child's parent, guardian, or custodian, and the department.

2. The dispositional hearing shall be held within eighteen months of the date the child was placed in foster care.

3. A dispositional hearing is open to the public unless the court, on the motion of any of the parties or upon the court's own motion, excludes the public. The court shall exclude the public from a hearing if the court determines that the possibility of damage or harm to the child outweighs the public's interest in having an open hearing. Upon closing the hearing to the public, the court may admit those persons who have direct interest in the case or in the work of the court.

4. The hearing shall be informal and all relevant and material evidence shall be admitted.

5. Following the hearing, the court shall issue a dispositional order. The dispositional orders which the court may enter, subject to its continuing jurisdiction, are as follows:

a. An order that the child's voluntary placement shall be terminated and the child returned to the child's home and provided with available services and support needed for the child to remain in the home.

b. An order that the child's voluntary placement may continue if the department and the child's parent or guardian continue to agree to the voluntary placement.

c. If the court finds that the child's parent, guardian, or custodian has failed to fulfill responsibilities outlined in the case permanency plan, an order that the child remain in foster care and that

the county attorney or department file, within three days, a petition alleging the child to be a child in need of assistance.

6. With respect to each child whose placement was approved pursuant to subsection 5, the court shall continue to hold periodic dispositional hearings. The hearings shall not be waived or continued beyond eighteen months following the last dispositional hearing. After a dispositional hearing, the court shall enter one of the dispositional orders authorized under subsection 5.

7. A dispositional hearing is not required if the court has approved either the local citizen foster care review board review or the department's administrative review procedure as defined under section 234.42, and all parties agree. This provision does not eliminate the initial judicial determination required under section 232.182.

Footnote added  
For amendment to subsection 7 effective July 1, 1994, see 93 Acts, ch 172, §36, 56

### 232.187 Regional out-of-state placement committees.

1. *Duties.* The department of human services and the judicial department shall jointly establish one or more out-of-state placement committees in each departmental region to review the cases of children who are placed outside the children's homes, in an out-of-state group foster care placement which is more than one hundred twenty-five miles from a child's home. It is the intent of the general assembly that by June 30, 1994, the review committees will reduce the number of children placed in out-of-state group foster care placements by twenty-five percent from the number of those placements in the fiscal year beginning July 1, 1991. A review committee shall perform all of the following activities:

a. Consult with the local experts in reforming youth services.

b. Seek to develop services and use of wrap-around services as alternatives to out-of-state placements. For the purposes of this paragraph, "wrap-around services" means coordinated, highly individualized and community-based services directed to the basic human needs of a child and the child's family which are developed and approved by an interdisciplinary team and focused upon the strengths of the child and the child's family.

c. Meet as necessary to review cases of children who are being referred to an out-of-state placement.

d. Require the presence or testimony of the persons associated with the referral of the child to an out-of-state placement as appropriate for the committee to make findings and recommendations.

e. Make findings and recommendations to the court within ten working days of referral of a child to an out-of-state placement. The department or the juvenile court officer associated with the referral of a child to an out-of-state placement shall report to the court the findings and recommendations of the committee prior to the court making a disposition. A committee shall not recommend out-of-state

placement of a child unless committee members representing both the department and the court are present at the meeting in which the recommendation is considered and a majority of the members present approve of the recommendation.

*f.* The department shall not pay the cost of an out-of-state group foster care placement which is more than one hundred twenty-five miles from a child's home without a review committee recommending the out-of-state group foster care placement.

*g.* Report annually to the child welfare task force created in 1992 Iowa Acts, chapter 1241, concerning the committee's progress in reducing out-of-state placements.

*2. Membership.* The membership of a review committee shall consist of representatives of the department appointed by the department's regional administrator and representatives of the juvenile court appointed by the chief juvenile court officer of each judicial district within the departmental region. The department and the judicial department shall appoint additional members to ensure at least one representative for each of the following areas of expertise: child welfare, education, juvenile justice, and mental health, mental retardation, or other developmental disabilities.

Footnote added

Section is to be repealed effective July 1, 1994, transfer of functions authorized pending repeal, 93 Acts, ch 172, §48, 50, 56

## CHAPTER 234

### CHILD AND FAMILY SERVICES

#### 234.1 Definitions.

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

1. "*Administrator*" means the administrator of the division.

2. "*Child*" means either a person less than eighteen years of age or a person eighteen or nineteen years of age who meets any of the following conditions:

*a.* Is in full-time attendance at an accredited\* school pursuing a course of study leading to a high school diploma.

*b.* Is attending an instructional program leading to a high school equivalency diploma.

*c.* Has been identified by the director of special education of the area education agency as a child requiring special education as defined in section 256B.2, subsection 1.

A person over eighteen years of age who has received a high school diploma or a high school equivalency diploma is not a child within the definition in this subsection.

3. "*Division*" or "*state division*" means that division of the department of human services to which the director has assigned responsibility for income and service programs.

4. "*Food programs*" means the food stamp and donated foods programs authorized by federal law under the United States department of agriculture.

93 Acts, ch 54, §3

\*Accreditation takes effect beginning July 1, 1989, schools remain subject to the approval process in §257 25, Code 1985, until accredited, see §256 11(10)

Subsection 3 stricken and former subsections 4 and 5 renumbered as 3 and

4

#### 234.6 Powers and duties of the administrator.

The administrator shall be vested with the authority to administer the family investment program, state supplementary assistance, food programs, child welfare, and emergency relief, family and adult service programs, and any other form of public welfare assistance and institutions that are placed under the administrator's administration. The administrator shall perform duties, formulate and adopt rules as may be necessary; shall outline policies, dictate procedure, and delegate such powers as may be necessary for competent and efficient administration. Subject to restrictions that may be imposed by the director of human services and the council on human services, the administrator may abolish, alter, consolidate, or establish subdivisions and may abolish or change offices previously created. The administrator may employ necessary personnel and fix their compensation; may allocate or reallocate functions and duties among any subdivisions now existing or later established; and may adopt rules relating to the employment of personnel and the allocation of their functions and duties among the various subdivisions as competent and efficient administration may require.

The administrator shall:

1. Co-operate with the federal social security board created by title VII of the Social Security Act [42 U.S.C. 901], enacted by the 74th Congress of the United States and approved August 14, 1935, or other agency of the federal government for public

welfare assistance, in such reasonable manner as may be necessary to qualify for federal aid, including the making of such reports in such form and containing such information as the federal social security board, from time to time, may require, and to comply with such regulations as such federal social security board, from time to time, may find necessary to assure the correctness and verification of such reports.

2. Furnish information to acquaint the public generally with the operation of the acts under the jurisdiction of the administrator.

3. With the approval of the director of human services, the governor, the director of management, and the director of revenue and finance, set up from the funds under the administrator's control and management an administrative fund and from the administrative fund pay the expenses of operating the division.

4. Notwithstanding any provisions to the contrary in chapter 239 relating to the consideration of income and resources of claimants for assistance, the administrator, with the consent and approval of the director of human services and the council on human services, shall make such rules as may be necessary to qualify for federal aid in the assistance programs administered by the administrator.

5. The department of human services shall have the power and authority to use the funds available to it, to purchase services of all kinds from public or private agencies to provide for the needs of children, including but not limited to psychiatric services, supervision, specialized group, foster homes and institutional care.

6. Have authority to use funds available to the department, subject to any limitations placed on the use thereof by the legislation appropriating the funds, to provide to or purchase, for families and individuals eligible therefor, services including but not limited to the following:

a. Day care for children or adults, in facilities which are licensed or are approved as meeting standards for licensure.

b. Foster care, including foster family care, group homes and institutions.

c. Intensive family preservation services and family-centered services, as defined in section 232.102, subsection 9, paragraph "b".

d. Family planning.

e. Protective services.

f. Services or support provided to a child with mental retardation or other developmental disability or to the child's family, either voluntarily by the department of human services or in accordance with a court order entered under section 222.31 or 232.182, subsection 5.

g. Transportation services.

h. Any services, not otherwise enumerated in this subsection, authorized by or pursuant to the United States Social Security Act of 1934, as amended.

7. Administer the food programs authorized by federal law, and recommend rules necessary in the

administration of those programs to the director for promulgation pursuant to chapter 17A.

8. Provide consulting and technical services to the director of the department of education, or the director's designee, upon request, relating to pre-kindergarten, kindergarten, and before and after school programming and facilities.

9. Recommend rules for their adoption by the council of human services for before and after school child care programs, conducted within and by or contracted for by school districts, that are appropriate for the ages of the children who receive services under the programs.

10. In determining the reimbursement rate for services purchased by the department of human services from a person or agency, the department shall not include private moneys contributed to the person or agency unless the moneys are contributed for services provided to a specific individual.

93 Acts, ch 97, §28

Unnumbered paragraph 1 amended

**234.9 County board of social welfare.** Repealed by 93 Acts, ch 54, § 12.

**234.10 Compensation of county board members.** Repealed by 93 Acts, ch 54, § 12.

**234.11 Duties of the county board.** Repealed by 93 Acts, ch 54, § 12. See § 217.43.

**234.35 When state to pay foster care costs.**

1. The department of human services is responsible for paying the cost of foster care for a child, according to rates established pursuant to section 234.38, under any of the following circumstances:

a. When a court has committed the child to the director of human services or the director's designee.

b. When a court has transferred legal custody of the child to the department of human services.

c. When the department has agreed to provide foster care services for the child for a period of not more than thirty days on the basis of a signed placement agreement between the department and the child's parent or guardian initiated on or after July 1, 1992.

d. When the child has been placed in emergency care for a period of not more than thirty days upon approval of the director or the director's designee.

e. When a court has entered an order transferring the legal custody of the child to a foster care placement pursuant to section 232.52, subsection 2, paragraph "d", or section 232.102, subsection 1. However, payment for a group foster care placement shall be limited to those placements which conform to a regional group foster plan established pursuant to section 232.143.

f. When the department has agreed to provide foster care services for a child who is eighteen years of age or older on the basis of a signed placement agreement between the department and the child or the person acting on behalf of the child.

g. When the department has agreed to provide



foster care services for the child on the basis of a signed placement agreement initiated before July 1, 1992, between the department and the child's parent or guardian.

h. When the child is placed in shelter care pursuant to section 232.20, subsection 1, or section 232.21.

i. When the court has entered an order in a voluntary foster care placement proceeding pursuant to section 232.182, subsection 5, placing the child into foster care.

2. Except as provided under section 234.38 for direct payment of foster parents, payment for foster care costs shall be limited to foster care providers with whom the department has a contract in force.

3. The department shall not pay for an out-of-state foster care placement of a child which is more than one hundred twenty-five miles from the child's home unless the placement is approved by an out-of-state placement committee established pursuant to section 232.187.

4. Payment for foster care services provided to a child who is eighteen years of age or older shall be limited to the following:

a. For a child who is eighteen years of age, family foster care or independent living arrangements.

b. For a child who is nineteen years of age, independent living arrangements.

c. For a child who is at imminent risk of becoming homeless or failing to graduate from high school or to obtain a graduate equivalency diploma, if the services are in the child's best interests, funding is available for the services, and an appropriate alternative service is unavailable.

Footnote added  
For amendment striking subsection 3 effective July 1, 1994, see 93 Acts, ch 172, §37, 56

**234.42 Foster care review committees — confidentiality.**

The department of human services shall select foster care review committees of at least three individuals each to review recommendations regarding a child foster care placement. The department shall determine the composition, organization, and duties of foster care review committees. Members of a foster care review committee who are not employees of the department are subject to the same standards of confidentiality comparable to those imposed on departmental employees under section 217.30.

Footnote added  
Section is to be repealed effective July 1, 1994, transfer of functions authorized pending repeal, 93 Acts, ch 172, §48, 50, 56

**CHAPTER 235A**

**CHILD ABUSE**

**235A.13 Definitions.**

As used in sections 235A.13 to 235A.23, unless the context otherwise requires:

1. "Child abuse information" means any or all of the following data maintained by the department in a manual or automated data storage system and individually identified:

- a. Report data.
- b. Investigation data.
- c. Disposition data.

2. "Confidentiality" means the withholding of information from any manner of communication, public or private.

3. "Disposition data" means information pertaining to an opinion or decision as to the occurrence of child abuse, including:

- a. Any intermediate or ultimate opinion or decision reached by investigative personnel.
- b. Any opinion or decision reached in the course of judicial proceedings.
- c. The present status of any case.

4. "Expungement" means the process of destroying child abuse information.

5. "Individually identified" means any report, investigation or disposition data which names the per-

son or persons responsible or believed responsible for the child abuse.

6. "Investigation data" means information pertaining to the evaluation of report data, including:

- a. Additional information as to the nature, extent and cause of the injury, and the identity of persons responsible therefor.
- b. The names and conditions of other children in the home.
- c. The child's home environment and relationships with parents or others responsible for the child's care.

7. "Multidisciplinary team" means a group of individuals who possess knowledge and skills related to the diagnosis, assessment, and disposition of child abuse cases and who are professionals practicing in the disciplines of medicine, nursing, public health, substance abuse, mental health, social work, child development, education, law, juvenile probation, or law enforcement, or a group established pursuant to section 235B.1, subsection 1.

8. "Report data" means information pertaining to any occasion involving or reasonably believed to involve child abuse, including:

- a. The name and address of the child and the

child's parents or other persons responsible for the child's care.

- b. The age of the child.
  - c. The nature and extent of the injury, including evidence of any previous injury.
  - d. Any other information believed to be helpful in establishing the cause of the injury and the identity of the person or persons responsible therefor.
9. "Sealing" means the process of removing child abuse information from authorized access as provided by this chapter.

Footnote added  
For amendment striking subsection 7 effective July 1, 1994, see 93 Acts, ch 172, §§38, 56

### **235A.15 Authorized access — procedures involving other states.**

1. Notwithstanding chapter 22, the confidentiality of all child abuse information shall be maintained, except as specifically provided by subsection 2, 3, or 4.

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 state and local citizen 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 272 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), and to the department of justice for purposes of the crime victim compensation program in accordance with section 912.10.

4. Access to founded child abuse information only is authorized to the department of personnel as necessary for presentation in grievance or arbitra-

tion procedures provided for in sections 19A.14 and 20.18. Child abuse information introduced into a grievance or arbitration proceeding shall not be considered a part of the public record of a case.

If a child who is a legal resident of another state is present in this state and a report of child abuse is made concerning the child, the department shall act to ensure the safety of the child. The department shall contact the child's state of legal residency to coordinate the investigation of the report. If the child's state of residency refuses to conduct an investigation, the department shall commence an appropriate investigation.

If a report of child abuse is made concerning an alleged perpetrator who resides in this state and a child who resides in another state, the department shall assist the child's state of residency in conducting an investigation of the report. The assistance shall include but is not limited to an offer to interview the alleged perpetrator and any other relevant source. If the child's state of residency refuses to conduct an investigation of the report, the department shall commence an appropriate investigation. The department shall seek to develop protocols with states contiguous to this state for coordination in the investigation of a report of child abuse when a person involved with the report is a resident of another state.

93 Acts, ch 76, §3, 4  
 For amendment striking subsection 2, paragraph b subparagraph (4), see 93 Acts, ch 172, §39, 56  
 Transfer of functions authorized effective July 1, 1993, 93 Acts, ch 172, §50 Subsection 3 amended  
 NEW unnumbered paragraphs 1 and 2

**235A.18 Sealing and expungement of child abuse information.**

1. Child abuse information relating to a particular case of suspected child abuse shall be sealed ten years after the receipt of the initial report of such abuse by the registry unless good cause be shown why the information should remain open to authorized access. If a subsequent report of a suspected case of child abuse involving the child named in the initial report as the victim of abuse or a person named in such report as having abused a child is received by the registry within this ten-year period, the information shall be sealed ten years after receipt of the subsequent report unless good cause be shown why the information should remain open to authorized access. The information shall be expunged eight years after the date the information was sealed.

2. Child abuse information which cannot be determined by a preponderance of the evidence to be founded or unfounded shall be sealed one year after the receipt of the initial report of abuse and expunged five years after the date it was sealed. Child abuse information which is determined by a preponderance of the evidence to be unfounded shall be expunged when it is determined to be unfounded. A report shall be determined to be unfounded as a result of any of the following:

a. The investigation of a report of suspected child abuse by the department.

b. A successful appeal as provided in section 235A.19.

c. A court finding by a juvenile or district court.

The juvenile or district court and county attorney shall expunge child abuse information upon notice from the registry.

3. However, if a correction of child abuse information is requested under section 235A.19 and the issue is not resolved at the end of the one-year period, the information shall be retained until the issue is resolved and if the child abuse information is not determined to be founded, the information shall be expunged at the appropriate time under subsection 2.

4. The registry, at least once a year, shall review and determine the current status of child abuse reports which are transmitted or made to the registry after July 1, 1974, which are at least one year old and in connection with which no investigatory report has been filed by the department of human services pursuant to section 232.71. If no such investigatory report has been filed, the registry shall request the department of human services to file a report. In the

event a report is not filed within ninety days subsequent to such a request, the report and information relating thereto shall be sealed and remain sealed unless good cause be shown why the information should remain open to authorized access.

93 Acts, ch 76, §5, 6  
Subsection 1 amended  
Subsection 2, unnumbered paragraph 1 amended

#### 235A.20 Civil remedy.

Any aggrieved person may institute a civil action for damages under chapter 669 or 670 or to restrain the dissemination of child abuse information in violation of this chapter, and any person, agency or other recipient proven to have disseminated or to have requested and received child 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 one hundred dollars.

Section not amended  
Reference to transferred chapter corrected editorially

## CHAPTER 235B

### ADULT ABUSE

#### 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 injury which is at a variance with the history given of the injury, or unreasonable confinement, unreasonable punishment, or assault 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 or 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.

dent 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.

93 Acts, ch 76, §7  
Subsection 5, paragraph a, subparagraph (1) amended

### 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.

Reports of dependent adult abuse which is the result of the acts or omissions of the dependent adult shall be collected and maintained in the files of the dependent adult as assessments only and shall not be included in the central registry.

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 or an income maintenance 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.

f. A person who performs inspections of elder group homes for the department of elder affairs and a care review committee member assigned to an elder group home pursuant to chapter 231B.

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 reporting 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.

93 Acts, ch 72, §6  
Subsection 2, NEW paragraph f

### 235B.11 Civil remedy.

Any aggrieved person may institute a civil action for damages under chapter 669 or 670 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.

Section not amended  
References to transferred chapters corrected editorially

### 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 caretakers with information regarding services to alleviate the emotional, psychological, physical, or financial stress associated with the caretaker 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 272C 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 272C 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. A person who is a mandatory reporter for both child abuse and dependent adult abuse may satisfy the combined training requirements of this subsection through completion of a two-hour training program, if the training program curriculum and content are approved by the department of human services.

6. The department shall require an educational program for employees of the registry on the proper use and control of dependent adult abuse information.

Section not amended  
Subsection 5, unnumbered paragraph 3, reference to transferred chapter corrected editorially

## CHAPTER 235C

### COUNCIL ON CHEMICALLY EXPOSED INFANTS AND CHILDREN

#### 235C.1 Council created — purpose.

A council on chemically exposed infants and children is established as a subcommittee of the committee on maternal and child health of the community health division of the Iowa department of public health. The purpose of the council is to help the state develop and implement policies to reduce the likelihood that infants will be born chemically exposed, and to assist those who are born chemically exposed to grow and develop in a safe environment.

As used in this chapter, a "*chemically exposed infant or child*" is an infant or child who shows evidence of exposure to or the presence of alcohol, cocaine, heroin, amphetamine, methamphetamine, or other illegal drugs or combinations or derivatives thereof which were not prescribed by a health practitioner.

93 Acts, ch 93, §4  
Section amended

#### 235C.2 Membership.

The council on chemically exposed infants and children shall be composed of the following members:

1. Two members of the Iowa department of public health selected by the director of the Iowa department of public health, one from the division of substance abuse, and one from the division of family and community health.

2. The director of the department of human services or the director's designee as a nonvoting ex officio member.

3. The department coordinator of the department of human rights or the coordinator's designee as a nonvoting ex officio member.

4. The director of the department of education or the director's designee as a nonvoting ex officio member.

5. The director of the department of corrections or the director's designee, as a nonvoting ex officio member.

6. The chairperson of the state maternal and child health advisory council or the chairperson's designee.

7. A physician selected by the board of the Iowa medical society with expertise in the care of the mother and a physician selected by the board of the Iowa medical society with expertise in the care of the infant.

8. A hospital administrator selected by the board of the Iowa hospital association.

9. A representative from a community health center located in Iowa selected by the Iowa/Nebraska primary care association.

10. A representative from a maternal and child health center selected by the governor.

11. A representative from a substance abuse treatment program, selected by the governor.

12. Two citizen members, selected by the governor.

13. A representative from the governor's alliance on substance abuse selected by the alliance.

14. A representative from the university of Iowa medical school selected by the director of the medical school.

15. A representative from a community-based substance abuse prevention program, selected by the governor.

16. A representative from the juvenile court, selected by the chief justice of the Iowa supreme court.

17. An attorney who practices in the area of juvenile law, selected by the Iowa state bar association.

The council shall be staffed by the Iowa department of public health. The council shall elect its own chairperson.

93 Acts, ch 93, §5, 93 Acts, ch 139, §6  
Unnumbered paragraph 1 amended  
NEW subsection 5, and former subsections 5-16 renumbered as 6-17

### 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 chemically exposed infants and children, and the costs incurred in caring for chemically exposed infants and children, 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 and children.

4. *Treatment services.* The council shall seek to

improve effective treatment services within the state for chemically exposed infants and children. 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, children, 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 and children 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 and children.

b. Identify additional services, such as therapeutic day care services, that may be needed to effectively care for chemically exposed infants and children.

c. Review the need for residential programs designed to meet the needs of chemically exposed infants and children.

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.

93 Acts, ch 93, §6-9  
Subsections 1, 3, and 5 amended  
Subsection 4, unnumbered paragraph 1 and paragraph a amended



## CHAPTER 236

### DOMESTIC ABUSE

**236.2 Definitions.**

For purposes of this chapter, unless a different meaning is clearly indicated by the context:

1. *“Department”* means the department of justice.
2. *“Domestic abuse”* means committing assault as defined in section 708.1 under any 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.
  - c. The assault is between persons who are parents of the same minor child, regardless of whether they have been married or have lived together at any time.
  - d. The assault is between persons who have been family or household members residing together within the past year and are 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.

93 Acts, ch 157, §1  
Subsection 2 amended

**236.3B Assistance by county attorney.**

A county attorney’s office may provide assistance to a person wishing to initiate proceedings pursuant to this chapter or to a plaintiff at any stage of a proceeding under this chapter, if the individual does not have sufficient funds to pay for legal assistance and if the assistance does not create a conflict of interest for the county attorney’s office. The assistance provided may include, but is not limited to, assistance in obtaining or completing forms, filing a petition or other necessary pleading, presenting evidence to the court, and enforcing the orders of the court entered pursuant to this chapter. Providing assistance pursuant to this section shall not be considered the private practice of law for the purposes of section 331.752.

93 Acts, ch 157, §2  
NEW section

**236.4 Hearings — temporary orders.**

1. Not less than five and not more than fifteen days after commencing a proceeding and upon notice to the other party, a hearing shall be held at which the plaintiff must prove the allegation of domestic abuse by a preponderance of the evidence.
2. The court may enter any temporary order it deems necessary to protect the plaintiff from domestic abuse prior to the hearing, upon good cause shown in an ex parte proceeding. Present danger of domestic abuse to the plaintiff constitutes good cause for purposes of this subsection.
3. If a hearing is continued, the court may make or extend any temporary order under subsection 2 that it deems necessary.
4. Upon application of a party, the court shall issue subpoenas requiring attendance and testimony of witnesses and production of papers.
5. The court shall advise the defendant of a right to be represented by counsel of the defendant’s choosing and to have a continuance to secure counsel.
6. Hearings shall be recorded.

93 Acts, ch 157, §3  
Subsection 1 amended

**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 safe-

ty 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 clerk may fulfill this requirement by sending the notice by facsimile or other electronic transmission which reproduces the notice in writing within six hours of filing the order. 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.

93 Acts, ch 157, §4  
Subsection 4 amended

### 236.8 Contempt — hearings.

The court may hold a party in contempt for a violation 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 of more than one day imposed under this section shall be served on consecutive days.

A hearing in a contempt proceeding brought pursuant to this section shall be held not less than five and not more than fifteen days after the issuance of a rule to show cause, as set by the court.

93 Acts, ch 157, §5  
Section 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 magistrate 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 five days nor more than fifteen 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.

93 Acts, ch 157, §6  
 Unnumbered paragraph 3 amended

**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 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 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. A hearing in a contempt proceeding brought pursuant to this section shall be held not less than five and not more than fifteen days after the issuance of a rule to show cause, as set by the court. 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. No portion of the mandatory minimum term of confinement imposed by this section shall be deferred or suspended. A deferred judgment, deferred sentence, or suspended sentence shall not be entered for violation of a no-contact order, and the court shall not impose a fine in lieu of the minimum sentence, although a fine may be imposed in addition to the minimum sentence.

3. This section shall not be construed to limit a pretrial release order issued pursuant to chapter 811.

93 Acts, ch 157, §7, 8  
 Subsection 2, unnumbered paragraph 4 amended  
 NEW subsection 3

**CHAPTER 237**

**CHILD FOSTER CARE FACILITIES**

**237.3 Rules.**

1. Except as otherwise provided by subsections 3 and 4, the administrator shall promulgate, after their adoption by the council on human services, and enforce in accordance with chapter 17A, administrative rules necessary to implement this chapter. Formulation of the rules shall include consultation with representatives of child foster care providers, and other persons affected by this chapter. The rules shall encourage the provision of child foster care in a single-family, home environment, exempting the

single-family, home facility from inappropriate rules.

2. Rules applicable to licensees shall include but are not limited to:

a. Types of facilities which include but are not limited to group foster care facilities and family foster care homes.

b. The number, qualifications, character, and parenting ability of personnel necessary to assure the health, safety and welfare of children receiving child foster care.

c. Programs for education and in-service training of personnel.

d. The physical environment of a facility.

e. Policies for intake, assessment, admission and discharge.

f. Housing, health, safety, and medical-care policies for children receiving child foster care.

g. The adequacy of programs available to children receiving child foster care provided by agencies, including but not limited to:

(1) Dietary services.

(2) Social services.

(3) Activity programs.

(4) Behavior management procedures.

(5) Educational programs, including special education as defined in section 256B.2, subsection 2 where appropriate, which are approved by the state board of education. The department shall not promulgate rules which regulate individual licensees in the subject areas enumerated in this paragraph.

h. Policies for involvement of natural parents.

i. Records a licensee is required to keep, and reports a licensee is required to make to the administrator.

j. Prior to the licensing of an individual as a foster family home, a required, written social assessment of the quality of the living situation in the home of the individual, and a required compilation of personal references for the individual other than those references given by the individual.

3. Rules governing fire safety in facilities with child foster care provided by agencies shall be promulgated by the state fire marshal pursuant to section 100.1, subsection 5 after consultation with the administrator.

4. Rules governing sanitation, water and waste disposal standards for facilities shall be promulgated by the Iowa department of public health pursuant to section 135.11, subsection 13 after consultation with the administrator.

5. In case of a conflict between rules promulgated pursuant to subsections 3 and 4 and local rules, the more stringent requirement applies.

6. Rules of the department shall not prohibit the licensing, as foster family homes, of individuals who are departmental employees not directly engaged in the administration of the child foster care program pursuant to this chapter.

7. If an agency is accredited by the joint commission on the accreditation of health care organizations under the commission's consolidated standards for residential settings or by the council on accreditation of services for families and children, the department shall modify facility licensure standards applied to the agency in order to avoid duplicating standards applied through accreditation.

8. The department, in consultation with the judicial department, the division of criminal and juvenile justice planning of the department of human rights, residential treatment providers, the foster care provider association, and other parties which may be affected, shall review the licensing rules per-

taining to residential treatment facilities, and examine whether the rules allow the facilities to accept and provide effective treatment to juveniles with serious problems who might not otherwise be placed in those facilities.

93 Acts, ch 172, §40

Subsection 2, paragraph a stricken and rewritten

### 237.13 Foster home insurance fund.

1. For the purposes of this section, "foster home" means either of the following:

a. An individual, as defined in section 237.1, subsection 7, who is licensed to provide child foster care and shall also be known as a "licensed foster home".

b. A guardian appointed on a voluntary petition of a ward pursuant to section 633.557, or a conservator appointed on a voluntary petition of a ward pursuant to section 633.572, provided the ward has an income that does not exceed one hundred fifty percent of the current federal office of management and budget poverty guidelines and who does not have resources in excess of the criteria for resources under the federal supplemental security income program. However, the ward's ownership of one residence and one vehicle shall not be considered in determining resources.

2. The foster home insurance fund is created within the office of the treasurer of state to be administered by the department of human services. The fund consists of all moneys appropriated by the general assembly for deposit in the fund. The general fund of the state is not liable for claims presented against the fund. The department may contract with another state agency, or private organization, to perform the administrative functions necessary to carry out this section.

3. Except as provided in this section, the fund shall pay, on behalf of each licensed foster home, any valid and approved claim of foster children, their parents, guardians, or guardians ad litem, for damages arising from the foster care relationship and the provision of foster care services. The fund shall also reimburse licensed foster homes for property damage or bodily injury, as a result of the activities of the foster child, and reasonable and necessary legal fees incurred in defense of civil claims filed pursuant to subsection 7, paragraph "d", and any judgments awarded as a result of such claims.

4. The fund is not liable for any of the following:

a. A loss arising out of a foster parent's dishonest, fraudulent, criminal, or intentional act.

b. An occurrence which does not arise from the foster care relationship.

c. A bodily injury arising out of the operation or use of a motor vehicle, aircraft, recreational vehicle, or watercraft owned, operated by, rented, leased, or loaned to, a foster parent.

d. A loss arising out of a foster parent's lascivious acts, indecent contact, or sexual activity, as defined in chapters 702 and 709. Notwithstanding any definition to the contrary in chapters 702 and 709, for purposes of this subsection a child is a person under the age of eighteen.

e. A loss or damage arising out of occurrences prior to July 1, 1988.

f. Exemplary or punitive damages.

g. Any claim for which compensation has been provided by, or is available from, any other source including the child's own funds.

h. The liability of a foster parent due solely to the foster parent's failure to obtain automobile or homeowner's insurance.

i. A loss or damage arising out of conduct which is in violation of administrative rules.

5. Except as provided in this section, the fund shall pay, on behalf of a guardian or conservator, the reasonable and necessary legal costs incurred in defending against a suit filed by a ward or the ward's representative and the damages awarded as a result of the suit, so long as it is determined that the guardian or conservator acted in good faith in the performance of their duties. A payment shall not be made if there is evidence of intentional misconduct or a knowing violation of the law by the guardian or conservator, including, but not limited to, failure to carry out the responsibilities required under sections 633.633 through 633.635 and 633.641 through 633.650.

6. The fund is not liable for the first seventy-five dollars of any claim based on a single occurrence. The fund is not liable for damages in excess of three hundred thousand dollars for a single foster home for all claims arising out of one or more occurrences during a calendar year.

7. Procedures for claims against the fund:

a. A claim against the fund shall be filed in accordance with the claims procedures and on forms prescribed by the department of human services.

b. A claim shall be submitted to the fund within the applicable period of limitations for the appropriate civil action underlying the claim. If a claim is not submitted to the fund within the applicable time, the claim shall be rejected.

c. The department shall issue a decision on a claim within one hundred eighty days of its presentation.

d. A person shall not bring a civil action against

a foster parent for which the fund may be liable unless that person has first filed a claim against the fund and the claim has been rejected, or the claim has been filed, approved, and paid in part, and damages in excess of the payment are claimed.

8. All processing of decisions and reports, payment of claims, and other administrative actions relating to the fund shall be conducted by the department of human services.

9. The department of human services shall adopt rules, pursuant to chapter 17A, to carry out the provisions of this section.

93 Acts, ch 172, §41  
Subsection 6 amended

**237.14 Enhanced foster care services.**

The department shall provide for enhanced foster care services by establishing supplemental per diem or performance-based contracts which include payment of costs relating to payments of principal and interest for bonds and notes issued pursuant to section 16.155 with facilities licensed under this chapter which provide special services to children who would otherwise be placed in a state juvenile institution or an out-of-state program. Before completion of the department's budget estimate as required by section 8.23, the department shall determine and include in the estimate the amount which should be appropriated for enhanced foster care services for the forthcoming fiscal year in order to provide sufficient services.

Section not amended  
Reference to transferred section corrected editorially

DIVISION II

FOSTER CARE REVIEW

Sections 237.15-237.23 repealed effective July 1, 1994, see §237.23

**237.23 Automatic repeal.**

Sections 237.15 through 237.22, and this section, are repealed July 1, 1994.

93 Acts, ch 175, §17  
Section 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.

g. A program administered by a political subdivision of the state which is primarily for recreational or social purposes and is limited to children who are five years of age or older and attending school.

h. An instructional program administered by a nonpublic school system which is not accredited by the department of education or the state board of regents.

5. *“Child day care facility”* or *“facility”* means a child care center, group day care home, or registered family day care home.

6. *“Department”* means the department of human services.

7. *“Director”* means the director of human services.

8. 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, or for less than sixteen children at any one time as authorized in accordance with section 237A.3, subsection 3, provided each child in excess of six children is attending school full-time on a regular basis.

9. *“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.

10. *“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.

11. *“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.

12. *“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.

13. *“State child day care advisory council”* means the state child day care advisory council established pursuant to sections 237A.21 and 237A.22.

93 Acts, ch 54, §4; 93 Acts, ch 76, §8, 9

Subsection 4, NEW paragraph h

Subsection 6 stricken and former subsections 7-14 renumbered as 6-13

Subsection 8, paragraph b amended

#### 237A.3 Registration of family and group day care homes.

1. a. 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.

b. No greater number of children than is autho-

ized by the registration 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.

c. A family day care home may provide care in accordance with this subsection for more than six but less than twelve children for two hours or more during a day with inclement weather following the cancellation of school classes. The home must have prior written approval from the parent or guardian of each child present in the home concerning the presence of excess children in the home pursuant to this paragraph. The home must have a responsible individual, age fourteen or older, on duty to assist the home provider when more than six children are present in accordance with the provisions of this paragraph. In addition, one or more of the following conditions shall apply to each child present in the home in excess of six children:

(1) The home provides care to the child on a regular basis for periods of less than two hours.

(2) If the child was not present in the family day care home, the child would be unattended.

(3) The home regularly provides care to a sibling of the child.

d. 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.

e. The registration process may be repeated on an annual basis.

f. 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 registered group day care home may provide care in accordance with this subsection for more than eleven but less than sixteen children for a period of less than two hours or for a period of two hours or more during a day with inclement weather following the cancellation of school classes. The home must have the prior written approval from the parent or guardian of each child present in the home concerning the presence of excess children in the home. In addition, one or more of the following conditions shall apply to each child present in the home in excess of eleven children during a period of inclement weather:

a. The group day care home provides care to the child on a regular basis for periods of less than two hours.

b. If the child was not present in the group day care home, the child would be unattended.

c. The group day care home provides care to a sibling of the child.

4. 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.

5. 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.

93 Acts, ch 76, §10, 11

Subsection 1 amended

NEW subsection 3 and former subsections 3 and 4 renumbered as 4 and 5

**237A.13 Apportionment of funds.** Repealed by 93 Acts, ch 54, § 12.

**237A.14 Allocation by the county.** Repealed by 93 Acts, ch 54, § 12.

**237A.15 Application for funds.** Repealed by 93 Acts, ch 54, § 12.

**237A.16 Use of funds.** Repealed by 93 Acts, ch 54, § 12.

**237A.17 Distribution.** Repealed by 93 Acts, ch 54, § 12.

**237A.18 Restrictions on funding.** Repealed by 93 Acts, ch 54, § 12.

**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 or have previously participated in the federal crisis nursery pilot project. The department shall adopt rules pursuant to chapter 17A to implement this section.

93 Acts, ch 76, §12  
Section amended

**237A.28 Child day care credit fund.**

A child day care credit fund is created in the state treasury under the authority of the department of human services. The moneys in the fund shall consist of moneys deposited pursuant to section 422.100 and shall be used for child day care services as annually directed by the general assembly.

93 Acts, ch 172, §42  
NEW section

**237A.29 State and federal funding of child day care.**

State funds and federal funds provided to the state in accordance with federal requirements shall not be used to pay for the care, supervision, or guidance of a child for periods of less than twenty-four hours per day on a regular basis in a place other than the child's home unless the care, supervision, or guidance is defined as child day care as used in this chapter.

93 Acts, ch 76, §13  
NEW section

## CHAPTER 239

### FAMILY INVESTMENT PROGRAM

Welfare reform initiative, work and earn incentives and family investment agreements, federal approval, conflicts with current law, schedule, 93 Acts, ch 97, §3-7

**239.1 Definitions.**

As used in this chapter:

1. "Administrator" means the administrator of the division of the department of human services to which the director of human services assigns responsibility for the family investment program.
2. "Assistance" means a money payment made under this chapter on behalf of a dependent child.
3. "Department" means the department of human services.
4. "Dependent child" means a needy child under the age of eighteen years, or a needy person eighteen years of age who meets the additional eligibility criteria established by federal law or regulation, who has been deprived of parental support or care by reason of death, continued absence from the home, physical or mental incapacity, or partial or total unemployment of the parent. However, a child is not a dependent child solely by reason of a parent's absence from the home due to the parent's performance of active duty in the uniformed services of the United States.

5. "Division" means the division of the department of human services to which the director of human services assigns responsibility for the family investment program.

6. "Protective payee" means a protective payee selected in accordance with 45 C.F.R. sec. 234.60.

7. "Recipient" is a person to whom the assistance grant is made or a person whose needs are included in granting assistance.

8. "Specified relative" means a relative specified in 42 U.S.C. sec. 606 and in federal regulations adopted pursuant to that section.

9. "Vendor payment" means assistance paid to a third party and not to a specified relative with whom a dependent child is residing.

93 Acts, ch 97, §29  
Subsections 1 and 5 amended

**239.1A Family investment program.**

Effective July 1, 1993, assistance provided under this chapter shall no longer be referred to as aid to



dependent children but shall be referred to as assistance under the family investment program.

93 Acts, ch 97, §30  
NEW section

**239.2 Eligibility for assistance.**

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 is subject to any of the following circumstances:
  - 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 requirements of this section, 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 the assistance.

93 Acts, ch 97, §31  
Section amended

**239.12 Family investment program account.**

There is established in the state treasury an account to be known as the family investment program account to which shall be credited all funds appropriated by the state for the payment of assistance, and all other moneys received at any time for these pur-

poses. Moneys assigned to the department under section 239.3 and received by the child support recovery unit pursuant to section 252B.5 and 42 U.S.C. § 664 shall be credited to the account in the fiscal year in which the moneys are received. All assistance shall be paid from the account.

93 Acts, ch 97, §32  
Section amended

**239.17 Recovery of assistance obtained by fraudulent act.**

A person who obtains, or attempts to obtain, or aids or abets any person to obtain, by means of a willfully false statement or representation, or by impersonation or any fraudulent device, assistance to which the recipient is not entitled, is personally liable for the amount of assistance thus obtained. The amount of the assistance may be recovered from the offender or the offender's estate in an action brought or by claim filed in the name of the state and the recovered funds shall be deposited in the family investment program account. The action or claim filed in the name of the state shall not be considered an election of remedies to the exclusion of other remedies.

93 Acts, ch 97, §33  
Section amended

**239.19 Transfer of funds to other work and training programs.**

The department of human services may transfer family investment program 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. and administered under chapter 249C and this chapter.

93 Acts, ch 97, §34  
Section amended

**239.20 County attorney to enforce.**

Violations of law relating to the family investment program shall be prosecuted by county attorneys. Area prosecutors of the office of the attorney general shall provide prosecution assistance.

93 Acts, ch 97, §35  
Section amended

**239.22 Mentoring.**

A statewide mentoring program is established to recruit, screen, train, and match former recipients and other volunteers with current recipients in a mentoring relationship. The commission on the status of women of the department of human rights shall implement the program in collaboration with the departments of human services, economic development, employment services, and education. The availability of the program is subject to the funding appropriated for the purposes of the program.

93 Acts, ch 97, §9  
Limited to pilot program for 1993-1994 fiscal year, 93 Acts, ch 97, §10  
NEW section

## CHAPTER 249

### STATE SUPPLEMENTARY ASSISTANCE

#### 249.13 County attorney to enforce.

It is the intent of the general assembly that violations of law relating to the family investment program, medical assistance, and supplemental assistance shall be prosecuted by county attorneys. Area prosecutors of the office of the attorney general shall provide such assistance in prosecution as may be re-

quired. It is the intent of the general assembly that the first priority for investigation and prosecution for which funds are provided shall be for fraudulent claims or practices by health care vendors and providers.

93 Acts, ch 97, §36  
Section amended

## CHAPTER 249A

### MEDICAL ASSISTANCE

#### 249A.2 Definitions.

As used in this chapter:

1. *“Additional medical assistance”* means payment 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. *“Department”* means the department of human services.

3. *“Director”* means the director of human services.

4. *“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 insufficient to meet all of the costs of necessary medical care and services, provided that if the assistance includes services in institutions for mental diseases or intermediate care facilities for the mentally retarded, or both, for any group of such individuals, the assistance 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, section 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 Security 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).

5. *“Group health plan cost sharing”* means payment under the medical assistance program of a premium, 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.

6. *“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 Security 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).

7. *“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 federal Social Security Act, section 1905(p)(3), as codified in 42 U.S.C. § 1396d(p)(3).

8. *“Provider”* means an individual, firm, corporation, association, or institution which is providing or has been approved to provide medical assistance to recipients under this chapter.

9. *“Recipient”* means a person who receives medical assistance under this chapter.

93 Acts, ch 54, §5  
Subsection 2 stricken and former subsections 3-10 renumbered as 2-9

#### 249A.3 Eligibility.

The extent of and the limitations upon eligibility 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 temporarily absent from the state, who:

a. Is a recipient of federal supplementary security income or who would be eligible for federal supplementary security income if living in their own home.

*b.* Is a recipient of family investment program payments under chapter 239 or is an individual who would be eligible for unborn child payments under the family investment program, as authorized by Title IV-A of the federal Social Security Act, if the family investment 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 family investment 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 family investment 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 family investment 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 presumptive 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 medi-

cal 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 the family investment program 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 the family investment program 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 the family investment program, 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 assistance under the family investment program.

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 assistance under the family investment program.

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 or to a person other than the individual's spouse on or after July 1, 1992, which are nonexempt resources or interests in resources, owned by the transferor within the preceding sixty months which the transferor gave away or sold at less than fair market value for the purpose of establishing eligibility for medical assistance under this chapter, to the extent consistent with 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 in accordance with the provisions of Title XIX of the federal Social Security Act, section 1902(a)(10)(E), as codified in 42 U.S.C. § 1396a(a)(10)(E), to or on be-

half of an individual who is a resident of the state or a resident who is temporarily absent from the state, and who is a member of any of the following eligibility categories:

a. 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).

b. 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).

c. A specified low-income medicare beneficiary as defined under Title XIX of the federal Social Security Act, section 1902(a)(10)(E), as codified in 42 U.S.C. § 1396a(10)(E)(iii).

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.

93 Acts, ch 97, §37  
 Subsection 1, paragraph b, name change applied editorially  
 Subsection 1, paragraph e, subparagraphs (1) and (2) and paragraphs f and m amended  
 Subsection 2, paragraphs c, d, and f and paragraph h, unnumbered paragraph 1 amended

#### 249A.6 Lien.

1. When payment is made by the department for medical care or expenses through the medical assistance program on behalf of a recipient, the department shall have a lien, to the extent of those payments, to all monetary claims which the recipient may have against third parties. A lien under this section is not effective unless the department files a notice of lien with the clerk of the district court in the county where the recipient resides and with the recipient's attorney when the recipient's eligibility for medical assistance is established. The notice of lien shall be filed before the third party has concluded a final settlement with the recipient, the recipient's attorney, or other representative. The third party shall obtain a written determination from the department concerning the amount of the lien before a settlement is deemed final for purposes of this section. A compromise, including but not limited to a settlement, waiver or release, of a claim under this section does not defeat the department's lien except pursuant to the written agreement of the director or the director's designee. A settlement, award, or judgment structured in any manner not to include medical expenses or an action brought by a recipient or on behalf of a recipient which fails to state a claim for recovery of medical expenses does not defeat the department's lien if there is any recovery on the recipient's claim.

2. The department shall be given notice of monetary claims against third parties as follows:

a. Applicants for medical assistance shall notify the department of any possible claims against third parties upon submitting the application. Recipients of medical assistance shall notify the department of any possible claims when those claims arise.

b. A person who provides health care services to a person receiving assistance through the medical assistance program shall notify the department whenever the person has reason to believe that third parties may be liable for payment of the costs of those health care services.

c. An attorney representing an applicant for or recipient of assistance on a claim to which the department has a lien under this section shall notify the department of the claim of which the attorney has actual knowledge, prior to filing a claim, commencing an action or negotiating a settlement offer. Actual knowledge under this section shall include the notice to the attorney pursuant to subsection 1.

The mailing and deposit in a United States post office or public mailing box of the notice, addressed to the department at its state or district office location, is adequate legal notice of the claim.

3. The department's lien is valid and binding on an attorney, insurer, or other third party only upon notice by the department or unless the attorney, insurer, or third party has actual notice that the recipient is receiving medical assistance from the department and only to the extent to which the attorney, insurer, or third party has not made payment to the recipient or an assignee of the recipient prior to the notice. Payment of benefits by an insurer or third party pursuant to the rights of the lienholder in this section discharges the attorney, insurer, or third party from liability to the recipient or the recipient's assignee to the extent of the payment to the department.

4. If a recipient of assistance through the medical assistance program incurs the obligation to pay attorney fees and court costs for the purpose of enforcing a monetary claim to which the department has a lien under this section, upon the receipt of the judgment or settlement of the total claim, of which the lien for medical assistance payments is a part, the court costs and reasonable attorney fees shall first be deducted from this total judgment or settlement. One-third of the remaining balance shall then be deducted and paid to the recipient. From the remaining balance, the lien of the department shall be paid. Any amount remaining shall be paid to the recipient. An attorney acting on behalf of a recipient of medical assistance for the purpose of enforcing a claim to which the department has a lien shall not collect from the recipient any amount as attorney fees which is in excess of the amount which the attorney customarily would collect on claims not subject to this section.

5. For purposes of this section the term "third party" includes an attorney, individual, institution, corporation, or public or private agency which is or

may be liable to pay part or all of the medical costs incurred as a result of injury, disease or disability by or on behalf of an applicant for or recipient of assistance under the medical assistance program.

6. The department may enforce its lien by a civil action against any liable third party.

93 Acts, ch 180, §50  
Section amended

#### 249A.14 County attorney to enforce.

It is the intent of the general assembly that violations of law relating to the family investment program, medical assistance, and supplemental assistance shall be prosecuted by county attorneys. Area prosecutors of the office of the attorney general shall provide assistance in prosecution as required.

93 Acts, ch 97, §38  
Section amended

#### 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 mon-

eys 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, persons with mental disorders resulting from Alzheimer's disease or substance abuse shall not be considered chronically mentally ill.

93 Acts, ch 172, §43  
Subsection 2 amended

## CHAPTER 249C

### WORK AND TRAINING PROGRAM

Welfare reform initiative, work-and-earn incentives and family investment agreements, federal approval, conflicts with current law, schedule, 93 Acts, ch 97, §3-7

## CHAPTER 249F

### TRANSFER OF ASSETS — MEDICAL ASSISTANCE DEBT

#### 249F.1 Definitions.

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

1. "Medical assistance" means "medical assistance", "additional medical assistance", "discretionary medical assistance", or "medicare cost sharing" as each is defined in section 249A.2 which is provided to an individual pursuant to chapter 249A and Title XIX of the federal Social Security Act.

2. a. "Transfer of assets" means any transfer or assignment of a legal or equitable interest in property, as defined in section 702.14, from a transferor to a transferee for less than fair consideration, made while the transferor is receiving medical assistance or within five years prior to application for medical assistance by the transferor. Any such transfer or assignment is presumed to be made with the intent, on the part of the transferee, of enabling the transferor to obtain or maintain eligibility for medical assis-

tance. This presumption is rebuttable only by clear and convincing evidence that the transferor's eligibility or potential eligibility for medical assistance was no part of the transferee's reason for accepting the transfer or assignment.

b. However, transfer of assets does not include the following:

(1) Transfers to or for the sole benefit of the transferor's spouse, including a transfer to a spouse by an institutionalized spouse pursuant to section 1924(f)(1) of the federal Social Security Act.

(2) Transfers, other than the transfer of a dwelling, to or for the sole benefit of the transferor's child who is blind or disabled as defined in section 1614 of the federal Social Security Act.

(3) Transfer of a dwelling to a child of the transferor under twenty-one years of age.

(4) Transfer of a dwelling, after the transferor is institutionalized, to either of the following:

(a) A sibling of the transferor who has an equity interest in the dwelling and who was residing in the dwelling for a period of at least one year immediately prior to the date the transferor became institutionalized.

(b) A child of the transferor who was residing in the dwelling for a period of at least two years immediately prior to the date the transferor became institutionalized and who provided care to the transferor which permitted the transferor to reside at the dwelling rather than in an institution or facility.

(5) Transfers of less than two thousand dollars. For purposes of this chapter, all transfers by the same transferor during a calendar year will be aggregated.

(6) Transfers of property that would, at the time of the transferor's application for medical assistance, have been exempt from consideration as a resource if it had been retained by the transferor, pursuant to 42 U.S.C. § 1382b(a), as implemented by regulations adopted by the secretary of the United States department of health and human services, and pursuant to section 561.16 and chapter 627.

3. "Transferee" means the person who receives a transfer of assets.

4. "Transferor" means the person who makes a transfer of assets.

93 Acts, ch 106, §1  
NEW section

### 249F.2 Creation of debt.

A transfer of assets creates a debt due and owing to the department of human services from the transferee in an amount equal to medical assistance provided to or on behalf of the transferor, on or after the date of the transfer of assets, but not exceeding the assets which are not exempt under section 249F.1.

93 Acts, ch 106, §2  
NEW section

### 249F.3 Notice of debt — failure to respond — hearing — order.

1. The department of human services may issue a notice establishing and demanding payment of an accrued or accruing debt due and owing to the department of human services as provided in section 249F.2. The notice shall be served upon the transferee in accordance with the rules of civil procedure. The notice shall include all of the following:

a. The amount of medical assistance provided to the transferor to date which creates the debt.

b. A computation of the debt due and owing.

c. A demand for immediate payment of the debt.

d. (1) A statement that if the transferee desires to discuss the notice, the transferee, within ten days after being served, may contact the department of human services and request an informal conference.

(2) A statement that if a conference is requested, the transferee has until ten days after the date set for the conference or until twenty days after the date of service of the original notice, whichever is later, to send a request for a hearing to the department of human services.

(3) A statement that after the holding of the conference, the department of human services may issue a new notice to be sent to the transferee by first-class mail addressed to the transferee at the transferee's last known address, or if applicable, to the transferee's attorney at the last known address of the transferee's attorney.

(4) A statement that if the department of human services issues a new notice, the transferee has until ten days after the date of mailing of the new notice or until twenty days after the date of service of the original notice, whichever is later, to send a request for a hearing to the department of human services.

e. A statement that if the transferee objects to all or any part of the original notice and no conference is requested, the transferee has until twenty days after the date of service of the original notice to send a written response setting forth any objections and requesting a hearing to the department of human services.

f. A statement that if a timely written request for a hearing is received by the department of human services, the transferee has the right to a hearing to be held in district court as provided in section 249F.4; and that if no timely written request for hearing is received, the department of human services will enter an order in accordance with the latest notice.

g. A statement that as soon as the order is entered, the property of the transferee is subject to collection action, including but not limited to wage withholding, garnishment, attachment of a lien, or execution.

h. A statement that the transferee must notify the department of human services of any change of address or employment.

i. A statement that if the transferee has any questions concerning the transfer of assets, the transferee should contact the department of human services or consult an attorney.

j. Other information as the department of human services finds appropriate.

2. If a timely written request for hearing is received by the department of human services, a hearing shall be held in district court.

3. If a timely written request for hearing is not received by the department of human services, the department may enter an order in accordance with the latest notice, and the order shall specify all of the following:

a. The amount to be paid with directions as to the manner of payment.

b. The amount of the debt accrued and accruing in favor of the department of human services.

c. Notice that the property of the transferee is subject to collection action, including but not limited to wage withholding, garnishment, attachment of a lien, and execution.

4. The transferee shall be sent a copy of the order by first-class mail addressed to the transferee at the transferee's last known address, or if applicable, to the transferee's attorney at the last known address

of the transferee's attorney. The order is final, and action by the department of human services to enforce and collect upon the order may be taken from the date of the issuance of the order.

93 Acts, ch 106, §3  
NEW section

**249F.4 Certification to court — hearing — default.**

1. If a timely written request for a hearing is received, the department of human services shall certify the matter to the district court in the county where the transferee resides.

2. The certification shall include true copies of the original notice, the return of service, any request for an informal conference, any subsequent notices, the written request for hearing, and true copies of any administrative orders previously entered.

3. The department of human services may also request a hearing on its own motion regarding the determination of a debt, at any time prior to entry of an administrative order.

4. The district court shall set the matter for hearing and notify the parties of the time and place of hearing.

5. If a party fails to appear at the hearing, upon a showing of proper notice to the party, the district court may find the party in default and enter an appropriate order.

93 Acts, ch 106, §4  
NEW section

**249F.5 Filing and docketing of order — order effective as court decree.**

1. A true copy of an order entered by the department of human services pursuant to this chapter, along with a true copy of the return of service, if applicable, may be filed in the office of the clerk of the district court in the county in which the transferee resides or, if the transferee resides in another state, in the office of the district court in the county in which the transferor resides.

2. The department of human services order shall be presented, ex parte, to the district court for review and approval. Unless defects appear on the face of the order or on the attachments, the district court shall approve the order. The approved order shall have all force, effect, and attributes of a docketed order or decree of the district court.

3. Upon filing, the clerk shall enter the order in the judgment docket.

93 Acts, ch 106, §5  
NEW section

**249F.6 Security for payment of debt — forfeiture.**

Upon entry of a court order or upon the failure of a transferee to make payments pursuant to a court order, the court may require the transferee to provide security, a bond, or other guarantee which the court determines is satisfactory to secure the payment of the debt under the court order. If the transferee fails to make payments pursuant to the court order, the court may declare the security, bond, or other guarantee forfeited.

93 Acts, ch 106, §6  
NEW section

**249F.7 Administration.**

As provided in this chapter, the establishment of a debt for medical assistance due to transfer of assets shall be administered by the department of human services. All administrative discretion in the administration of this chapter shall be exercised by the department of human services, and any state administrative rules implementing or interpreting this chapter shall be adopted by the department of human services.

93 Acts, ch 106, §7  
NEW section

**249F.8 Inconsistency with federal laws.**

If it is determined by the attorney general that any provision of this chapter would cause denial of funds from the United States government under Title XIX of the federal Social Security Act, or would otherwise be inconsistent or conflict with the requirements of federal law for state participation in the Title XIX program, such provision shall be suspended, but only to the extent necessary to prevent denial of such funds or to eliminate the inconsistency or conflict with the requirements of federal law. If the attorney general makes such a suspension determination, the attorney general shall report it to the general assembly at its next session. This report shall include any recommendations in regard to corrective legislation needed to conform this chapter with federal law.

93 Acts, ch 106, §8  
NEW section



## CHAPTER 249G

### LONG-TERM CARE ASSET PRESERVATION PROGRAM

**249G.1 Long-term care asset preservation program.**

1. The Iowa long-term care asset preservation program is established to do all of the following:

a. Provide incentives for an individual to insure against the costs of providing for the individual's own long-term care.

b. Provide a mechanism for an individual to qualify for coverage of the costs of the individual's long-term care needs under the medical assistance program pursuant to chapter 249A prior to substantially exhausting the assets of the individual.

c. Assist in developing methods for increasing access to and the affordability of a long-term care policy.

d. Provide counseling services to individuals regarding planning for long-term care needs.

e. Assist in alleviating the financial burden on the state's medical assistance program by encouraging the pursuit of private long-term care payment initiatives.

2. The department of human services and the division of insurance of the department of commerce shall administer this program as provided in this chapter.

93 Acts, ch 92, §1  
NEW section

**249G.2 Duties of departments.**

1. The department of human services shall seek approval of a state plan amendment or make application to the United States department of health and human services for any necessary waivers under 42 U.S.C. § 1396n relating to providing assistance under chapter 249A.

2. The division of insurance shall adopt rules pursuant to chapter 17A for the certification of any long-term care policy or contract which, if purchased by an eligible individual, will allow such individual to retain additional assets as provided in section 249G.4. A policy certified pursuant to this section shall satisfy the definition in section 514G.4, subsection 5, and additionally shall, at a minimum, do all of the following:

a. Inform the purchaser of the availability of consumer information concerning the long-term care asset preservation program established in this chapter.

b. Provide the option of home and community-based services in addition to nursing home care.

c. Provide case management services in all home care plans.

d. Provide for inflation protection.

e. Provide for recordkeeping and an explanation of benefit reports on insurance payments which qualify for the asset adjustment under section 249G.4.

f. Provide for written reports to the division regarding the effects of this program on the amount of medical assistance payments made under chapter 249A.

3. The division of insurance shall develop and implement a plan providing information to persons who may be eligible to participate in the long-term care asset preservation program.

93 Acts, ch 92, §2  
NEW section

**249G.3 Eligibility — participation in program.**

An individual who elects to participate in the long-term care asset preservation program shall make application to the department of human services on a form provided by the department. The department shall find that the individual is eligible if the individual satisfies all of the following:

1. Is at least sixty-five years of age.

2. Is eligible to receive medical assistance pursuant to chapter 249A upon application of the asset adjustment.

3. Is the beneficiary of a certified long-term care policy or contract approved by the division of insurance, or is enrolled in a prepaid health care delivery plan that provides long-term care services.

93 Acts, ch 92, §3  
NEW section

**249G.4 Asset adjustment.**

1. As used in this chapter, "*asset adjustment*" means an additional exemption in the amount of assets an individual who purchases a qualified long-term care policy or contract and who meets the requirements of section 249G.3 may retain for purposes of determining eligibility for long-term care services under chapter 249A equal to the benefit amount actually paid out under the individual's policy or contract.

2. The department of human services shall make an asset adjustment for an individual who is qualified pursuant to section 249G.3 and who purchases a qualified long-term care policy. The asset adjustment is available to the individual after the benefits of the long-term care policy have been applied to the cost of long-term care as required in subsection 1.

93 Acts, ch 92, §4  
NEW section

## CHAPTER 251

### EMERGENCY RELIEF ADMINISTRATION

#### 251.3 Powers and duties.

The administrator shall have the power to:

1. Appoint such personnel as may be necessary for the efficient discharge of the duties imposed upon the administrator in the administration of emergency relief, and to make such rules and regulations as the administrator deems necessary or advisable covering the administrator's activities and those of the county cluster boards created under section 217.43, concerning emergency relief.

2. Join and co-operate with the government of the United States, or any of its appropriate agencies or instrumentalities, in any proper relief activity.

3. Make such reports of budget estimates to the governor and to the general assembly as are required by law, or are necessary and proper to obtain appropriations of funds necessary for relief purposes and for all the purposes of this chapter.

4. Determine the need for funds in the various counties of the state basing such determination upon the amount of money needed in the various counties to provide adequate relief, and upon the counties financial inability to provide such relief from county funds. The administrator may administer said funds belonging to the state within the various counties of the state to supplement local funds as needed.

5. Make such reports, obtain and furnish such information from time to time as may be required by the governor, by the general assembly, or by any other proper office or agency, state or federal, and make an annual report of its activities.

93 Acts, ch 54, §6  
Subsection 1 amended

#### 251.5 Duties of the county cluster board.

A county cluster board created in section 217.43 shall perform the following activities for any county in the board's county cluster concerning emergency relief:

1. Cooperate with a county's board of supervisors in all matters pertaining to administration of relief.

2. At the request of a county's board of supervisors, prepare requests for grants of state funds.

3. At the request of a county's board of supervisors, administer county relief funds.

4. In a county receiving grants of state funds upon approval of the director of revenue and finance and the county's board of supervisors, administer both state and county relief funds.

5. Perform other duties as may be prescribed by the administrator and a county's board of supervisors.

93 Acts, ch 54, §7  
Section amended

#### 251.7 County appointees to act as executive officers.

The county board of supervisors may appoint an individual to serve as the executive officer of the county cluster board in all matters pertaining to relief for that county.

93 Acts, ch 54, §8  
Section amended

## CHAPTER 252

### SUPPORT OF THE POOR

#### 252.6 Enforcement of liability.

Upon the failure of such relatives to assist or maintain a poor person who has made application for assistance, the county board of supervisors, county cluster board created under section 217.43, or state division of child and family services of the department of human services may apply to the district court of the county where the poor person re-

sides or may be found, for an order to compel the assistance or maintenance.

93 Acts, ch 54, §9  
Section amended

**252.43 State support for Indians.** Repealed by 93 Acts, ch 172, § 49.

## CHAPTER 252A

## UNIFORM SUPPORT OF DEPENDENTS LAW

**252A.2 Definitions.**

As used in this chapter, unless the context shall require otherwise, the following terms shall have the meanings ascribed to them by this section:

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.

2. "*Court*" shall mean and include any court by whatever name known, in any state having reciprocal laws or laws substantially similar to this chapter upon which jurisdiction has been conferred to determine the liability of persons for the support of dependents within and without such state.

3. "*Dependent*" shall mean and include a spouse, child, mother, father, grandparent or grandchild who is in need of and entitled to support from a person who is declared to be legally liable for such support by the laws of the state or states wherein the petitioner and the respondent reside.

4. "*Initiating state*" shall mean the state of domicile or residence of the petitioner.

5. "*Petitioner*" shall mean and include each dependent person for whom support is sought in a proceeding instituted pursuant to this chapter.

6. "*Petitioner's representative*" shall mean and include a corporation counsel, county attorney, state's attorney, commonwealth attorney and any other public officer, by whatever title the officer's public office may be known, charged by law with the duty of instituting, maintaining or prosecuting a proceeding under this chapter or under the laws of the state or states wherein the petitioner and the respondent reside.

7. "*Register*" means to file a foreign support order in the registry of foreign support orders maintained as a filing in equity by the clerk of court.

8. "*Rendering state*" means a state in which the court has issued a support order for which registration is sought or granted in the court of another state.

9. "*Respondent*" shall mean and include each person against whom a proceeding is instituted pursuant to this chapter.

10. "*Responding state*" shall mean the state wherein the respondent resides or is domiciled or found.

11. "*State*" means any state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any foreign jurisdiction in which this or a similar reciprocal law is in effect.

12. "*State registrar*" means state registrar as defined in section 144.1.

13. "*Summons*" shall mean and include a subpoena, warrant, citation, order or other notice, by whatever name known, provided for by the laws of the state or states wherein the petitioner and the respondent reside as the means for requiring the appearance and attendance in court of the respondent in a proceeding instituted pursuant to this chapter.

93 Acts, ch 79, §11

NEW subsection 12 and former subsection 12 renumbered as 13

**252A.3 Liability for support.**

For the purpose of this chapter:

1. A spouse in one state is hereby declared to be liable for the support of the spouse and any child or children under eighteen years of age and any other dependent residing or found in the same state or in another state having substantially similar or reciprocal laws. The court having jurisdiction of the respondent in a proceeding instituted under this chapter shall establish the respondent's monthly support payment and the amount of the support debt accrued and accruing pursuant to section 598.21, subsection 4.

2. A parent in one state is hereby declared to be liable for the support of the parent's child or children under eighteen years of age residing or found in the same state or in another state having substantially similar or reciprocal laws, whenever the other parent of such child or children is dead, or cannot be found, or is incapable of supporting the child or children, and, if the liable parent is possessed of sufficient means or able to earn the means. The court having jurisdiction of the respondent in a proceeding instituted under this chapter shall establish the respondent's monthly support payment and the amount of the support debt accrued and accruing pursuant to section 598.21, subsection 4.

3. The parents in one state are hereby declared to be severally liable for the support of a dependent child eighteen years of age or older residing or found in the same state or in another state having substantially similar or reciprocal laws, whenever such child is unable to maintain the child's self and is likely to become a public charge.

4. A child or children born of parents who, at any time prior or subsequent to the birth of such child, have entered into a civil or religious marriage ceremony, shall be deemed the legitimate child or children of both parents, regardless of the validity of such marriage.

5. A child or children born of parents who held or hold themselves out as husband and wife by virtue of a common law marriage recognized as valid by the laws of the initiating state and of the responding state shall be deemed the legitimate child or children of both parents.

6. A man or woman who was or is held out as the person's spouse by a person by virtue of a common law marriage recognized as valid by the laws of the initiating state and of the responding state shall be deemed the legitimate spouse of such person.

7. Notwithstanding the fact that the respondent has obtained in any state or country a final decree of divorce or separation from the respondent's spouse or a decree dissolving the marriage, the respondent shall be deemed legally liable for the support of any dependent child of such marriage.

8. Duties of support applicable under this chapter are those imposed or imposable under the laws of any state where the respondent was present during the period for which support is sought. The respondent is presumed to have been present in the responding state during the period for which support is sought until otherwise shown.

9. The parents of a child born out of wedlock shall be severally liable for the support of the child, but the liability of the father shall not be enforceable unless paternity has been legally established. Paternity may be established as follows:

a. By order of a court of competent jurisdiction or by administrative order when authorized by state law.

b. By the statement of the person admitting paternity in court and upon concurrence of the mother. If the mother was married, at the time of birth or conception of the child, to an individual other than the person admitting paternity, the individual to whom the mother was married at the time of birth or conception must deny paternity in order to establish the paternity of the person admitting paternity upon the sole basis of the admission.

c. By the filing of an affidavit of paternity executed on or after July 1, 1993, as provided in section 252A.3A, provided that the mother of the child was unmarried at the time of birth and conception of the child or if the mother was married at the time of birth or conception of the child, a court of competent jurisdiction has determined that the individual to whom the mother was married at that time is not the father of the child.

93 Acts, ch 79, §12  
Subsection 9 amended

### **252A.3A Establishing paternity by affidavit.**

1. Upon the birth of a child to a woman who was unmarried at the time of birth and conception of the child, the institution where the birth occurred shall provide the mother and the individual alleged to be the father all of the following:

a. Written information, available from the Iowa department of public health and developed by the child support recovery unit established in section 252B.2, explaining the implications of filing the affidavit, parental rights and responsibilities, and the benefits of establishing paternity.

b. Upon request, an affidavit of paternity form from the Iowa department of public health to be completed by the parties, or instructions regarding

the process for obtaining a form from the Iowa department of public health.

An institution is not required to assist in the completion or filing of an affidavit of paternity except as provided under subsection 2.

2. An institution may either voluntarily, or under an agreement with the child support recovery unit, assist the mother and the individual alleged to be the father in completing an affidavit of paternity and submitting a completed affidavit of paternity to the state registrar accompanied by a copy of the birth certificate. A completed affidavit of paternity shall contain or have attached all of the following:

a. The signature of a notary public attesting to the identity of the parties signing the affidavit of paternity.

b. A statement by the mother consenting to the assertion of paternity and the identity of the father and acknowledging that the mother was unmarried at the time of birth and conception of the child.

c. A statement by the individual admitting paternity that the individual is the father of the child.

d. The social security numbers of both persons signing the affidavit.

3. The child support recovery unit may reimburse an institution for the costs of administering the provisions of this section if the institution has entered into a written agreement with the child support recovery unit. Reimbursement shall be based only on the number of affidavits submitted to the state registrar that are completed in compliance with this section and shall be limited to the lesser of actual costs or twenty dollars for each affidavit filed. An institution entering into an agreement for reimbursement shall assist the parents of a child born out of wedlock in completing and submitting an affidavit for paternity upon the request of the parties and within ten days following the birth.

4. The mother and the individual admitting paternity of a child born out of wedlock may directly obtain an affidavit of paternity from the Iowa department of public health or the child support recovery unit and complete and file the affidavit of paternity with the state registrar, without utilizing the services of an institution, provided that all other requirements under this section are met. Upon the request for an affidavit of paternity from the Iowa department of public health or child support recovery unit, the Iowa department of public health or child support recovery unit shall also make available the information provided pursuant to subsection 1.

5. If a court of competent jurisdiction has determined that the husband of the mother at the time of birth or conception is not the father of the child, the mother may utilize the proceedings to establish paternity by affidavit provided in this section with respect to unmarried mothers.

93 Acts, ch 79, §13  
NEW section

### **252A.6 How commenced — trial.**

1. A proceeding under this chapter shall be commenced by a petitioner, or a petitioner's representa-

tive, by filing a verified petition in the court in equity in the county of the state wherein the petitioner resides or is domiciled, showing the name, age, residence and circumstances of the petitioner, alleging that the petitioner is in need of and is entitled to support from the respondent, giving the respondent's name, age, residence and circumstances, and praying that the respondent be compelled to furnish such support. The petitioner may include in or attach to the petition any information which may help in locating or identifying the respondent including, but without limitation by enumeration, a photograph of the respondent, a description of any distinguishing marks of the respondent's person, other names and aliases by which the respondent has been or is known, the name of the respondent's employer, the respondent's fingerprints, or social security number.

2. If the respondent be a resident of or domiciled in such state and the court has or can acquire jurisdiction of the person of the respondent under existing laws in effect in such state, such laws shall govern and control the procedure to be followed in such proceeding.

3. If the court of this state acting as an initiating state finds that the petition sets forth facts from which it may be determined that the respondent owes a duty of support and that a court of the responding state may obtain jurisdiction of the respondent or the respondent's property, it shall so certify and shall cause three copies of (a) the petition (b) its certificate and (c) this chapter to be transmitted to the court in the responding state. If the name and address of such court is unknown and the responding state has an information agency comparable to that established in the initiating state it shall cause such copies to be transmitted to the state information agency or other proper official of the responding state, with a request that it forward them to the proper court, and that the court of the responding state acknowledge their receipt to the court of the initiating state.

4. When the court of this state, acting as a responding state, receives from the court of an initiating state the aforesaid copies, it shall docket the cause, notify the county attorney or other official acting as petitioner's representative, set a time and place for a hearing, and take such action as is necessary in accordance with the laws of this state to serve notice and thus obtain jurisdiction over the respondent. If a court of the state, acting as a responding state, is unable to obtain jurisdiction of the respondent or the respondent's property due to inaccuracies or inadequacies in the petition or otherwise, the court shall communicate this fact to the court in the initiating state, shall on its own initiative use all means at its disposal to trace the respondent or the respondent's property, and shall hold the case pending the receipt of more accurate information or an amended petition from the court in the initiating state.

However, if the court of the responding state is unable to obtain jurisdiction because the respondent

resides in or is domiciled or found in another county of the responding state, the papers received from the court of the initiating state may be forwarded by the court of the responding state which received the papers to the court of the county in the responding state in which the respondent resides or is domiciled or found, and the court of the initiating state shall be notified of the transfer. The court of the county where the respondent resides or is domiciled or found shall acknowledge receipt of the papers to both the court of the initiating state and the court of the responding state which forwarded them, and shall take full jurisdiction of the proceedings with the same powers as if it had received the papers directly from the court of the initiating state.

5. It shall not be necessary for the petitioner or the petitioner's witnesses to appear personally at such hearing, but it shall be the duty of the petitioner's representative of the responding state to appear on behalf of and represent the petitioner at all stages of the proceeding.

6. If at such hearing the respondent controverts the petition and enters a verified denial of any of the material allegations thereof, the judge presiding at such hearing shall stay the proceedings and transmit to the judge of the court in the initiating state a transcript of the clerk's minutes showing the denials entered by the respondent.

7. Upon receipt by the judge of the court in the initiating state of such transcript, such court shall take such proof, including the testimony of the petitioner and the petitioner's witnesses and such other evidence as the court may deem proper, and, after due deliberation, the court shall make its recommendation, based on all of such proof and evidence, and shall transmit to the court in the responding state an exemplified transcript of such proof and evidence and of its proceedings and recommendation in connection therewith.

8. Upon the receipt of such transcript, the court in the responding state shall resume its hearing in the proceeding and shall give the respondent a reasonable opportunity to appear and reply.

9. Upon the resumption of such hearing, the respondent shall have the right to examine or cross-examine the petitioner and the petitioner's witnesses by means of depositions or written interrogatories, and the petitioner shall have the right to examine or cross-examine the respondent and the respondent's witnesses by means of depositions or written interrogatories.

10. If a respondent, duly summoned by a court in the responding state, willfully fails without good cause to appear as directed in the summons, the respondent shall be punished in the same manner and to the same extent as is provided by law for the punishment of a defendant or witness who willfully disobeys a summons or subpoena duly issued out of such court in any other action or proceeding cognizable by said court.

11. If, on the return day of the summons, the respondent appears at the time and place specified in

the summons and fails to answer the petition or admits the allegations of the petition, or, if, after a hearing has been duly held by the court in the responding state in accordance with this section, the court has found and determined that the prayer of the petitioner, or any part of the prayer, is supported by the evidence adduced in the proceeding, and that the petitioner is in need of and entitled to support from the respondent, the court shall make and enter an order directing the respondent to furnish support to the petitioner and to pay a sum as the court determines pursuant to section 598.21, subsection 4. A certified copy of the order shall be transmitted by the court to the court in the initiating state and the copy shall be filed with and made a part of the records of the court in the proceeding. Upon entry of an order for support or upon failure of a person to make payments pursuant to an order for support, the court may require the respondent to provide security, a bond, or other guarantee which the court determines is satisfactory to secure the payment of the support. Upon the respondent's failure to pay the support under the order, the court may declare the security, bond, or other guarantee forfeited.

12. The court making such order may require the respondent to make payment at specified intervals to the clerk of the district court, or to the dependent, or to any state or county agency, and to report personally to the sheriff or any other official, at such times as may be deemed necessary.

13. A respondent who shall willfully fail to comply with or violate the terms or conditions of the support order or of the respondent's probation shall be punished by the court in the same manner and to the same extent as is provided by law for a contempt of such court or a violation of probation ordered by such court in any other suit or proceeding cognizable by such court.

14. The court of this state when acting as a responding state shall have the following duties which may be carried out through the clerk of the court: Upon receipt of a payment made by the respondent pursuant to any order of the court or otherwise, to transmit the same forthwith to the court of the initiating state, and upon request to furnish to the court of the initiating state a certified statement of all payments made by the respondent.

15. Any order of support issued by a court of the state acting as a responding state shall not supersede any previous order of support issued in a divorce or separate maintenance action, but the amounts for a particular period paid pursuant to either order shall be credited against amounts accruing or accrued for the same period under both. This subsection also applies to orders entered following an administrative process including, but not limited to, the administrative processes provided pursuant to chapters 252C and 252F.

16. The court of the initiating state shall receive and accept all payments made by the respondent to the probation department or bureau of the court of the responding state and transmitted by the latter on

behalf of the respondent. Upon receipt of any such payment, and under such rules as the court of the initiating state may prescribe, the court, or its probation department or bureau, as the court may direct, shall deliver such payment to the dependent person entitled thereto, take a proper receipt and acquittance therefor, and keep a permanent record thereof.

93 Acts, ch 79, §35  
Subsection 15 amended

#### **252A.18 Registration procedure for foreign support orders — notice.**

1. A petitioner seeking to register a foreign support order in a court of this state shall transmit to the clerk of the court three certified copies of the order reflecting all modifications, one copy of the reciprocal enforcement of support act of the state in which the order was made, and a statement verified and signed by the petitioner, showing the post-office address of the petitioner, the last known place of residence and post-office address of the respondent, the amount of support remaining unpaid, a description and the location of any property of the respondent available upon execution, and a list of the states in which the order is registered. Upon receipt of these documents the clerk of the court, with payment of a filing fee of six dollars, shall file them in the registry of foreign support orders. The filing constitutes registration under this chapter.

2. Promptly upon registration, the clerk of the court shall send by restricted certified mail to the respondent at the address given a notice of the registration with a copy of the registered support order and the post-office address of the petitioner, or the petitioner may request that the respondent be personally served with the notice and the copy of the order in the same manner as original notices are personally served. The clerk shall also docket the case and notify the prosecuting attorney of the action.

3. a. The respondent shall have twenty days after receiving notice of the registration in which to petition the court to vacate the registration or for other relief. If the respondent does not so petition, the respondent is in default and the registered support order is confirmed.

b. If a registration action is initiated by the child support recovery unit, issues subject to challenge are limited to issues of fact relating to the support obligation and not other issues including, but not limited to, custody and visitation, or the terms of the support order.

93 Acts, ch 78, §2  
NEW subsection 3

#### **252A.19 Enforcement procedure for registered foreign support orders.**

1. Upon registration the registered foreign support order shall be treated in the same manner as a support order issued by a court of this state. The order shall have the same effect and shall be subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a support order of this state and may be enforced and satisfied in like manner.

2. At a hearing to enforce the registered support order the respondent may present only matters that would be available to the respondent as defenses in an action to enforce a foreign money judgment. If the respondent states to the court that an appeal from the order is pending or will be taken or that a stay of execution has been granted, the court shall stay enforcement of the order until the appeal is concluded, the time for appeal has expired, or the order is vacated, upon satisfactory proof that the respondent has furnished security for payment of the support as ordered by the court. If the respondent shows to the court any ground upon which enforcement of a support order of this state may be stayed the court shall stay enforcement of the order for an appropriate period if the respondent furnishes the same security for payment of the support ordered that is required for a support order of this state.

93 Acts, ch 78, §3, 4  
 Subsection 2 stricken  
 Subsection 3 amended and renumbered as 2

**252A.20 Modification or adjustment of a registered foreign support order and of an Iowa order registered in a foreign jurisdiction.**

1. An order which has been registered in a court of this state pursuant to section 252A.18 may be

modified or adjusted following registration, subject to all of the following:

a. The modification or adjustment of the order does not affect the underlying judgment in the foreign jurisdiction, unless provided pursuant to the statute of the foreign jurisdiction.

b. The modification or adjustment of the underlying judgment by a foreign jurisdiction does not affect the registered order in this state unless confirmed by a court of this state.

2. A support order issued in a court of this state may be registered in a foreign jurisdiction and, following registration, may be modified or adjusted subject to the following:

a. The modification or adjustment of the registered order by a foreign jurisdiction does not affect the underlying judgment in this state unless confirmed by a court of this state.

b. The modification or adjustment of the underlying judgment by a court of this state following registration in a foreign jurisdiction does not affect the registered order unless provided by the statute of the foreign jurisdiction.

93 Acts, ch 78, §5  
 NEW section

**252A.21 through 252A.23 Reserved.**

**CHAPTER 252B**

**CHILD SUPPORT RECOVERY**

**252B.1 Definitions.**

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

1. “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.

2. “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.

3. “Department” means the department of human services.

4. “Director” means the director of human services.

5. “Obligor” means the person legally responsible for the support of a child as defined in section 598.1 under a support order issued in this state or a foreign jurisdiction.

6. “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.

7. “Unit” means the child support recovery unit created in section 252B.2.

93 Acts, ch 79, §25  
 NEW subsection 5 and former subsections 5 and 6 renumbered as 6 and 7

**252B.3 Duty of department to enforce child support.**

Upon receipt by the department of an application for public assistance on behalf of a child and determination by the department that the child has been abandoned by its parents or that the child and one parent have been abandoned by the other parent or that the parent or other person responsible for the care, support or maintenance of the child has failed or neglected to give proper care or support to the child, the department shall take appropriate action under the provisions of this chapter or under other appropriate statutes of this state including but not limited to chapters 239, 252A, 252F, 598, and 600B,

to ensure that the parent or other person responsible for the support of the child fulfills the support obligation.

The department of human services may negotiate a partial payment of a support obligation with a parent or other person responsible for the support of the child, provided that the negotiation and partial payment are consistent with applicable federal law and regulation.

93 Acts, ch 79 §36  
Unnumbered paragraph 1 amended

#### 252B.4 Nonassistance cases.

The child support and paternity determination services established by the department pursuant to this chapter and other appropriate services provided by law including but not limited to the provisions of chapters 239, 252A, 252C, 252D, 252E, 252F, 598, and 600B shall be made available by the unit to an individual not otherwise eligible as a public assistance recipient upon application by the individual for the services. The application shall be filed with the department.

1. The director shall require an application fee of five dollars.

2. The director may require an additional fee to cover the costs incurred by the department in providing the support collection and paternity determination services.

a. The director shall, by rule, establish and inform all applicants for support enforcement and paternity determination services of the fee schedule.

b. The additional fee for services may be deducted from the amount of the support money recovered by the department or may be collected from the recipient of the services following recovery of support money by the department.

3. When the unit intercepts a federal tax refund of an obligor for payment of delinquent support and the funds are due to a recipient of services who is not otherwise eligible for public assistance, the unit shall deduct a twenty-five dollar fee from the funds before forwarding the balance to the recipient.

a. The unit shall inform the recipient of the fee under this subsection prior to assessment.

b. The fee shall be assessed only to individuals who receive support from the federal tax refund offset program. If the tax refund due the recipient is less than fifty dollars, the fee shall not be assessed.

4. The department may adopt rules to establish fees which provide for recovery of administrative costs of the program in addition to other fees identified.

5. Fees collected pursuant to this section shall be retained by the department for use by the unit. The director or a designee shall keep an accurate record of funds so retained.

6. An application fee paid by a recipient of services pursuant to subsection 1 may be recovered by the unit from the person responsible for payment of support and if recovered, shall be used to reimburse the recipient of services.

a. The fee shall be an automatic judgment against the person responsible to pay support.

b. This subsection shall serve as constructive notice that the fee is a debt due and owing, is an automatic judgment against the person responsible for support, and is assessed as the fee is paid by a recipient of services. The fee may be collected in addition to any support payments or support judgment ordered, and no further notice or hearing is required prior to collecting the fee.

c. Notwithstanding any provision to the contrary, the unit may collect the fee through any legal means by which support payments may be collected, including but not limited to income withholding under chapter 252D or income tax refund offsets, unless prohibited under federal law.

d. The unit is not required to file these judgments with the clerk of the district court, but shall maintain an accurate accounting of the fee assessed, the amount of the fee, and the recovery of the fee.

e. Support payments collected shall not be applied to the recovery of the fee until all other support obligations under the support order being enforced, which have accrued through the end of the current calendar month, have been paid or satisfied in full.

f. This subsection applies to fees that become due on or after July 1, 1992.

93 Acts, ch 78, §6, 7, 93 Acts, ch 79, §37  
Deadline for initial rules implementing subsection 4, items to be considered,  
93 Acts, ch 78, §49

Unnumbered paragraph 1 amended  
Subsection 1 amended  
NEW subsections 3 and 4 and former subsections 3 and 4 renumbered as 5 and 6

#### 252B.5 Services of unit.

The child support recovery unit shall provide the following services:

1. Assistance in the location of an absent parent or any other person who has an obligation to support the child of the resident parent.

2. Aid in establishing paternity and securing a court or administrative order for support pursuant to chapter 252A, 252F, or 600B.

3. Aid in enforcing through court or administrative proceedings an existing court order for support issued pursuant to chapter 252A, 252C, 252F, 598, or 600B, or any other chapter under which child or medical support is granted.

4. Assistance to set off against a debtor's income tax refund or rebate any debt, which is assigned to the department of human services or which the child support recovery unit is attempting to collect on behalf of any individual not eligible as a public assistance recipient, 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. The department of human services shall promulgate rules pursuant to chapter 17A necessary to assist the department of revenue and finance in the implementation of the child support setoff as established under section 421.17, subsection 21.

5. Determine periodically whether an individual receiving unemployment compensation benefits under chapter 96 owes a support obligation which is



being enforced by the unit, and enforce the support obligation through court or administrative proceedings to have specified amounts withheld from the individual's unemployment compensation benefits.

6. Assistance in obtaining medical support as defined in chapter 252E.

7. At the request of either parent who is subject to the order of support or upon its own initiation, review the amount of the support award in accordance with the guidelines established pursuant to section 598.21, subsection 4, and the federal Family Support Act of 1988, and take action to initiate modification proceedings if the criteria established pursuant to this section are met. However, a review of a support award is not required in those cases for which an assignment ordered pursuant to chapter 234 or 239 is in effect if the child support recovery unit determines that such a review would not be in the best interest of the child and neither parent has requested such review.

The department shall adopt rules no later than October 13, 1990, setting forth the process for review of requests for modification of support obligations and the criteria and process for taking action to initiate modification proceedings.

8. *a.* Assistance, in consultation with the department of revenue and finance, in identifying and taking action against self-employed individuals as identified by the following conditions:

(1) The individual owes support pursuant to a court or administrative order being enforced by the unit and is delinquent in an amount equal to or greater than the support obligation amount assessed for one month.

(2) The individual has filed a state income tax return in the preceding twelve months.

(3) The individual has no reported tax withholding amount on the most recent state income tax return.

(4) The individual has failed to enter into or comply with a formalized repayment plan with the unit.

(5) The individual has failed to make either all current support payments in accordance with the court or administrative order or to make payments against any delinquency in each of the preceding twelve months.

*b.* Notwithstanding section 252B.9, the unit may forward information to the department of revenue and finance as necessary to implement this subsection, including but not limited to both of the following:

(1) The name and social security number of the individual.

(2) Support obligation information in the specific case, including the amount of the delinquency.

9. The review and adjustment or modification of a support order pursuant to chapter 252H upon adoption of rules pursuant to chapter 17A governing policies and procedures for review and adjustment or modification.

93 Acts, ch 78, §8; 93 Acts, ch 79, §33, 38  
Subsections 2 and 3 amended  
NEW subsections 8 and 9

### **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 parent, 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. Notwithstanding other statutory provisions to the contrary, including but not limited to chapters 22 and 217, as the chapters relate to confidentiality of records maintained by the department, the payment records of the collection services center maintained under section 252B.13A are public records only as follows:

*a.* Payment records of the collection services center which are maintained pursuant to chapter 598 are public records and may be released upon request.

*b.* Except as otherwise provided in subsection 1, the department shall not release details related to payment records or provide alternative formats for release of the information, with the following additional exceptions:

(1) The unit or collection services center may provide additional detail or present the information in an alternative format to an individual or to the individual's legal representative if the individual owes or is owed a support obligation, to an agency assigned the obligation as the result of receipt by a party of public assistance, to an agency charged with enforcing child support pursuant to Title IV-D of the federal Social Security Act, or to the court.

(2) For support orders entered in Iowa which are being enforced by the unit, the unit may compile and make available for publication a listing of cases in which no payment has been credited to an accrued or accruing support obligation during a previous three-month period. Each case on the list shall be identified only by the name of the support obligor, the support obligor's court order docket or case number, the county in which the obligor's support order

is filed, and the collection services center case numbers. The department shall determine dates for the release of information, the specific format of the information released, and the three-month period used as a basis for identifying cases. The department may not release the information more than twice annually. In compiling the listing of cases, no prior public notice to the obligor is required, but the unit may send notice annually by first-class mail to the last known address of any individual owing a support obligation which is being enforced by the unit. The notice shall inform the individual of the provisions of this subparagraph. Actions taken pursuant to this subparagraph are not subject to review under chapter 17A, and the lack of receipt of a notice does not prevent the unit from proceeding in implementing this subparagraph.

(3) The provisions of subparagraph (2) may be applied to support obligations entered in another state, at the request of an initiating state if the initiating state has demonstrated that the provisions of subparagraph (2) are not in conflict with the laws of the state where the support obligation is entered and the unit is enforcing the support obligation. For the purposes of this subparagraph, “*initiating state*” means any child support enforcement agency operating under the provisions of Title IV-D of the federal Social Security Act.

c. The attorney general may utilize information of the unit to secure, modify, or enforce a support obligation of an individual, unless otherwise prohibited by federal law.

d. This subsection shall not permit or require the release of information contained in the case records of the unit, except to the extent provided in this section.

3. Except as otherwise provided in subsection 1, paragraph “b”, and in subsection 2, 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.

93 Acts, ch 79, §31, 32, 57

Effectiveness of 1993 amendments contingent on approval by federal government, legislative intent regarding implementation, 93 Acts, ch 79, § 57

NEW subsection 2 and former subsection 2 renumbered as 3  
Subsection 3 amended

### 252B.13A Collection services center.

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 as required for orders by section 252B.14. For purposes of this section, support payments do not include attorney fees, court costs, or property settlements.

93 Acts, ch 79, §39, 40  
Former subsection 1 amended  
Subsections 2 and 3 stricken

### 252B.14 Support payments — collection services center — clerk of the district court.

1. For the purposes of this section, “*support order*” includes any order entered pursuant to chapter 234, 252A, 252C, 598, 600B, or any other support chapter or proceeding which establishes support payments as defined in section 598.1.

2. For support orders being enforced by the child support recovery unit, support payments made pursuant to the order shall be directed to and disbursed by the collection services center.

3. For a support order as to which subsection 2 does not apply, 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.

4. 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 in sections 598.22 and 598.22A.

93 Acts, ch 79, §41  
Section amended

### 252B.15 Processing and disbursement of support payments.

1. 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.

2. 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.

93 Acts, ch 79, §42  
Subsections 1, 3 and 4 stricken and former subsections 2 and 5 renumbered as 1 and 2

### 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 immediate-

ly 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.

3. Once the responsibility for receiving and disbursing support payments has been transferred from a clerk of the district court to the collection services center, the responsibility shall remain with the collection services center even if the child support recovery unit is no longer providing enforcement services, unless redirected by court order.

93 Acts, ch 79, §43  
NEW subsection 3

#### **252B.19** Reserved.

#### **252B.20** Suspension of support.

1. If the unit is providing child support enforcement services pursuant to this chapter, the parents of a dependent child for whom support has been ordered pursuant to chapter 252A, 252C, 252F, 598, 600B, or any other chapter, may jointly request the assistance of the unit in suspending the obligation for support if all of the following conditions exist:

a. The parents have reconciled and are cohabiting, and the child for whom support is ordered is living in the same residence as the parents, or the child is currently residing with the parent who is ordered to pay support.

b. The person entitled to receive support and the child for whom support is ordered are not receiving public assistance pursuant to chapter 239, 249A, or a comparable law of a foreign jurisdiction, unless the person against whom support is ordered is considered to be a member of the same household as the child for the purposes of public assistance eligibility.

c. The parents have signed a notarized affidavit attesting to the conditions under paragraphs "a" and "b", have consented to suspension of the support order, and have submitted the affidavit to the unit.

d. No prior request for suspension has been filed with the unit during the two-year period preceding the request.

e. Any other criteria established by rule of the department.

2. Upon receipt of the application for suspension and properly executed and notarized affidavit, the unit shall review the application and affidavit to determine that the necessary criteria have been met. The unit shall then do one of the following:

a. Deny the request and notify the parents in writing that the application is being denied, providing reasons for the denial and notifying the parents

of the right to proceed through private counsel. Denial of the application is not subject to contested case proceedings or further review pursuant to chapter 17A.

b. Approve the request and prepare an order which shall be submitted, along with the affidavit, to a judge of a district court for approval, suspending the accruing support obligation.

3. An order approved by the court for suspension of an accruing support obligation is effective upon the date of filing of the suspension order.

4. An order suspending an accruing support obligation entered by the court pursuant to this section shall be considered a temporary order for the period of six months from the date of filing of the suspension order.

5. During the six-month period the unit may request that the court reinstate the accruing support order if any of the following conditions exist:

a. Upon application to the unit by either parent or other person who has physical custody of the child.

b. Upon the receipt of public assistance benefits, pursuant to chapter 239, 249A, or a comparable law of a foreign jurisdiction, by the person entitled to receive support and the child on whose behalf support is paid, provided that the person owing the support is not considered to be a member of the same household as the child for the purposes of public assistance eligibility.

6. Upon filing of an application for reinstatement, service of the application shall be made either in person or by first class mail upon both parents. Within ten days following the date of service, the parents may file a written objection with the clerk of the district court to the entry of an order for reinstatement.

a. If no objection is filed, the court may enter an order reinstating the accruing support obligation without additional notice.

b. If an objection is filed, the clerk of court shall set the matter for hearing and send notice of the hearing to both parents and the unit.

7. The reinstatement is effective as follows:

a. For reinstatements initiated under subsection 5, paragraph "a", the date the notices were served on both parents pursuant to subsection 6.

b. For reinstatements initiated under subsection 5, paragraph "b", the date the child began receiving public assistance benefits during the suspension of the obligation.

c. Support which became due during the period of suspension but prior to the reinstatement is waived and not due and owing unless the parties requested and agreed to the suspension under false pretenses.

8. If the order suspending a support obligation has been on file with the court for a period exceeding six months, the order becomes final by operation of law and terminates the support obligation, and thereafter, a party seeking to establish a support obligation against either party shall bring a new action for support as provided by law.

9. This section shall not limit the rights of the parents or the unit to proceed by other means to suspend, terminate, modify, reinstate, or establish support.

10. This section does not provide for the suspension, waiver, satisfaction, or retroactive modification of support obligations which accrued prior to the entry of an order suspending enforcement and collection of support pursuant to this section.

11. Nothing in this section shall prohibit or limit the unit or a party entitled to receive support from enforcing and collecting any unpaid support that accrued prior to the suspension of the accruing obligation.

93 Acts, ch 79, §24  
NEW section

#### **252B.21 Administrative seek employment orders.**

1. For any support order being enforced by the unit, the administrator may enter an ex parte order requiring the obligor to seek employment if employment of the obligor cannot be verified and if the obligor has failed to make support payments. Advance notice is not required prior to entering the ex parte order. The unit shall file a copy of the order with the clerk of the district court.

2. The order to seek employment shall contain directives, including all of the following:

a. That the obligor seek employment within a determinate amount of time.

b. That the obligor file with the unit on a weekly basis a report of at least five new attempts to find employment or of having found employment. The report shall include the names, addresses, and the telephone numbers of any employers or businesses with whom the obligor attempted to seek employment and the name of the individual contact to whom the obligor made application for employment or to whom an inquiry was directed.

c. That failure to comply with the notice is evidence of a willful failure to pay support under section 598.23A.

d. That the obligor shall provide the child support recovery unit with verification of any reason for noncompliance with the order.

e. The duration of the order, not to exceed three months.

3. The department may establish additional criteria or requirements relating to seek employment orders by rule as necessary to implement this section.

93 Acts, ch 79, §26  
NEW section

## CHAPTER 252C

### CHILD SUPPORT DEBTS — ADMINISTRATIVE PROCEDURES

#### **252C.1 Definitions.**

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

1. “*Administrator*” means the administrator of the child support recovery unit of the department of human services, or the administrator’s designee.

2. “*Caretaker*” means a parent, relative, guardian, or another person who is responsible for paying foster care costs pursuant to chapter 234 or whose needs are included in an assistance payment made pursuant to chapter 239.

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. For orders entered on or after July 1, 1990, unless the court specifically orders otherwise, medical support, as defined in section 252E.1, is not included in the amount of monetary support.

4. “*Department*” means the department of human services.

5. “*Dependent child*” means a person who meets the eligibility criteria established in chapter 234 or 239 and whose support is required by chapter 234, 239, 252A, 252F, 598, or 600B.

6. “*Medical support*” means either the provision of coverage under a health benefit plan, including a group or employment-related or an individual health benefit plan, or a health benefit plan provided pursuant to chapter 514E, to meet the medical needs of a dependent and the cost of any premium required by a health benefit plan, or the payment to the obligee of a monetary amount in lieu of providing coverage under a health benefit plan, either of which is an obligation separate from any monetary amount of child support ordered to be paid.

7. “*Public assistance*” means foster care costs paid by the department pursuant to chapter 234 or assistance provided pursuant to chapter 239.

8. “*Responsible person*” means a parent, relative, guardian, or another person legally liable for the support of a child or a child’s caretaker.

93 Acts, ch 79, §44  
Subsection 5 amended

#### **252C.4 Certification to court — hearing — default.**

1. A responsible person or the child support recovery unit may request a hearing regarding a deter-

mination of support. If a timely written request for a hearing is received, the administrator shall certify the matter to the district court in the county in which the order has been filed, or if no such order has been filed, then to a district court in the county where the dependent child resides or, where the dependent child resides in another state, to the district court where the absent parent resides.

2. If the matter has not been heard previously by the district court, or an existing administrative order does not provide for medical support pursuant to chapter 252E, the certification shall include true copies of the notice and finding of financial responsibility or notice of the support debt accrued and accruing, the return of service, the written objections and request for hearing, and true copies of any administrative orders previously entered.

3. The court shall set the matter for hearing and notify the parties of the time and place of hearing.

4. The court shall establish the monthly child support payment and the amount of the support debt accrued and accruing pursuant to section 598.21, subsection 4, or medical support pursuant to chapter 252E, or both.

5. If a party fails to appear at the hearing, upon a showing of proper notice to that party, the court may find that party in default and enter an appropriate order.

6. Actions initiated by the administrator under this chapter are not subject to chapter 17A and resulting court hearings following certification shall be an original hearing before the district court.

93 Acts, ch 78, §9  
NEW subsection 6

**252C.9 Prevailing orders.** Repealed by 93 Acts, ch 79, § 54.

## CHAPTER 252D

### CHILD SUPPORT PAYMENTS — ASSIGNMENT OF INCOME AND IMMEDIATE INCOME WITHHOLDING

#### **252D.1 Support definition — delinquent support payments — assignment of income.**

1. As used in this chapter, unless the context otherwise requires, “*support*” or “*support payments*” means any amount which the court may require a person to pay for the benefit of a child under a temporary order or a final judgment or decree, and may include child support, maintenance, medical support as defined in chapter 252E, and, if contained in a child support order, spousal support, and any other term used to describe these obligations. These obligations may include support for a child who is between the ages of eighteen and twenty-two years and who is regularly attending an accredited\* school in pursuance of a course of study leading to a high school diploma or its equivalent, or regularly attending a course of vocational technical training either as a part of a regular school program or under special arrangements adapted to the individual person’s needs, or is, in good faith, a full-time student in a college, university, or community college, or has been accepted for admission to a college, university, or community college and the next regular term has not yet begun; and may include support for a child of any age who is dependent on the parties to the dissolution proceedings because of physical or mental disability.

2. If support payments ordered under chapter 232, 234, 252A, 252C, 252D, 252E, 252F, 598, 600B, or any other applicable chapter, or under a comparable statute of a foreign jurisdiction, as certified to the

child support recovery unit established in section 252B.2, are not paid to the clerk of the district court or the collection services center pursuant to section 598.22 and become delinquent in an amount equal to the payment for one month, upon application of a person entitled to receive the support payments, the child support recovery unit or the district court may enter an *ex parte* order notifying the person whose income is to be assigned, of the delinquent amount, of the amount of income, wages, compensation, or benefits to be withheld, and of the procedure to file a motion to quash the order of assignment, and shall order an assignment of income requiring the withholding of specified sums to be deducted from the delinquent person’s periodic earnings, trust income, compensation, benefits, or other income sufficient to pay the support obligation and, except as provided in section 598.22, requiring the payment of such sums to the clerk of the district court or the collection services center. Notification of income withholding shall be provided to the payor of earnings, trust income, or other income pursuant to section 252D.17.

3. A person entitled by court order to receive support payments or a person responsible for enforcing such a court order may petition the clerk of the district court for an assignment of income. If the petition is verified and establishes that support payments are delinquent in an amount equal to the payment for one month and if the clerk of the district court determines, after providing an opportunity for

a hearing, that notice of the mandatory assignment of income as provided in section 252D.3 has been given, the clerk of the district court shall order an assignment of income under subsection 2.

93 Acts, ch 78, §10, 93 Acts, ch 79, §45

\*Accreditation takes effect beginning July 1, 1989, schools remain subject to the approval process in §257 25, Code 1985, until accredited, see §256 11(10)

See Code editor's note to §6A 10

Subsection 2 amended

#### **252D.8 Persons subject to immediate income withholding.**

1. In a support order issued or modified on or after November 1, 1990, for which services are being provided by the child support recovery unit, and in any support orders issued or modified after January 1, 1994, for which services are not provided by the child support recovery unit, the income of a support obligor is subject to withholding, on the effective date of the order, regardless of whether support payments by the obligor are in arrears. If services are being provided pursuant to chapter 252B, the child support recovery unit may enter an ex parte order for an immediate withholding of income if authorizing language is contained in the court order. The district court may enter an ex parte order for immediate income withholding for cases in which the child support recovery unit is not providing services. The income of the obligor is subject to immediate withholding unless one of the following occurs:

a. One of the parties demonstrates and the court or child support recovery unit finds there is good cause not to require immediate withholding. A finding of good cause shall be based on, at a minimum, written findings and conclusions by the court or administrative authority as to why implementing immediate withholding would not be in the best interests of the child. In cases involving modifications, the findings shall also include proof of timely payment of previously ordered support.

b. A written agreement is reached between both parties which provides for an alternative arrangement. If the support payments have been assigned to the department of human services pursuant to chapter 234 or 239, or a comparable statute of another jurisdiction, the department shall be considered a party to the support order, and a written agreement pursuant to this section to waive immediate withholding is void unless approved by the child support recovery unit. Any agreement existing at the time an assignment of support is made pursuant to chapter 234 or 239 or pursuant to a comparable statute of another jurisdiction shall not prevent the child support recovery unit from implementing immediate withholding.

2. For an order not requiring immediate withholding, income of an obligor is subject to immediate withholding, without regard to whether there is an arrearage, on the earliest of the following:

a. The date the obligor requests that the withholding begin.

b. The date the custodial parent or party to the proceeding requests that the withholding begin, if

the request is approved by the district court or, in cases in which services are being provided pursuant to chapter 252B, if the child support recovery unit approves the request.

93 Acts, ch 78, §11

Section amended

**252D.12 Notice to employer or income payor.** Repealed by 93 Acts, ch 78, § 47. See § 252D.17.

**252D.13 Priority.** Repealed by 93 Acts, ch 78, § 47. See § 252D.17.

**252D.14 Modification or revocation of immediate income withholding.** Repealed by 93 Acts, ch 78, § 47. See § 252D.18.

**252D.15 and 252D.16 Reserved.**

#### SUBCHAPTER III

#### GENERAL PROVISIONS

**252D.17 Notice to employer or income payor — duties and liability — criminal penalty.**

The child support recovery unit or the district court shall provide notice of income withholding to the obligor's employer, trustee, or other payor of income. Notice shall be sent by regular mail, with proof of service completed according to rule of civil procedure 82 and, in addition to the amount to be withheld for payment of support, shall include all of the following information regarding the duties of the payor in implementing the withholding order:

1. The withholding order for child support has priority over a garnishment or an assignment for a purpose other than the support of the dependents in the court order being enforced.

2. As reimbursement for the payor's processing costs, the payor may deduct a fee of no more than two dollars for each payment in addition to the amount withheld for support.

3. The amount withheld for support, including the processing fee, shall not exceed the amounts specified in 15 U.S.C. § 1673(b).

4. Income withholding is binding on an existing or future employer, trustee, or other payor ten days after receipt of the notice.

5. The payor shall send the amounts withheld to the collection services center or the clerk of the district court within ten working days of the date the obligor is paid.

6. The payor may combine amounts withheld from the obligor's wages in a single payment to the clerk of the district court or to the collection services center, as appropriate. Whether combined or separate, payments shall be identified by the name of the obligor, account number, amount, and the date withheld. If payments for multiple obligors are combined, the portion of the payment attributable to each obligor shall be specifically identified.

7. The payor shall deliver or send a copy of the order to the person named in the order within one business day after receipt of notice.

8. The withholding is binding on the payor until further notice by the court or the child support recovery unit.

9. If the payor fails to withhold income in accordance with the provisions of the order, the payor is liable for the accumulated amount which should have been withheld, together with costs, interest, and reasonable attorney fees related to the collection of the amounts due from the payor.

10. The payor shall promptly notify the court or the child support recovery unit when the obligor's employment or other income terminates, and provide the obligor's last known address and the name and address of the obligor's new employer, if known.

11. Any payor who discharges an obligor, refuses to employ an obligor, or takes disciplinary action against an obligor based upon income withholding is guilty of a simple misdemeanor. A withholding order has the same force and effect as any other district court order, including, but not limited to, contempt of court proceedings for noncompliance.

93 Acts, ch 78, §12  
NEW section

#### **252D.18 Modification or termination of withholding.**

1. The court or the child support recovery unit may, by ex parte order, modify a previously entered income withholding order if the court or the unit determines any of the following:

a. There has been a change in the amount of the current support obligation.

b. The amount required to be withheld under the income withholding order is in error.

c. Any past due support debt has been paid in full. Should a delinquency later accrue, the withholding order may be modified to secure payment toward the delinquency.

2. The court or the child support recovery unit may, by ex parte order, terminate an income withholding order when the current support obligation has terminated and when the delinquent support obligation has been fully satisfied as applicable to all of the children covered by the income withholding order.

3. In no case shall payment of overdue support be the sole basis for termination of withholding.

93 Acts, ch 78, §13  
Section stricken and rewritten

#### **252D.18A Multiple income withholding orders — amounts withheld by payor.**

When the obligor is responsible for paying more than one support obligation and the employer or the income payor has received more than one income withholding order for the obligor, the payor shall withhold amounts in accordance with all of the following:

1. The total of all amounts withheld shall not exceed the amounts specified in 15 U.S.C. § 1673(b).

2. As reimbursement for the payor's processing costs, the payor may deduct a fee of no more than two dollars for each payment withheld in addition to the amount withheld for support.

3. Priority shall be given to the withholding of current support rather than delinquent support. The payor shall not allocate amounts withheld in a manner which results in the failure to withhold an amount for one or more of the current support obligations.

a. To arrive at the amount to be withheld for each obligee, the payor shall total the amounts due for current support under the income withholding orders and determine the proportionate share for each obligee. The proportionate share shall be determined by dividing the amount due for current support for each order by the total due for current support for all orders. The results are the percentages of the obligor's net income which shall be withheld for each obligee.

b. If, after completing the calculation in paragraph "a", the withholding limit specified under 15 U.S.C. § 1673(b) has not been attained, the payor shall total the amounts due for arrearages and determine the proportionate share for each obligee. The proportionate share amounts shall be established utilizing the procedures established in paragraph "a" for current support obligations.

4. The payor shall identify and report payments by the obligor's name, account number, amount, and date withheld pursuant to section 252D.17. If payments for multiple obligees are combined, the portion of the payment attributable to each obligee shall be specifically identified.

93 Acts, ch 78, §14  
NEW section

#### **252D.18B Irregular income.**

When payment of income is irregular, and an order for immediate or mandatory income withholding has been entered by the child support recovery unit or the district court, the income payor shall withhold income equal to the total that would have been withheld had there been regular monthly income. The amounts withheld shall not exceed the amounts specified in 15 U.S.C. § 1673(b). For the purposes of this section, an income source is irregular when there are periods in excess of one month during which the income payor makes no payment to the obligor and the periods are not the result of termination or suspension of employment.

93 Acts, ch 78, §15  
NEW section

#### **252D.18C Withholding from lump sum payments.**

The child support recovery unit or the district court may enter an ex parte order for income withholding when the obligor is paid by a lump sum in-

come source. When a sole payment is made or payment occurs at two-month or greater intervals, the withholding order may include all current and delinquent support due through the current month, but shall not exceed the amounts specified in 15 U.S.C. § 1673(b).

93 Acts, ch 78, §16  
NEW section

#### **252D.24 Applicability to support orders of foreign jurisdictions.**

1. An income withholding order may be entered to enforce a support order of a foreign jurisdiction. The foreign support order may be entered and filed with the clerk of the district court at the time the income withholding order is entered. Entry of the foreign support order under this subsection does not constitute registration of the order.

2. Notice of withholding requirements pursuant to section 252D.3 is met if comparable notice was issued in the foreign jurisdiction, was included in the support order, or was provided as a separate written notice.

3. Income withholding for a support order issued by a foreign jurisdiction is subject to the law and procedures for income withholding of the jurisdiction where the income withholding order is implemented. With respect to when the obligor becomes subject to withholding, however, the law and procedures of the

jurisdiction where the support order was entered apply.

93 Acts, ch 78, §17  
NEW section

#### **252D.25 Limitations on scope of proceedings.**

1. Issues related to visitation, custody, or other provisions not related to the support provisions of a support order are not grounds for a motion to quash, revoke, suspend, or stay a withholding order.

2. Support orders shall not be modified under a motion to quash a withholding order.

93 Acts, ch 78, §18  
NEW section

#### **252D.26 through 252D.29 Reserved.**

#### **252D.30 Ex parte order — provisions for medical support.**

An *ex parte* order entered under this chapter may also include provisions for enforcement of medical support when medical support provisions are included in the support order. The *ex parte* order may require income withholding of a dollar amount for medical support or implementation of provision for dependent coverage under a health benefit plan pursuant to chapter 252E.

93 Acts, ch 78, §19  
NEW section

## CHAPTER 252E

### MEDICAL SUPPORT

#### **252E.1 Definitions.**

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

1. *“Child”* means a person for whom child or medical support may be ordered pursuant to chapter 234, 239, 252A, 252C, 252F, 598, 600B or any other chapter of the Code or pursuant to a comparable statute of a foreign jurisdiction.

2. *“Department”* means the department of human services, which includes but is not limited to the child support recovery unit, or any comparable support enforcement agency of another state.

3. *“Dependent”* means a child, or an obligee for whom a court may order coverage by a health benefit plan pursuant to section 252E.3.

4. *“Enroll”* means to be eligible for and covered by a health benefit plan.

5. *“Health benefit plan”* means any policy or contract of insurance, indemnity, subscription or membership issued by an insurer, health service corpora-

tion, health maintenance organization, or any similar corporation, organization, or a self-insured employee benefit plan, for the purpose of covering medical expenses. These expenses may include, but are not limited to hospital, surgical, major medical insurance, dental, optical, prescription drugs, office visits, or any combination of these or any other comparable health care expenses.

6. *“Insurer”* means any entity which provides a health benefit plan.

7. *“Medical support”* means either the provision of a health benefit plan, including a group or employment-related or an individual health benefit plan, or a health benefit plan provided pursuant to chapter 514E, to meet the medical needs of a dependent and the cost of any premium required by a health benefit plan, or the payment to the obligee of a monetary amount in lieu of a health benefit plan, either of which is an obligation separate from any monetary amount of child support ordered to be paid. Medical support is not alimony.



8. “*Obligee*” means a parent or another natural person legally entitled to receive a support payment on behalf of a child.

9. “*Obligor*” means a parent or another natural person legally responsible for the support of a dependent.

10. “*Order*” means a support order entered pursuant to chapter 234, 252A, 252C, 252H, 598, 600B, or any other support chapter, or pursuant to a comparable statute of a foreign jurisdiction, or an ex parte order entered pursuant to section 252E.4.

93 Acts, ch 78, §20, 93 Acts, ch 79, §46  
 Subsection 1 amended  
 NEW subsection 10

**252E.2 Order for medical support.**

1. An order requiring the provision of coverage under a health benefit plan is authorization for enrollment of the dependent if the dependent is otherwise eligible to be enrolled. The dependent’s eligibility and enrollment for coverage under such a plan shall be governed by all applicable terms and conditions, including, but not limited to, eligibility and insurability standards. The dependent, if eligible, shall be provided the same coverage as the obligor.

2. The obligor shall take all actions necessary to enroll and maintain coverage under a health benefit plan for a dependent at the obligor’s present and all future places of employment.

93 Acts, ch 78, §21  
 Section amended

**252E.4 Order to employer.**

1. When a support order requires an obligor to provide coverage under a health benefit plan, the district court or the department may enter an ex parte order directing an employer to take all actions necessary to enroll an obligor’s dependent for coverage under a health benefit plan.

2. The obligee, district court, or department may forward either the support order containing the provision for coverage under a health benefit plan or the ex parte order provided for in subsection 1 to the obligor’s employer.

3. This chapter shall be constructive notice to the obligor of enforcement and further notice prior to enforcement is not required.

4. The order requiring coverage is binding on all future employers or insurers if the dependent is eligible to be enrolled in the health benefit plan under the applicable plan terms and conditions.

93 Acts, ch 78, §22  
 Section amended

**252E.11 Assignment.**

If medical assistance is provided by the department to a dependent pursuant to chapter 249A, rights to medical support payments are assigned to the department.

93 Acts, ch 78, §23  
 Section amended

**CHAPTER 252F**

**ADMINISTRATIVE ESTABLISHMENT OF PATERNITY**

**252F.1 Definitions.**

As used in this chapter unless the context otherwise requires:

1. “*Administrator*” means the administrator of the child support recovery unit of the department of human services or the administrator’s designee.

2. “*Mother*” means a mother of the child for whom paternity is being established.

3. “*Paternity is at issue*” means any of the following conditions:

a. A child was not born or conceived within marriage.

b. A child was born or conceived within marriage but a court has declared that the child is not the issue of the marriage.

c. Paternity has been established by the filing of an affidavit of paternity and the father is contesting paternity within the statute of limitations period pursuant to section 600B.41, subsection 7.

4. “*Paternity test*” means and includes any form

of blood, tissue, or genetic testing administered to determine the biological father of a child.

5. “*Putative father*” means a person alleged to be the biological father of a child.

6. “*Unit*” means the child support recovery unit created in section 252B.2.

93 Acts, ch 79, §14  
 NEW section

**252F.2 Jurisdiction.**

In any case in which the unit is providing services pursuant to chapter 252B and paternity is at issue, proceedings may be initiated by the unit pursuant to this chapter for the sole purpose of establishing paternity and any accrued or accruing child support or medical support obligations. Proceedings under this chapter are in addition to other means of establishing paternity or support. Issues in addition to establishment of paternity or support obligations shall not be addressed in proceedings initiated under this chapter.

An action to establish paternity and support under this chapter may be brought within the time limitations set forth in section 614.8.

93 Acts, ch 79, §15  
NEW section

**252F.3 Notice of alleged paternity and support debt — conference — request for hearing.**

1. The unit may prepare a notice of alleged paternity and support debt to be served on the putative father if the mother of the child provides a statement to the unit verifying that the putative father is or may be the biological father of the child or children involved. The notice shall be accompanied by a copy of the statement and served on the putative father in accordance with rule of civil procedure 56.1. Service upon the mother shall not constitute valid service upon the putative father. The notice shall include all of the following:

a. The name of the recipient of services under chapter 252B and the name and birth date of the child or children involved.

b. A statement that the putative father has been named as the biological father of the child or children named.

c. A statement that the amount of the putative father's monthly support obligation and the amount of the support debt accrued and accruing will be established in accordance with the guidelines established in section 598.21, subsection 4, and the criteria established pursuant to section 252B.7A.

d. A statement that the putative father has a duty to provide accrued and accruing medical support to the child or children in accordance with chapter 252E.

e. An explanation of the procedures for determining the child support obligation and a request for financial or income information as necessary for application of the child support guidelines established pursuant to section 598.21, subsection 4.

f. (1) The right of the putative father to request a conference with the unit to discuss paternity establishment and the amount of support that the putative father is required to pay, within ten days of the date of service or within ten days of the date of mailing of the paternity test results to the putative father if the father denies paternity.

(2) A statement that if a conference is requested, the putative father shall have ten days from the date set for the conference or twenty days from the date of service of the original notice, or ten days from the date of the mailing of paternity test results to the putative father if the putative father no longer denies paternity, whichever is later, to send a written request for a hearing on the issue of support to the unit.

(3) A statement that after the holding of the conference, the administrator may issue a new notice and finding of financial responsibility for child support or medical support, or both, to be sent to the putative father by regular mail addressed to the putative father's last known address.

(4) A statement that if the administrator issues

a new notice and finding of financial responsibility for child support or medical support, or both, the putative father shall have ten days from the date of issuance of the new notice or twenty days from the date of service of the original notice, or ten days from the date of the mailing of paternity test results to the putative father if the putative father no longer denies paternity, whichever is later, to send a written request for a hearing on the issue of support to the unit.

g. A statement that if a conference is not requested, and the putative father objects to the finding of financial responsibility or the amount of child support or medical support, or both, the putative father shall within twenty days of the date of service or within ten days from the date of the mailing of paternity test results to the putative father if the putative father no longer denies paternity, whichever is later, send a written request for a hearing on the issue of support to the unit.

h. A statement that if a timely written request for a hearing on the issue of support is received by the unit, the putative father shall have the right to a hearing to be held in district court and that if no timely written request is received and paternity is not denied, the administrator may enter an order in accordance with the notice and finding of financial responsibility for child support or medical support, or both.

i. A statement of the rights and responsibilities associated with the establishment of paternity.

j. A statement of the putative father's right to deny paternity, the procedures for denying paternity, and the consequences of the denial.

2. The time limitations established for the notice provisions under subsection 1 are binding unless otherwise specified in this chapter or waived by the putative father pursuant to section 252F.8.

3. If notice is served on the putative father, the unit shall file a true copy of the notice and the original return of service with the clerk of the district court in the county in which the child or children reside, or, if the action is the result of a request from a foreign jurisdiction of another state to establish paternity of a putative father located in Iowa, in the county in which the putative father resides. All subsequent documents filed or court hearings held related to the action shall be in the district court in the county in which notice was filed pursuant to this subsection. The clerk shall file and docket the action.

4. If the putative father requests a hearing on the issue of support, and if a timely written response setting forth objections and requesting a hearing is received by the unit, a hearing shall be held in district court on the issue of support.

5. If a timely written response and request for hearing is not received by the unit and the putative father does not deny paternity, the administrator may enter an order in accordance with section 252F.4 on the issue of support.

6. a. If the putative father denies paternity, the putative father shall submit, within twenty days of

service of the notice under subsection 1, a written denial of paternity to the unit. Upon receipt of a written denial of paternity, the administrator shall enter an ex parte administrative order requiring the mother, child or children, and the putative father to submit to paternity testing. The order shall be filed with the clerk of the district court in the county where the notice was filed.

b. If the putative father has signed an affidavit of paternity pursuant to section 252A.3A within the three-year period prior to the receipt of notice, and the putative father contests paternity, the putative father shall pay all costs of the paternity testing.

c. If a paternity test is required under this section, the administrator shall direct that inherited characteristics, including but not limited to blood types, be analyzed and interpreted, and shall appoint an expert qualified as an examiner of genetic markers to analyze and interpret the results and report the results to the administrator.

d. The putative father shall be provided one opportunity to reschedule the paternity testing appointment if the testing is rescheduled prior to the date of the originally scheduled appointment.

e. An original copy of the test results shall be sent to the clerk of the district court in the county where the notice was filed, and a copy shall be sent to the administrator and to the putative father.

f. Verified documentation of the chain of custody of the blood specimens is competent evidence to establish the chain of custody.

g. If the expert concludes that the test results show that the putative father is not excluded and that the probability of the putative father's paternity is ninety-five percent or higher, there shall be a rebuttable presumption that the putative father is the biological father, and the evidence shall be sufficient as a basis for administrative establishment of paternity. A verified expert's report on test results which indicate a statistical probability of paternity is sufficient authenticity of the expert's conclusion.

h. If the paternity test results indicate a probability of paternity of ninety-five percent or greater and the putative father wishes to challenge the presumption of paternity, the putative father shall file a written notice of the challenge with the district court and an application for a hearing by the district court within twenty days of the filing of the expert's report with the clerk of the district court or within ten days after the scheduled date of the conference, whichever occurs later.

(1) The party challenging the presumption of paternity has the burden of proving that the putative father is not the father of the child.

(2) The presumption of paternity may be rebutted only by clear and convincing evidence.

i. If the expert concludes that the test results indicate that the putative father is not excluded and that the probability of the putative father's paternity is less than ninety-five percent, test results shall be weighed along with other evidence of paternity. To challenge the test results, a party shall file a written

notice of the challenge with the clerk of the district court within twenty days of the filing of the expert's report and shall send a copy of the written notice to any other party. The administrator may then order a second test or certify the case to the district court for resolution.

j. If the paternity test results exclude the putative father as a potential biological father of the child, and additional tests are not requested by either party, the unit shall withdraw its action against the putative father and shall file a notice of the withdrawal with the clerk of the district court.

k. If the results of the test or the expert's analysis are disputed, the administrator, upon the request of a party or upon the unit's own initiative, shall order that an additional test be performed by the same laboratory or an independent laboratory, at the expense of the party requesting additional testing.

93 Acts, ch 79, §16  
NEW section

#### **252F.4 Entry of order.**

1. If the putative father fails to respond to the initial notice within twenty days after the date of service of the notice or fails to appear at the conference pursuant to section 252F.3 on the scheduled date of the conference, the administrator may enter an order against the putative father, declaring the putative father to be the biological father and assessing the support obligation and accrued and accruing child support pursuant to the guidelines established under section 598.21, subsection 4, and medical support pursuant to chapter 252E against the father.

2. If the putative father fails to appear for a paternity test and fails to request a rescheduling pursuant to section 252F.3, or fails to appear for both the initial and the rescheduled paternity tests, the administrator may enter an order against the putative father declaring the putative father to be the biological father of the child and assessing the support obligation and accrued and accruing child support pursuant to the guidelines established under section 598.21, subsection 4, and medical support pursuant to chapter 252E against the father.

3. If the putative father appears at a conference, the administrator may enter an order against the putative father ten days after the second notice has been sent declaring the putative father to be the biological father of the child and assessing the support obligation and accrued and accruing child support pursuant to the guidelines established under section 598.21, subsection 4, and medical support pursuant to chapter 252E against the father.

4. If paternity testing was performed and the putative father was not excluded, and the putative father fails to timely challenge paternity testing, the administrator may enter an order against the putative father declaring the putative father to be the biological father of the child and assessing the support obligation and accrued and accruing child support pursuant to the guidelines established under section 598.21, subsection 4, and medical support pursuant to chapter 252E against the father.

5. The administrator shall establish a support obligation under this section based upon the best information available to the unit and pursuant to section 252B.7A.

6. The order shall contain all of the following:

- a. A declaration of paternity.
- b. The amount of monthly support to be paid, with direction as to the manner of payment.
- c. The amount of accrued support.
- d. The name of the custodial parent or caretaker.
- e. The name and birth date of the child or children to whom the order applies.

f. A statement that property of the putative father is subject to income withholding, liens, garnishment, tax offset, and other collection actions.

g. The medical support required pursuant to chapter 598 and chapter 252E.

7. If the putative father does not deny paternity but does wish to challenge the issues of child or medical support, the administrator may enter an order establishing paternity and reserving the issues of child or medical support for determination by the district court.

93 Acts, ch 79, §17  
NEW section

#### **252F.5 Certification to district court.**

1. Actions initiated under this chapter are not subject to contested case proceedings or further review pursuant to chapter 17A.

2. An action under this chapter may be certified to the district court if a party challenges the administrator's finding of paternity, or the amount of support, or both. Review by the district court shall be an original hearing before the court.

3. In any action brought under this chapter, the action shall not be certified to the district court in a contested paternity action unless all of the following have occurred:

- a. Paternity testing has been completed.
- b. The results of the paternity test have been sent to the putative father.
- c. A written objection to the entry of an order has been received from the putative father.

4. A matter shall be certified to the district court in the county in which the notice was filed pursuant to section 252F.3, subsection 3.

5. The court shall set the matter for hearing and notify the parties of the time of and place for hearing.

6. If the court determines that the putative fa-

ther is the biological father, the court shall establish the amount of the monthly support payment and the accrued and accruing child support pursuant to the guidelines established under section 598.21, subsection 4, and shall establish medical support pursuant to chapter 252E.

7. If a party fails to appear at the hearing, upon a showing that proper notice has been provided to the party, the court may find the party in default and enter an appropriate order.

93 Acts, ch 79, §18  
NEW section

#### **252F.6 Filing with the district court.**

Following issuance of an order by the administrator, the order shall be presented to an appropriate district court judge for review and approval. Unless a defect appears on the face of the order, the district court shall approve the order. Upon approval by the district court judge, the order shall be filed in the district court in the county in which the notice was filed pursuant to section 252F.3, subsection 3. Upon filing, the order has the same force and effect as a district court order.

93 Acts, ch 79, §19  
NEW section

#### **252F.7 Report to vital statistics.**

Upon the filing of an order with the district court pursuant to this chapter, the clerk of the district court shall report the information from the order to the bureau of vital statistics in the manner provided in section 600B.36.

93 Acts, ch 79, §20  
NEW section

#### **252F.8 Waiver of time limitations by putative father.**

1. A putative father may waive the time limitations established in this chapter.

2. Upon receipt of a signed statement from the putative father waiving the time limitations, the administrator may enter an order establishing paternity and support and the court may approve the order, notwithstanding the expiration of the period of the time limitations.

3. If a putative father waives the time limitations and an order establishing paternity and support is entered under this chapter, the signed statement of the putative father waiving the time limitations shall be filed with the order for support.

93 Acts, ch 79, §21  
NEW section

## CHAPTER 252G

### CENTRAL EMPLOYEE REGISTRY

**252G.1 Definitions.**

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

1. *“Compensation”* means payment owed by the payor of income for:
  - a. Labor or services rendered by an employee or contractor to the payor of income.
  - b. Benefits including, but not limited to, vacation, holiday, and sick leave, and severance payments which are due an employee under an agreement with the employer or under a policy of the employer.
2. *“Contractor”* means a natural person who is an independent contractor, including an independent trucking owner or operator.
3. *“Date of hire”* means the earlier of either of the following:
  - a. The first day for which the employee or contractor is owed compensation by the payor of income.
  - b. The first day that an employee or contractor reports to work or performs labor or services for the payor of income.
4. *“Days”* means calendar days.
5. *“Department”* means the department of human services.
6. *“Dependent”* includes a spouse or child or any other person who is in need of and entitled to support from a person who is declared to be legally liable for the support of that dependent.
7. *“Employee”* means a natural person who is employed by an employer in this state for compensation and for whom the employer withholds federal or state tax liabilities from the employee’s compensation.
8. *“Employer”* means a person doing business in the state who engages an employee for compensation and for whom the employer withholds federal or state tax liabilities from the employee’s compensation.
9. *“Payor of income”* includes both an employer and a person doing business in the state who engages a contractor for compensation.
10. *“Registry”* means the central employee registry created in section 252G.2.
11. *“Rehire”* means the earlier of either of the following:
  - a. The first day for which the employee or contractor is owed compensation by the payor of income following an unpaid absence of a minimum of six consecutive weeks.
  - b. The first day that an employee or contractor reports to work or performs labor or services for the payor of income following an unpaid absence of a minimum of six consecutive weeks.

12. *“Unit”* means the child support recovery unit created in section 252B.2.

93 Acts, ch 79, §3  
NEW section

**252G.2 Establishment of central employee registry.**

By January 1, 1994, the unit shall establish a centralized employee registry database for the purpose of receiving and maintaining information on newly hired or rehired employees from employers. The unit shall establish the database and the department may adopt rules in conjunction with the department of revenue and finance and the department of employment services to identify appropriate uses of the registry and to implement this chapter, including implementation through the entering of agreements pursuant to chapter 28E.

93 Acts, ch 79, §4  
NEW section

**252G.3 Employer reporting requirements — penalty.**

1. Beginning January 1, 1994, an employer who hires or rehires an employee on or after January 1, 1994, shall report all of the following to the centralized employee registry within ten days of the hiring or rehiring of an employee:
  - a. The employer’s name, address, and federal identification number.
  - b. The employee’s name, address, social security number, and date of birth.
  - c. Information regarding availability of employee dependent health care coverage and whether or not the employee is qualified for the coverage.
  - d. Whether the payroll of the employer is prepared at the address of the employer or at a separate location, and the address of the separate location, if applicable.
2. Employers required to report may report the information required under subsection 1 by any of the following means:
  - a. By mailing a copy of the employee’s Iowa employee’s withholding allowance certificate to the registry.
  - b. By submitting electronic media in a format approved by the unit in advance.
  - c. By submitting a fax transmission of the employee’s Iowa employee’s withholding allowance certificate to the registry.
  - d. By any other means authorized by the unit in advance if the means will result in timely reporting.
3. Until such time as the Iowa employees’ withholding allowance certificate is amended to provide for inclusion of all of the information required under

subsection 1, submission of the certificate constitutes compliance with this section.

4. If an employer fails to report as required under this section, an action may be brought against the employer by any state agency accessing or administering the registry, or by the attorney general. The action may be brought in district court in the county in which the employer has its principal place of business, or if the employer has no principal place of business, in any county in which an employee is performing labor or service for compensation, or in Polk county to determine noncompliance with this section. A willful failure to provide the information shall be punishable as contempt.

93 Acts, ch 79, §5  
NEW section

#### **252G.4 Alternative reporting requirements — penalty.**

1. Beginning January 1, 1994, a payor of income to whom section 252G.3 is inapplicable, who engages a contractor on or after January 1, 1994, shall report all of the following to the registry within ten days of hiring or rehiring of a contractor:

a. The name, address, and federal identification number of the payor of income.

b. The contractor's name, address, social security number, and if known, the contractor's date of birth.

2. Payors of income to whom section 252G.3 is inapplicable shall report under this section only when all of the following conditions are met:

a. The contractor is not being engaged for the sole purpose of performing services on the residential property of the payor of income.

b. Payment of income under the contract is reasonably expected to equal or exceed one thousand dollars in any twelve-month period.

c. The contractor will perform labor or services for a minimum period of two months.

3. A payor of income required to report under this section may report the information required under subsection 1 by any written means authorized by the unit which results in timely reporting.

4. Information reported under this section shall be received and maintained as provided in section 252G.2.

5. A payor of income required to report under this section who fails to report is subject to the penalty provided in section 252G.3, subsection 4.

93 Acts, ch 79, §6  
NEW section

#### **252G.5 Access to centralized employee registry.**

The records of the centralized employee registry are confidential records pursuant to section 22.7, and may be accessed only by state agencies as provided in this section. When a state agency accesses information in the registry, the agency may use the information to update the agency's own records. Access to and use of the information contained in the registry shall be limited to the following:

1. The unit for administration of the child support enforcement program, including but not limited to activities related to establishment and enforcement of child and medical support obligations through administrative or judicial processes, and other services authorized pursuant to chapter 252B.

2. State agencies which utilize income information for the determination of eligibility or calculation of payments for benefit or entitlement payments.

3. State agencies which utilize income information for the recoupment of debts to the state.

93 Acts, ch 79, §7  
NEW section

#### **252G.6 Administration and costs of the centralized employee registry.**

1. The registry shall maintain the information received from employers for a minimum period of six months.

2. State agencies accessing the centralized registry shall participate in a proportionate cost sharing to defray the administrative costs of the registry. The amount of a state agency's proportionate share shall be established by rule of the department.

93 Acts, ch 79, §8  
NEW section

## CHAPTER 252H

### ADJUSTMENT AND MODIFICATION OF SUPPORT ORDERS

#### SUBCHAPTER I

#### GENERAL PROVISIONS

##### **252H.1 Purpose and intent.**

This chapter is intended to provide a means for state compliance with the federal Family Support Act of 1988, requiring states to provide procedures for the review and adjustment of support orders being enforced under Title IV-D of the federal Social Security Act, and also to provide an expedited modification process when review and adjustment procedures are not required, appropriate, or applicable. Actions under this chapter shall be initiated only by the child support recovery unit.

93 Acts, ch 78, §24  
NEW section

##### **252H.2 Definitions.**

As used in this chapter, unless the context otherwise requires, “*administrator*”, “*caretaker*”, “*court order*”, “*department*”, “*dependent child*”, “*medical support*”, and “*responsible person*” mean the same as defined in section 252C.1.

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

1. “*Act*” means the federal Social Security Act.
2. “*Adjustment*” applies only to the child support provisions of a support order and means either of the following:
  - a. A change in the amount of child support based upon an application of the child support guidelines established pursuant to section 598.21, subsection 4.
  - b. An addition of or change to provisions for medical support as defined in section 252E.1.
3. “*Child*” means a child as defined in section 252B.1.
4. “*Child support agency*” means any state, county, or local office or entity of another state that has the responsibility for providing child support enforcement services under Title IV-D of the Act.
5. “*Child support recovery unit*” or “*unit*” means the child support recovery unit created pursuant to section 252B.2.
6. “*Modification*” means either of the following:
  - a. An alteration, change, correction, or termination of an existing support order.
  - b. The establishment of a child or medical support obligation in a previously established order entered pursuant to chapter 234, 252A, 252C, 598, 600B, or any other support proceeding, in which such support was not previously established, or in which support was previously established and subsequently terminated prior to the emancipation of the children affected.

7. “*Parent*” means, for the purposes of requesting a review of a support order and for being entitled to notice under this chapter:

- a. The individual ordered to pay support pursuant to the order.
- b. An individual or entity entitled to receive current or future support payments pursuant to the order, or pursuant to a current assignment of support including but not limited to an agency of this or any other state that is currently providing public assistance benefits to the child for whom support is ordered and any child support agency. Service of notice of an action initiated under this chapter on an agency is not required, but the agency may be advised of the action by other means.

8. “*Public assistance*” means benefits received in this state or any other state, under Title IV-A (aid to dependent children), IV-E (foster care), or XIX (medicaid) of the Act.

9. “*Review*” means an objective evaluation conducted through a proceeding before a court, administrative body, or an agency, of information necessary for the application of a state’s mandatory child support guidelines to determine:

- a. The appropriate monetary amount of support.
- b. Provisions for medical support.

10. “*State*” means “*state*” as defined in section 252A.2.

11. “*Support order*” means a “*court order*” as defined in section 252C.1 or an order establishing support entered pursuant to an administrative or quasi-judicial process if authorized by law.

93 Acts, ch 78, §25; 93 Acts, ch 79, §47  
NEW section  
Unnumbered paragraph 1 amended

##### **252H.3 Scope of the administrative adjustment or modification — role of district court in contested cases.**

1. Any action initiated under this chapter, including any court hearing resulting from an action, shall be limited in scope to the adjustment or modification of the child or medical support provisions of a support order.
2. Nonsupport issues shall not be considered by the unit or the court in any action resulting under this chapter.
3. Actions initiated by the unit under this chapter shall not be subject to contested case proceedings or further review pursuant to chapter 17A and resulting court hearings following certification shall be an original hearing before the district court.

93 Acts, ch 78, §26  
NEW section

#### **252H.4 Role of the child support recovery unit.**

1. The unit may administratively adjust or modify a support order entered under chapter 234, 252A, 252C, 598, or 600B, or any other support chapter if the unit is providing enforcement services pursuant to chapter 252B. The unit is not required to intervene to administratively adjust or modify a support order under this chapter.

2. The unit is a party to an action initiated pursuant to this chapter.

3. The unit shall conduct a review to determine whether an adjustment is appropriate or, upon the request of a parent or upon the unit's own initiative, determine whether a modification is appropriate.

4. The unit shall adopt rules pursuant to chapter 17A to establish the process for the review of requests for adjustment, the criteria and procedures for conducting a review and determining when an adjustment is appropriate, and other rules necessary to implement this chapter.

5. Legal representation of the unit shall be provided pursuant to section 252B.7, subsection 4.

93 Acts, ch 78, §27  
NEW section

#### **252H.5 Fees and cost recovery for review — adjustment — modification.**

The unit shall, consistent with applicable federal law, charge the following fees for providing the services described in this chapter:

1. A parent ordered to provide support, who requests a review of a support order under subchapter II, shall file an application for services and pay an application fee pursuant to section 252B.4.

2. A parent requesting a service shall pay the fee established for that service as established under this subsection. The fees established are not applicable to a parent who as a condition of eligibility for receiving public assistance benefits has assigned the rights to child or medical support for the order to be reviewed. The following fees shall be paid for the following services:

a. A fee for conducting the review, to be paid at the time the request for review is submitted to the unit. If the request for review is denied for any reason, the fee shall be refunded to the parent making the request. Any request submitted without full payment of the fee shall be denied.

b. A fee for a second review requested pursuant to section 252H.17, to be paid at the time the request for the second review is submitted to the unit. Any request submitted without full payment of the fee shall be denied.

c. A fee for activities performed by the unit in association with a court hearing requested pursuant to section 252H.8.

d. A fee for activities performed by the unit in entering an administrative order to adjust support when neither parent requests a court hearing pursuant to section 252H.8. The fee shall be paid during the postreview waiting period under section 252H.17. If the fee is not paid in full during the

postreview notice period, further action shall not be taken by the unit to adjust the order unless the parent not requesting the adjustment pays the fee in full during the postreview waiting period, or unless the children affected by the order reviewed are currently receiving public assistance benefits and the proposed adjustment would result in either an increase in the amount of support or in provisions for medical support for the children.

e. A fee for conducting a conference requested pursuant to section 252H.20.

3. A parent who requests a review of a support order pursuant to section 252H.13, shall pay any service of process fees for service or attempted service of the notice required in section 252H.15. The unit shall not proceed to conduct a review pursuant to section 252H.16 until service of process fees have been paid in full. The service of process fee requirement of this subsection is not applicable to a parent who as a condition of eligibility for public assistance benefits has assigned the rights to child or medical support for the order to be reviewed. Service of process fees charged by a person other than the unit are distinct from any other fees and recovery of costs provided for in this section.

4. The unit shall, consistent with applicable federal law, recover administrative costs in excess of any fees collected pursuant to subsections 1, 2, and 3 for providing services under this chapter and shall adopt rules providing for collection of fees for administrative costs.

5. The unit shall adopt rules pursuant to chapter 17A to establish procedures and criteria to determine the amount of any fees specified in this section and the administrative costs in excess of these fees.

93 Acts, ch 78, §28  
NEW section

#### **252H.6 Collection of information.**

The unit shall request, obtain, and validate information concerning the financial circumstances of the parents of a child as necessary to determine the appropriate amount of support pursuant to the guidelines established in section 598.21, subsection 4, including but not limited to those sources and procedures described in sections 252B.7A and 252B.9. The collection of information does not constitute a review conducted pursuant to section 252H.16.

93 Acts, ch 78, §29  
NEW section

#### **252H.7 Waiver of notice periods and time limitations.**

1. A parent may waive the thirty-day prereview waiting period provided for in section 252H.16.

a. Upon receipt of signed requests from both parents waiving the prereview waiting period, the unit may conduct a review of the support order prior to the expiration of the thirty-day period provided in section 252H.16.

b. If the parents jointly waive the prereview waiting period and the order under review is subsequently adjusted, the signed statements of both par-



ents waiving the waiting period shall be filed in the court record with the order adjusting the support obligation.

2. A parent may waive the postreview waiting period provided for in section 252H.8, subsection 6, for a court hearing or in section 252H.17 for requesting of a second review.

a. Upon receipt of signed requests from both parents subject to the order reviewed, waiving the postreview waiting period, the unit may enter an administrative order adjusting the support order, if appropriate, prior to the expiration of the postreview waiting period.

b. If the parents jointly waive the postreview waiting period and an administrative order to adjust the support order is entered, the signed statements of both parents waiving the waiting period shall be filed in the court record with the administrative order adjusting the support obligation.

3. A parent may waive the time limitations established in section 252H.8, subsection 2, for requesting a court hearing, or in section 252H.20 for requesting a conference.

a. Upon receipt of signed requests from both parents who are subject to the order to be modified, waiving the time limitations, the unit may proceed to enter an administrative modification order.

b. If the parents jointly waive the time limitations and an administrative modification order is entered under this chapter, the signed statements of both parents waiving the time limitations shall be filed in the court record with the administrative modification order.

93 Acts, ch 78, §30  
NEW section

**252H.8 Certification to court — hearing — default.**

1. For actions initiated under subchapter II, either parent or the unit may request a court hearing within thirty days from the date of issuance of the notice of decision under section 252H.16, or within ten days of the date of issuance of the second notice of decision under section 252H.17, whichever is later.

a. A court hearing shall not be granted if the review resulted in a determination that the adjustment was not appropriate.

b. If a court hearing is not granted pursuant to paragraph "a", a party retains the right to file a modification action upon the party's own initiative.

2. For actions initiated under subchapter III, either parent or the unit may request a court hearing within the latest of any of the following time periods:

a. Twenty days from the date of successful service of the notice of intent to modify required under section 252H.19.

b. Ten days from the date scheduled for a conference to discuss the modification action.

c. Ten days from the date of issuance of a second notice of a proposed modification action.

3. The time limitations for requesting a court hearing under this section may be extended by the unit.

4. If a timely written request for a hearing is received by the unit and the granting of the request is not precluded pursuant to subsection 1, a hearing shall be held in district court, and the unit shall certify the matter to the district court in the county in which the order subject to adjustment or modification is filed. The certification shall include the following, as applicable:

a. Copies of the notice of intent to review or notice of intent to modify.

b. The return of service, acceptance of service, or signed statement by the parent requesting review and adjustment waiving service of the notice.

c. Copies of the notice of decision and any revised notice as provided in section 252H.16.

d. Copies of any written objections to and request for a second review or conference or hearing.

e. Copies of any second notice of decision issued pursuant to section 252H.17, or second notice of proposed modification action issued pursuant to section 252H.20.

f. Copies of any financial statements and supporting documentation provided by the parents.

g. Copies of any computation worksheet prepared by the unit to determine the amount of support calculated using the mandatory child support guidelines established under section 598.21, subsection 4.

5. The court shall set the matter for hearing and notify the parties of the time and place of the hearing.

6. For actions initiated under subchapter II, a hearing shall not be held for at least thirty-one days following the date of issuance of the notice of decision unless the parents have jointly waived, in writing, the thirty-day postreview period.

7. Pursuant to section 252H.3, the district court shall review the matter as an original hearing before the court.

8. Issues subject to review by the court in any hearing resulting from an action initiated under this chapter shall be limited to the issues identified in section 252H.3.

9. Notwithstanding any other law to the contrary, if more than one support order exists involving children with the same legally established parents, one hearing on all of the affected support orders shall be held in the district court in the county where the unit files the action. For the purposes of this subsection, the district court hearing the matter shall have jurisdiction over all other support orders entered by a court of this state and affected under this subsection.

10. The court shall establish the amount of child support pursuant to section 598.21, subsection 4, or medical support pursuant to chapter 252E, or both.

11. If a party fails to appear at the hearing, upon a showing of proper notice to the party, the court may find the party in default and enter an appropriate order.

93 Acts, ch 78, §31  
NEW section

**252H.9 Filing and docketing of administrative adjustment or modification order — order effective as district court order.**

1. If timely request for a court hearing is not made pursuant to section 252H.8, the unit shall prepare and present an administrative order for adjustment or modification, as applicable, for review and approval, *ex parte*, to the district court where the order to be adjusted or modified is filed.

2. The unit shall determine the appropriate amount of the child support obligation using the current child support guidelines established pursuant to section 598.21, subsection 4, and the criteria established pursuant to section 252B.7A and shall determine the provisions for medical support pursuant to chapter 252E.

3. The administrative order prepared by the unit shall specify all of the following:

a. The amount of support to be paid and the manner of payment.

b. The name of the custodian of any child for whom support is to be paid.

c. The name of the parent ordered to pay support.

d. The name and birth date of any child for whom support is to be paid.

e. That the property of the responsible person is subject to collection action, including but not limited to wage withholding, garnishment, attachment of a lien, and other methods of execution.

f. Provisions for medical support.

4. Supporting documents as described in section 252H.8, subsection 4, may be presented to the court with the administrative order, as applicable.

5. Unless defects appear on the face of the order or on the attachments, the district court shall approve the order. Upon filing, the approved order shall have the same force, effect, and attributes of an order of the district court.

6. Upon filing, the clerk of the district court shall enter the order in the judgment docket and judgment lien index.

7. A copy of the order shall be sent by regular mail to each parent's last known address, or if applicable, to the last known address of the parent's attorney.

8. The order is final, and action by the unit to enforce and collect upon the order, including arrearages and medical support, or both, may be taken from the date of the entry of the order by the district court.

93 Acts, ch 78, §32  
NEW section

**252H.10 Effective date of adjustment — modification.**

Pursuant to section 598.21, subsection 8, any administrative or court order resulting from an action initiated under this chapter may be made retroactive only to the date that all parties were successfully served the notice required under section 252H.15 or section 252H.19, as applicable.

93 Acts, ch 78, §33  
NEW section

**252H.11 Concurrent actions.**

This chapter does not prohibit or affect the ability or right of a parent or the parent's attorney to file a modification action at the parent's own initiative. If a modification action is filed by a parent concerning an order for which an action has been initiated but has not yet been completed by the unit under this chapter, the unit shall terminate any action initiated under this chapter, subject to the following:

1. The modification action filed by the parent must address the same issues as the action initiated under this chapter.

2. If the modification action filed by the parent is subsequently dismissed before being heard by the court, the unit shall continue the action previously initiated under this chapter, or initiate a new action as follows:

a. If the unit previously initiated an action under subchapter II, and had not issued a notice of decision as required under section 252H.16, the unit shall proceed as follows:

(1) If notice of intent to review was served ninety days or less prior to the date the modification action filed by the parent is dismissed, the unit shall complete the review and issue the notice of decision.

(2) If the modification action filed by the parent is dismissed more than ninety days after the original notice of intent to review was served, the unit shall serve or issue a new notice of intent to review and conduct the review.

b. If the unit previously initiated an action under subchapter II and had issued the notice of decision as required under section 252H.16, the unit shall proceed as follows:

(1) If the notice of decision was issued ninety days or less prior to the date the modification action filed by the parent is dismissed, the unit shall request, obtain, and verify any new or different information concerning the financial circumstances of the parents and issue a revised notice of decision to each parent, or if applicable, to the parent's attorney.

(2) If the modification action filed by the parent is dismissed more than ninety days after the date of issuance of the notice of decision, the unit shall serve or issue a new notice of intent to review pursuant to section 252H.15 and conduct a review pursuant to section 252H.16.

c. If the unit previously initiated an action under subchapter III, the unit shall proceed as follows:

(1) If the modification action filed by the parent is dismissed more than ninety days after the original notice of intent to modify was served, the unit shall serve a new notice of intent to modify pursuant to section 252H.19.

(2) If the modification action filed by the parent is dismissed ninety days or less after the original notice of intent to modify was served, the unit shall complete the original modification action initiated by the unit under this subchapter.

(3) Each parent shall be allowed at least twenty days from the date the administrative modification action is reinstated to request a court hearing as provided for in section 252H.8.

3. If an action initiated under this chapter is terminated as the result of a concurrent modification action filed by one of the parents or the parent's attorney, the unit shall advise each parent, or if applicable, the parent's attorney, in writing, that the action has been terminated and the provisions of subsection 2 of this section for continuing or initiating a new action under this chapter. The notice shall be issued by regular mail to the last known mailing address of each parent, or if applicable, each parent's attorney.

4. If an action initiated under this chapter by the unit is terminated as the result of a concurrent action filed by one of the parents and is subsequently reinstated because the modification action filed by the parent is dismissed, the unit shall advise each parent, or if applicable, each parent's attorney, in writing, that the unit is continuing the prior administrative adjustment or modification action. The notice shall be issued by regular mail to the last known mailing address of each parent, or if applicable, each parent's attorney.

93 Acts, ch 78, §34  
NEW section

SUBCHAPTER II

REVIEW AND ADJUSTMENT

**252H.12 Support orders subject to review and adjustment.**

A support order meeting all of the following conditions is eligible for review and adjustment under this subchapter:

1. The support order is subject to the jurisdiction of this state for the purposes of adjustment.

2. The support order provides for the ongoing support of at least one child under the age of eighteen or a child between the ages of eighteen and nineteen who has not yet graduated from high school but who is reasonably expected to graduate from high school before attaining the age of nineteen.

3. The ongoing support for at least one child described in subsection 2 continues, under the terms of the order, beyond October 13, 1993.

4. The unit is providing enforcement services for the ongoing support obligation pursuant to chapter 252B.

93 Acts, ch 78, §35  
NEW section

**252H.13 Right to request review.**

A parent shall have the right to request the review of a support order for which the unit is currently providing enforcement services of an ongoing child support obligation pursuant to chapter 252B.

93 Acts, ch 78, §36  
NEW section

**252H.14 Reviews initiated by the child support recovery unit.**

1. The unit shall periodically initiate a review of support orders meeting the conditions in section 252H.12 in accordance with the following:

a. The right to any ongoing child support obligation is currently assigned to the state due to the receipt of public assistance.

b. The right to any ongoing medical support obligation is currently assigned to the state due to the receipt of public assistance unless:

(1) The support order already includes provisions requiring the parent ordered to pay child support to also provide medical support.

(2) The parent entitled to receive support has satisfactory health insurance coverage for the children, excluding coverage resulting from the receipt of public assistance benefits.

2. The unit shall periodically initiate a request to a child support agency of another state to conduct a review of a support order entered in that state when the right to any ongoing child or medical support obligation due under the order is currently assigned to the state of Iowa.

3. The unit shall adopt rules establishing criteria to determine the appropriateness of initiating a review.

4. The unit shall initiate reviews under this section in accordance with the federal Family Support Act of 1988.

93 Acts, ch 78, §37  
NEW section

**252H.15 Notice of intent to review and adjust.**

1. Prior to conducting a review of a support order, the unit shall issue a notice of intent to review and adjust to each parent, or if applicable, to each parent's attorney. However, notice to a child support agency or an agency entitled to receive child or medical support payments as the result of an assignment of support rights is not required.

2. Notice shall be served upon each parent in accordance with the rules of civil procedure, except that a parent requesting a review pursuant to section 252H.13 may waive the right to personal service of the notice in writing and accept service by regular mail. If the service by regular mail does not occur within ninety days of the written waiver of personal service, personal service of the notice is required unless a new waiver of personal service is obtained.

3. The unit shall adopt rules pursuant to chapter 17A to ensure that all of the following are included in the notice:

a. The legal basis and purpose of the action.

b. Information sufficient to identify the affected parties and the support order or orders affected.

c. An explanation of the procedures for determining child support and a request for financial or income information as necessary for application of the child support guidelines established pursuant to section 598.21, subsection 4.

d. An explanation of the legal rights and responsibilities of the affected parties, including the time frames in which the parties must act.

e. Criteria for determining appropriateness of an adjustment and a statement that the unit will use the child support guidelines established pursuant to sec-

tion 598.21, subsection 4, and the provisions for medical support pursuant to chapter 252E to adjust the order.

*f.* Procedures for contesting the action.

*g.* An explanation of the right to request a court hearing, and the applicable time frames and procedures to follow in requesting a court hearing.

*h.* Other information as appropriate.

93 Acts, ch 78, §38  
NEW section

#### **252H.16 Conducting the review — notice of decision.**

1. The unit shall conduct the review and determine whether an adjustment is appropriate.

2. Unless both parents have waived the pre-review notice period as provided for in section 252H.7, the review shall not be conducted for at least thirty days from the date both parents were successfully served with the notice required in section 252H.15.

3. Upon completion of the review, the unit shall issue a notice of decision by regular mail to the last known address of each parent, or if applicable, each parent's attorney.

4. The unit shall adopt rules pursuant to chapter 17A to ensure that all of the following are included in the notice:

*a.* Information sufficient to identify the affected parties and the support order or orders affected.

*b.* A statement indicating whether the unit finds that an adjustment is appropriate and the basis for the determination.

*c.* Other information, as appropriate.

5. A revised notice of decision shall be issued when the unit receives or becomes aware of new or different information affecting the results of the review after the notice of decision has been issued and before the entry of an administrative order adjusting the support order, when new or different information is not received in conjunction with a request for a second review, or subsequent to a request for a court hearing. If a revised notice of decision is issued, the time frames for requesting a second review or court hearing shall apply from the date of issuance of the revised notice.

93 Acts, ch 78, §39  
NEW section

#### **252H.17 Challenging the notice of decision — second review — notice.**

1. Each parent shall have the right to challenge the notice of decision issued under section 252H.16, by requesting a second review by the unit.

2. A challenge shall be submitted, in writing, to the local child support office that issued the notice of decision, within the following time frames:

*a.* If the notice of decision indicates that an adjustment is not appropriate, a challenge shall be submitted within thirty days of the date of issuance of the notice.

*b.* If the notice of decision indicates that an adjustment is appropriate, a challenge shall be submitted within ten days of the issuance of the notice.

3. A parent challenging the notice of decision shall submit any new or different information, not previously considered by the unit in conducting the review, with the challenge and request for second review.

4. A parent challenging the notice of decision shall submit any required fees with the challenge. Any request submitted without full payment of the required fee shall be denied.

5. If a timely challenge along with any necessary fee is received, the unit shall issue by regular mail to the last known address of each parent, or if applicable, to each parent's attorney, a notice that a second review will be conducted. The unit shall adopt rules pursuant to chapter 17A to ensure that all of the following are included in the notice:

*a.* A statement of purpose of the second review.

*b.* Information sufficient to identify the affected parties and the support order or orders affected.

*c.* A statement of the information that is eligible for consideration at the second review.

*d.* The procedures and time frames in conducting and completing a second review, including a statement that only one second review shall be conducted as the result of a challenge received from either or both parents.

*e.* An explanation of the right to request a court hearing, and the applicable time frames and procedures to follow in requesting a court hearing.

*f.* Other information, as appropriate.

6. The unit shall conduct a second review, utilizing any new or additional information provided or available since issuance of the notice of decision under section 252H.16, to determine whether an adjustment is appropriate.

7. Upon completion of the review, the unit shall issue a second notice of decision by regular mail to the last known address of each parent, or if applicable, to each parent's attorney. The unit shall adopt rules pursuant to chapter 17A to ensure that all of the following are included in the notice:

*a.* Information sufficient to identify the affected parties and the support order or orders affected.

*b.* The unit's finding resulting from the second review indicating whether the unit finds that an adjustment is appropriate, the basis for the determination, and the impact on the first review.

*c.* An explanation of the right to request a court hearing, and the applicable time frames and procedures to follow in requesting a court hearing.

*d.* Other information, as appropriate.

8. If the determination resulting from the first review is revised or reversed by the second review, the following shall be issued to each parent along with the second notice of decision and the amount of any proposed adjustment:

*a.* Any updated or revised financial statements provided by either parent.

*b.* A computation prepared by the local child support office issuing the notice, demonstrating how the amount of support due under the child support guidelines was calculated, and a comparison of the

newly computed amount with the current support obligation amount.

93 Acts, ch 78, §40  
NEW section

SUBCHAPTER III

ADMINISTRATIVE MODIFICATION

**252H.18 Orders subject to administrative modification.**

An order meeting all of the following conditions is eligible for administrative modification under this subchapter.

1. The order is subject to the jurisdiction of this state for the purposes of modification.
2. The unit is providing services pursuant to chapter 252B.
3. The child was conceived or born during a marriage or paternity has been legally established.
4. Review and adjustment services pursuant to subchapter II are not required or are not applicable.

93 Acts, ch 78, §41  
NEW section

**252H.19 Notice of intent to modify.**

1. The unit shall issue a notice of intent to modify to each parent. Notice to a child support agency or an agency entitled to receive child or medical support payments as the result of an assignment of support rights is not required.

2. The notice shall be served upon each parent in accordance with the rules of civil procedure. The unit shall adopt rules pursuant to chapter 17A to ensure that all of the following are included in the notice:

- a. The legal basis and purpose of the action.
- b. Information sufficient to identify the affected parties and the support order or orders affected.
- c. An explanation of the procedures for determining child support and a request for financial or income information as necessary for application of the child support guidelines established pursuant to section 598.21, subsection 4.
- d. An explanation of the legal rights and respon-

sibilities of the affected parties, including the time frames in which the parties must act.

- e. Procedures for contesting the action through a conference or a court hearing.
- f. Other information, as appropriate.

93 Acts, ch 78, §42  
NEW section

**252H.20 Conference — second notice and finding of financial responsibility.**

1. Each parent shall have the right to request a conference with the office of the unit that issued the notice of intent to modify. The request may be made in person, in writing, or by telephone, and shall be made within ten days of the date of successful service of the notice of intent to modify.

2. A parent requesting a conference shall submit any required fee no later than the date of the scheduled conference. A conference shall not be held unless the required fee is paid in full.

3. Upon a request and full payment of any required fee, the office of the unit that issued the notice of intent to modify shall schedule a conference with the parent and advise the parent of the date, time, place, and procedural aspects of the conference. The unit shall adopt rules pursuant to chapter 17A to specify the manner in which a conference is conducted and the purpose of the conference.

4. Following the conference, the office of the unit that conducted the review shall issue a second notice of proposed modification and finding of financial responsibility to the parent requesting the conference. The unit shall adopt rules pursuant to chapter 17A to ensure that all of the following are included in the notice:

- a. Information sufficient to identify the affected parties and the support order or orders affected.
- b. If the unit will continue or terminate the action.
- c. Procedures for contesting the action and the applicable time frames for actions by the parents.
- d. Other information, as appropriate.

93 Acts, ch 78, §43  
NEW section

## CHAPTER 255

### MEDICAL AND SURGICAL TREATMENT OF INDIGENT PERSONS

Adjustments and reimbursements for qualifying hospitals,  
93 Acts, ch 179, §11

#### 255.18 Records.

One copy of each of the reports named in sections 255.15 and 255.17 shall be preserved in the records

of the hospital.

93 Acts, ch 70, §7  
Section amended

## CHAPTER 256

### DEPARTMENT OF EDUCATION

#### SUBCHAPTER I

#### GENERAL PROVISIONS

#### 256.1 Department established.

1. The department of education is established to act in a policymaking and advisory capacity and to exercise general supervision over the state system of education including all of the following:

- a. Public elementary and secondary schools.
- b. Community colleges.
- c. Area education agencies.
- d. Vocational rehabilitation.
- e. Educational supervision over the elementary and secondary schools under the control of an administrator of a division of the department of human services.
- f. Nonpublic schools to the extent necessary for compliance with Iowa school laws.

2. Stimulate and encourage educational radio and television and other educational communications services as necessary to aid in accomplishing the educational objectives of the state.

3. Meet the informational needs of the three branches of state government.

4. Provide for the improvement of library services to all Iowa citizens and foster development and cooperation among libraries.

5. The department shall act as an administrative, supervisory, and consultative state agency.

93 Acts, ch 48, §12  
Section amended

#### 256.7 Duties of state board.

Except for the college student aid commission and the public broadcasting board and division, 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 rehearing 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 di-

rector 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 educational 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 adminis-

trators, 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 260C.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 community college and a higher education institution under the control of the board of regents under section 260C.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 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.

19. 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.

20. 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.

21. Adopt rules to be effective by July 1, 1993, which set standards for approval of family support preservice and in-service training programs, offered by area education agencies and practitioner preparation institutions, and family support programs offered by or through local school districts.

22. Receive and review the budget and unified plan of service submitted by the division of libraries and information services.

23. Adopt rules that include children who retain some sight but who have a medically diagnosed expectation of visual deterioration within the definition of children requiring special education pursuant to section 256B.2, subsection 1. Rules adopted pursuant to this subsection shall provide for or include, but are not limited to, the following:

*a.* A presumption that proficiency in braille reading and writing is essential for satisfactory educational progress for a visually impaired student who is not able to communicate in print with the same level of proficiency as a student of otherwise comparable ability at the same grade level. This presumption includes a student as defined in paragraph "b". A student for whom braille services are appropriate, as defined in this subsection, is entitled to instruction in braille reading and writing that is sufficient to enable the pupil to communicate with the same level of proficiency as a pupil of otherwise comparable ability at the same grade level.

*b.* A pupil who retains some sight but who has a medically diagnosed expectation of visual deterioration in adolescence or early adulthood may qualify for instruction in braille reading and writing.

*c.* Instruction in braille reading and writing may be used in combination with other special education services appropriate to a pupil's educational needs.

*d.* The annual review of a pupil's individual education plan shall include discussion of instruction in braille reading and writing and a written explanation of the reasons why the pupil is using a given reading and writing medium or media. If the reasons have not changed since the previous year, the written explanation for the current year may refer to the fuller explanation from the previous year.

*e.* A pupil as defined in paragraph "b" whose primary learning medium is expected to change may begin instruction in the new medium before it is the only medium the pupil can effectively use.

*f.* A pupil who receives instruction in braille reading and writing pursuant to this subsection shall be taught by a teacher licensed to teach students with visual impairments.

93 Acts, ch 48, §13; 93 Acts, ch 59, §1; 93 Acts, ch 82, §1

Unnumbered paragraph 1 amended

Subsection 18 stricken and former subsections 19-23 renumbered as 18-22

NEW subsection 23

### 256.9 Duties of director.

Except for the college student aid commission and the public broadcasting board and division, 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 request 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 in-

clude 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 260C.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 counseling 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.

46. Develop and provide by July 1, 1993, in-service and preservice training programs through the area education agencies and practitioner preparation institutions and guidelines for school districts for the establishment of family support programs. Guidelines developed shall describe barriers to learning and development which can affect children served by family support programs.

47. Cooperate with the child development coordinating council in establishing the family resource center demonstration program. Assistance may include, but is not limited to, providing or directing the area education agencies to provide technical assistance to school districts in establishing and maintaining the services specified in section 256C.3, and recommending rules for adoption by the state board relating to the development of family resource centers in school districts. Technical assistance shall include, but is not limited to, assistance to local districts in developing an appropriate financial package that will permit the districts to set up and maintain a family resource center.

48. Serve as an ex officio member of the commission of libraries.

49. Grant annual exemptions from one or more of the minimum education standards contained in section 256.11 and rules adopted by the state board of education to nonpublic schools or public school districts who are engaging in comprehensive school transformation efforts that are broadly consistent with the current standards, but require exemption from one or more standards in order to implement the comprehensive school transformation effort within the nonpublic school or school district. Nonpublic schools or public school districts wishing to be exempted from one or more of the minimum standards contained in section 256.11 and rules adopted by the state board of education shall file a request for an exemption with the department. Requests for exemption shall include all of the following:

a. A description of the nonpublic school or public school district's school transformation plan, including but not limited to new structures, methodologies, and creative approaches designed to help students achieve at higher levels.

b. Identification of the standard or standards for which the exemption is being sought, including a statement of the reasons for requesting the exemption from the standard or standards.

c. Identification of a method for periodic demonstration that student achievement will not be lessened by the granting of the exemption.

The director shall develop a procedure for application for exemption and receipt, review, and evaluation of nonpublic school and public school district requests, including but not limited to development of criteria for the granting or denying of requests for exemptions and a time line for the submission, review, and granting or denying of requests for exemption from one or more standards.

93 Acts, ch 48, §14, 15

Unnumbered paragraph 1 amended

Subsections 49 and 50 stricken and former subsection 51 renumbered as 49

Sunset of subsection 49 repealed, 93 Acts, ch 127, §10, 11

### 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 contracted 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, this subsection shall not apply to the teaching of family, consumer, career, and technology education in nonpublic schools.

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 additional units of 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 seeking to be excused in order to enroll in academic courses not otherwise available to the student, or be enrolled or participating in one of the following:

(1) 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.

(2) An organized and supervised athletic program which requires at least as much participation per week as one-eighth unit of physical education.

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, family and consumer 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 paragraph does not apply to the teaching of vocational education in nonpublic schools.

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. 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 shall consist 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 in this section. The phase I monitoring requires that accredited schools and school districts annually complete accreditation compli-

ance forms adopted by the state board and file them with the department of education. Phase I monitoring requires a comprehensive desk audit of all accredited schools and school districts including review of accreditation compliance forms, accreditation visit reports, methods of administration reports, and reports submitted in compliance with sections 280.12 and 280.18.

The department shall conduct site visits to schools and school districts to address accreditation issues identified in the desk audit. Such a visit may be conducted by an individual departmental consultant or may be a comprehensive site visit by a team of departmental consultants and other educational professionals. The purpose of a comprehensive site visit is to determine that a district is in compliance with minimum standards and to provide a general assessment of educational practices in a school or school district and make recommendations with regard to the visit findings for the purposes of improving educational practices above the level of minimum compliance. The department shall establish a long-term schedule of site visits that includes visits of all accredited schools and school districts at least once every five years.

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 district or school 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 committee recommendation shall specify whether the school district or school shall remain accredited or under what conditions the district may remain accredited. The conditions may include, but are not limited to, providing temporary oversight authority, operational authority, or both oversight and operational authority to the director and the state board for some or all aspects of the school district operation, in order to bring the school district into compliance with minimum standards. 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, and the conditional accreditation alternatives contained in the report are not mutually acceptable to the local board and the state board, the state board shall merge the territory of the school district with one or more contiguous school districts at the end of the school year. 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, and subject to a decision by the state board of education, the school district shall pay tuition for its resident students to an accredited school district under section 282.24. However, in lieu of merger and payment of tuition by a nonaccredited school district, the state board may place a district under receivership for the remainder of the school year. The receivership shall be under the direct supervision and authority of the director. The decision of whether to merge the school district and require payment of tuition for the district's students or to place the district under receivership shall be based upon a determination by the state board of the best interests of the students, parents, residents of the community, teachers, administrators, and board members of the district and the recommendations of the accreditation committee and the director. If the state board declares a nonpublic school to be nonaccredited, the removal of accreditation shall take effect on the date established by the resolution of the state board, which shall be no later than the end of the school year in which the nonpublic school is declared to be nonaccredited.

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 matriculation 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.

93 Acts, ch 127, §1, 2  
 Subsection 10, unnumbered paragraph 2 stricken and rewritten as unnumbered paragraphs 2 and 3  
 Subsection 12 amended

#### 256.11A Implementation of standards.

1. Schools and school districts are not required to meet the standard adopted by the state board under section 256.17, Code Supplement 1987, requiring that ten units of vocational education be offered and taught in grades nine through twelve unless the general assembly enacts legislation relating to the requirements stated in the standard. Until the time schools and school districts are required to meet the standard, the occupational education requirements stated in section 256.11, subsection 5, paragraph "h", apply.

2. Schools and school districts unable to meet the standard adopted by the state board requiring each school or school district operating a kindergarten through grade twelve program to provide an articulated sequential elementary-secondary guidance program may, not later than August 1, 1993, for the school year beginning July 1, 1993, file a written request to the department of education that the department waive the requirement for that school or school district. The procedures specified in subsection 4 apply to the request. Not later than August 1, 1994, for the school year beginning July 1, 1994, the board of directors of a school district or the authorities in charge of a nonpublic school may request a one-year extension of the waiver.

If a waiver is approved under subsection 4, the school or school district shall meet the requirements of section 256.11, subsection 9, paragraph "b", Code Supplement 1987, for the period for which the waiver is approved.

3. Not later than August 1, 1993, for the school year beginning July 1, 1993, the board of directors of a school district, or authorities in charge of a nonpublic school, may file a written request with the department of education that the department waive the requirement to establish and operate a media services program to support the total curriculum for that district or school. The procedures specified in subsection 4 apply to the request. Not later than August 1, 1994, for the school year beginning July 1, 1994, the board of directors of a school district or the



authorities in charge of a nonpublic school may request an additional one-year extension of the waiver.

If a waiver is approved under subsection 4, the school district or school shall meet the requirements of section 256.11, subsection 9, paragraph "a", Code Supplement 1987, for the period for which the waiver is approved.

4. A request for a waiver filed by the board of directors of a school district or authorities in charge of a nonpublic school shall describe actions being taken by the district or school to meet the requirement for which the district or school has requested a waiver. The state board of education shall adopt rules, by January 1, 1990, under chapter 17A to implement a procedure and criteria for the department to use in making a decision to approve a waiver under subsections 2 and 3.

93 Acts, ch 4, §1, 93 Acts, ch 52, §1

Former subsection 2 stricken and subsections 3-5 renumbered as 2-4

Subsection 2, unnumbered paragraph 1, and subsection 3, unnumbered paragraph 1 amended

**256.12 Sharing instructors and services.**

1. The director, when necessary to realize the purposes of this chapter, shall approve the enrollment in public schools for specified courses of students who also are enrolled in private schools, when the courses in which they seek enrollment are not available to them in their private schools, provided the students have satisfactorily completed prerequisite courses, if any, or have otherwise shown equivalent competence through testing. Courses made available to students in this manner shall be considered as compliance by the private schools in which the students are enrolled with any standards or laws requiring private schools to offer or teach the courses.

2. This section does not deprive the respective boards of public school districts of any of their legal powers, statutory or otherwise, and in accepting the specially enrolled students, each of the boards shall prescribe the terms of the special enrollment, including but not limited to scheduling of courses and the length of class periods. In addition, the board of the affected public school district shall be given notice by the department of its decision to permit the special enrollment not later than six months prior to the opening of the affected public school district's school year, except that the board of the public school district may waive the notice requirement. School districts and area education agency boards shall make public school services, which shall include special education programs and services and may include health services, services for remedial education programs, guidance services, and school testing services, available to children attending nonpublic schools in the same manner and to the same extent that they are provided to public school students. However, services that are made available shall be provided on neutral sites, or in mobile units located off the nonpublic school premises as determined by the boards

of the school districts and area education agencies providing the services, and not on nonpublic school property, except for health services and diagnostic services for speech, hearing, and psychological purposes, which may be provided on nonpublic school premises, with the permission of the lawful custodian.

93 Acts, ch 101, §101  
Subsection 2 amended

**256.22 Library division, regional library system, library compact, state data center, and public broadcasting division.** Repealed by 93 Acts, ch 48, § 55. See § 256.51, 256.55, 256.60, 256.70, and 256.81.

**256.33 Educational technology assistance.**

The department shall consort with school districts, area education agencies, community colleges, and colleges and universities to provide assistance to them in the use of educational technology for instruction purposes. The department shall consult with the advisory committee on the operation of the narrowcast system, established in section 256.82, the advisory committee on telecommunications, established in section 256.7, subsection 9, and other users of educational technology on the development and operation of programs under this section.

If moneys are appropriated by the general assembly for a fiscal year for purposes provided in this section, the programs funded by the department may include but not be limited to:

1. The development and delivery of in-service training, including summer institutes and workshops for individuals employed by elementary, secondary, and higher education corporations and institutions who are using educational technology for instructional purposes. The in-service programs shall include the use of hardware as well as effective methods of delivery and maintenance of a learning environment.

2. Research projects on ways to improve instruction at all educational levels using educational technology.

3. Demonstration projects which model effective uses of educational technology.

4. Establishment of a clearinghouse for information and research concerning practices relating to and uses of educational technology.

5. Development of curricula that could be used by approved teacher preparation institutions to prepare teachers to use educational technology in the classroom.

6. Pursuit of additional funding from public and private sources for the functions listed in this section.

Priority shall be given to programs integrating telecommunications into the classroom. The department may award grants to school corporations and higher education institutions to perform the functions listed in this section.

93 Acts, ch 48, §16  
Unnumbered paragraph 1 amended

## SUBCHAPTER III

## PARTICIPATION IN INTERSCHOLASTIC ACTIVITIES

**256.46 Rules for participation in extracurricular activities by certain children.**

The state board shall adopt rules that permit a child who does not meet the residence requirements for participation in extracurricular interscholastic contests or competitions sponsored or administered by an organization as defined in section 280.13 to participate in the contests or competitions immediately if the child is duly enrolled in a school, is otherwise eligible to participate, and meets one of the following circumstances or a similar circumstance: the child has been adopted; the child is placed under foster or shelter care; the child is living with one of the child's parents as a result of divorce, separation, death, or other change in the child's parents' marital relationship; the child is a foreign exchange student; the child has been placed in a juvenile correctional facility; the child is a ward of the court or the state; the child is a participant in a substance abuse or mental health program; or the child is enrolled in an accredited nonpublic high school because the child's district of residence has entered into a whole grade sharing agreement for the pupil's grade with another district.

93 Acts, ch 101, §201  
Section amended

**256.47 through 256.49 Reserved.**

## SUBCHAPTER IV

## LIBRARIES AND INFORMATION SERVICES

## PART 1

## GENERAL PROVISIONS

**256.50 Division of libraries and information services — definitions.**

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

1. "*Commission*" means the commission of libraries.
2. "*Division*" means the division of libraries and information services of the department of education.
3. "*State agency*" means a legislative, executive, or judicial office of the state and all of its respective officers, departments, divisions, bureaus, boards, commissions, and committees, except the state institutions of higher education governed by the state board of regents.
4. "*State publications*" means all multiply produced publications regardless of format, which are issued by a state agency and supported by public funds, but it does not include:
  - a. Correspondence and memoranda intended solely for internal use within the agency or between agencies.
  - b. Materials excluded from this definition by the commission through the adoption and enforcement of rules.

93 Acts, ch 48, §17  
NEW section

**256.51 Division of libraries and information services — duties and responsibilities.**

1. The division of libraries and information services is established within the department of education. The division shall do all of the following:

- a. Determine policy for providing information service to the three branches of state government and to the legal and medical communities in this state.
  - b. 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.
  - c. Establish and administer a program for the collection and distribution of state publications to depository libraries.
  - d. Develop and adopt, in conjunction with the Iowa regional library system, long-range plans for the continued improvement of library services and which will explore or broaden the information mission 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.
  - e. Develop in cooperation with the Iowa regional library system a biennial unified plan of service for the division of libraries and information services.
  - f. Establish and administer a statewide continuing education program for librarians and trustees.
  - g. 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.
  - h. 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.
  - i. Establish and administer certification guidelines for librarians not covered by other accrediting agencies.
  - j. Foster public awareness of the condition of libraries in Iowa and of methods to improve library services to the citizens of the state.
  - k. Establish and administer standards for state agency libraries, the Iowa regional library system, and public libraries.
2. The division may do all of the following:
- a. 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 256.70.
  - b. Receive and expend money for providing programs and services. The division may receive, accept, and administer any moneys appropriated or granted to it, separate from the general library fund, by the federal government or by any other public or private agency.
  - c. Accept gifts, contributions, bequests, endowments, or other moneys, including but not limited to the Westgate endowment fund, for any or all pur-

poses of the division. Interest earned on moneys accepted under this paragraph shall be credited to the fund or funds to which the gifts, contributions, bequests, endowments, or other moneys have been deposited, and is available for any or all purposes of the division. The division shall report annually to the director and the general assembly regarding the gifts, contributions, bequests, endowments, or other moneys accepted pursuant to this paragraph and the interest earned on them.

93 Acts, ch 48, §18  
NEW section

**256.52 Commission of libraries established — duties of commission and state librarian.**

1. The state commission of libraries consists of one member appointed by the supreme court and six members appointed by the governor to serve four-year terms beginning and ending as provided in section 69.19. Of the governor's appointees, one member shall be from the medical profession and five members selected at large. Not more than three of the members appointed by the governor shall be of the same gender. The members shall be reimbursed for their actual expenditures necessitated by their official duties. Members may also be eligible for compensation as provided in section 7E.6.

2. The commission shall elect one of its members as chairperson. The commission shall meet at the time and place specified by call of the chairperson. Four members are a quorum for the transaction of business.

3. The commission shall appoint the state librarian who shall administer the division, and serve at the pleasure of the commission.

The state librarian shall do all of the following:

a. Direct and 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. Appoint and approve the technical, professional, excepting the medical librarian and the law librarian, secretarial, and clerical staff necessary to accomplish the purposes of the division subject to chapter 19A.

e. Perform other duties imposed by law.

4. The commission shall adopt rules under chapter 17A for carrying out the responsibilities of the division.

5. The commission shall receive and approve the budget and unified plan of service submitted by the division of libraries and information services.

93 Acts, ch 48, §19  
NEW section

**256.53 State publications.**

Upon issuance of a state publication in any format, a state agency shall deposit with the division at no cost to the division, seventy-five copies of the

publication or a lesser number if specified by the division.

93 Acts, ch 48, §20  
NEW section

**256.54 State library — medical and law libraries.**

The state library includes, but is not limited to, a medical library, a law library, and the state data center.

1. The medical library shall be administered by a medical librarian, appointed by the director subject to chapter 19A, who shall do all of the following:

a. Operate the medical library which shall always be available for free use by the residents of Iowa under rules the commission adopts.

b. Give no preference to any school of medicine and shall secure books, periodicals, and pamphlets for every legally recognized school of medicine without discrimination.

c. Perform other duties imposed by law or prescribed by the rules of the commission.

2. The law library shall be administered by a law librarian appointed by the director subject to chapter 19A, who shall do all of the following:

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 commission adopts.

b. Maintain, as an integral part of the law library, reports of various boards and agencies and copies of bills, journals, and other information relating to current or proposed legislation.

c. Arrange to make exchanges of all printed material published by the states and the government of the United States.

d. Perform other duties imposed by law or by the rules of the commission.

93 Acts, ch 48, §21  
NEW section

**256.55 State data center.**

A state data center is established in the department of education. The state data center shall be administered by the state data center coordinator, who shall do all of the following:

1. Manage the state data center program to make United States census data available to the residents of Iowa under rules the commission adopts.

2. Act as the state's liaison with the United States census bureau in matters relating to United States decennial, economic, and agricultural census data, and population estimates and projections.

3. Perform other duties imposed by law or prescribed by the commission.

93 Acts, ch 48, §22  
NEW section

**256.56 Electronic access to documents.**

The state library shall work to develop a system of electronic access to documents maintained by the

state library with a goal of providing electronic access to all such documents. The access shall be provided initially through the use of compact disc technology. This section shall not prohibit the state librarian from considering other forms of electronic access if the use of such other access is shown to exceed the benefits of, and is more cost-effective than, the use of compact disc technology.

93 Acts, ch 178, §32  
NEW section

**256.57 through 256.59** Reserved.

PART 2

REGIONAL LIBRARY SYSTEM

**256.60 Regional library system established — purposes.**

A regional library system is established to provide supporting services to libraries and to encourage local financial support for library services.

93 Acts, ch 48, §23  
NEW section

**256.61 Regional library trustees.**

The regional library system shall consist of seven regional boards of library trustees which shall serve respectively the seven geographic regions specified in this section. Each region shall be divided into geographic districts, which shall be drawn along county lines and which shall be represented on regional boards by trustees elected to the boards in the following numbers and from the following districts:

1. To the southwestern board, two from Potawattamie county and one from each of the following five districts:
  - a. Harrison, Shelby and Audubon counties.
  - b. Guthrie, Cass and Adair counties.
  - c. Mills, Fremont and Page counties.
  - d. Montgomery, Adams, Union and Taylor counties.
  - e. Clarke, Lucas, Ringgold, Decatur and Wayne counties.
2. To the northwestern board, two from Woodbury county and one from each of the following five districts:
  - a. Lyon, Sioux and Osceola counties.
  - b. Dickinson, Emmet, Clay and Palo Alto counties.
  - c. O'Brien, Plymouth and Cherokee counties.
  - d. Buena Vista, Pocahontas, Ida, Sac and Calhoun counties.
  - e. Monona, Crawford and Carroll counties.
3. To the north central board, two from a district composed of Hancock, Cerro Gordo and Franklin counties; two from a district composed of Humboldt, Wright and Webster counties; and one from each of the following three districts:
  - a. Kossuth and Winnebago counties.
  - b. Hamilton and Hardin counties.
  - c. Worth, Mitchell and Floyd counties.
4. To the central board, four from a district com-

posed of Polk and Marion counties, and one from each of the following three districts:

- a. Greene, Dallas, Madison and Warren counties.
- b. Boone and Story counties.
- c. Marshall and Jasper counties.
5. To the southeastern board, two from Scott county and one from each of the following five districts:
  - a. Appanoose, Davis and Wapello counties.
  - b. Jefferson, Van Buren and Lee counties.
  - c. Monroe, Mahaska and Keokuk counties.
  - d. Henry and Des Moines counties.
  - e. Muscatine, Louisa and Washington counties.
6. To the east central board, three from a district composed of Linn and Jones counties; two from a district composed of Iowa, Johnson and Cedar counties; and one from each of the following two districts:
  - a. Tama, Benton and Poweshiek counties.
  - b. Jackson and Clinton counties.
7. To the northeastern board, two from Black Hawk county; two from a district composed of Delaware and Dubuque counties; and one from each of the following three districts:
  - a. Grundy, Butler and Bremer counties.
  - b. Howard, Winneshiek, Allamakee and Chickasaw counties.
  - c. Buchanan, Fayette and Clayton counties.

93 Acts, ch 48, §24  
NEW section

**256.62 Regional library trustees — nonvoting members.**

In addition to the members of the seven regional boards of library trustees provided in section 256.61, the director of education shall appoint to each of the seven regional boards of library trustees the following nonvoting members:

1. A representative from an area education agency.
2. A representative who serves as a member on the board of directors for a community college.

The nonvoting members shall serve at the pleasure of the director. The appointed members shall cease to be members if they no longer are employed by an area education agency or no longer serve as a member on a community college board of directors. Sections 256.63 and 256.64 do not apply to the appointed nonvoting members of the regional boards of library trustees.

93 Acts, ch 48, §25  
NEW section

**256.63 Election.**

A trustee of a regional board shall be elected without regard to political affiliation at the general election by the vote of the electors of the trustee's district from a list of nominees, the names of which have been taken from nomination papers filed in accordance with chapter 45 in all respects except that they shall be signed by not less than twenty-five eligible electors of the respective district. The election

shall be administered by the commissioner who has jurisdiction under section 47.2.

The votes cast in the election shall be canvassed and abstracts of the votes cast shall be promptly certified by the commissioner to the commissioner of elections who is responsible under section 47.2 for conducting elections for that regional library board district. In each county whose commissioner of elections is responsible under section 47.2 for conducting elections held for a regional library board district, the county board of supervisors shall convene at nine a.m. on the third Monday in November, canvass the abstracts of votes cast and declare the results of the voting. The commissioner shall at once issue certificates of election to each person declared elected.

93 Acts, ch 48, §26  
NEW section

**256.64 Terms.**

Regional library trustees shall take office on the first day of January following the general election and shall serve terms of four years. A vacancy shall be filled when it occurs not less than ninety days before the next general election by appointment by the regional board for the unexpired term. No trustee shall serve on a local library board or be employed by a library during the trustee's term of office as a regional library trustee.

93 Acts, ch 48, §27  
NEW section

**256.65 Compensation.**

Regional trustees shall be reimbursed for the actual and necessary expenses incurred by them in the discharge of their duties, but shall receive no compensation for services.

93 Acts, ch 48, §28  
NEW section

**256.66 Powers and duties of regional trustees.**

In carrying out the purposes of section 256.60, each board of trustees:

1. Shall appoint and evaluate a qualified administrator who shall have a master's degree in librarianship from a program of study accredited by the American library association and who may be terminated for good cause.
2. Subject to the approval of the annual plan of service by the director of the department of education, may receive and expend state appropriated funds.
3. May receive and expend other funds and receive and expend gifts of real property, personal property or mixed property, and devises and bequests including trust funds; may take title to the property; may execute deeds and bills of sale for the conveyance of the property; and may expend the funds received from the gifts.
4. May accept and administer trusts and may authorize nonprofit foundations acting solely for the

support of the regional library to accept and administer trusts deemed by the board to be beneficial to the operation of the regional library. Notwithstanding section 633.63, the board and the nonprofit foundation may act as trustees in these instances. The board shall require that moneys belonging to a nonprofit foundation be audited annually.

5. May contract with libraries, library agencies, private corporations or individuals to improve library service.

6. May acquire land and construct or lease facilities to carry out the provisions of sections 256.60 through 256.69.

7. Shall provide consultation and educational programs for library staff and trustees concerning all facets of library management and operation.

8. Shall provide interlibrary loan and information services intraregionally, but which are capable of being linked interregionally, according to the standards developed by the commission of libraries.

9. Shall develop and adopt, in cooperation with other members of the regional library system and the director of the department of education, a long-range plan for the region.

10. Shall prepare, in cooperation with all members of the regional library system and the director of the department of education, an annual plan of service.

11. Shall provide data and prepare reports as directed by the director of the department of education.

12. Shall encourage governmental subdivisions to maintain local financial support for the operating expenses of local libraries.

13. May perform other acts necessary to carry out its powers and duties under sections 256.60 through 256.69.

93 Acts, ch 48, §29  
NEW section

**256.67 Duties of the regional administrator.**

A regional administrator shall:

1. Act as administrator and executive secretary of the region in accordance with the objectives and policies adopted by the regional board and with the intent of this chapter.
2. Organize, staff, and administer the regional library so as to render the greatest benefit to libraries and information services in the area.
3. Advise and counsel with the regional board of trustees and individual libraries in all matters pertaining to the improvement of library services in the region.
4. Cooperate with other members of the regional library system, the state library of Iowa and representatives of the Iowa library community in considering and developing plans for the improvement of library services in Iowa.
5. Carry out the policies of the regional board of trustees not inconsistent with state law.

93 Acts, ch 48, §30  
NEW section

**256.68 Allocation and administration of funds.**

1. Funds appropriated for the purpose of carrying out sections 256.60 through 256.69 shall be allocated to regional boards by the commission of libraries as follows:

a. Sixty percent in proportion to the population served by each regional board.

b. Twenty-five percent proportioned equally among the regional boards.

c. Fifteen percent in proportion to the geographic area served by each regional board.

2. In addition to funds received under subsection 1, a regional library board may individually or cooperatively apply to the commission of libraries for available grants.

93 Acts, ch 48, §31  
NEW section

**256.69 Local financial support.**

Commencing July 1, 1977, each city within its corporate boundaries and each county within the unincorporated area of the county shall levy a tax of at least six and three-fourths cents per thousand dollars of assessed value on the taxable property or at least the monetary equivalent thereof when all or a portion of the funds are obtained from a source other than taxation, for the purpose of providing financial support to the public library which provides library services within the respective jurisdictions.

93 Acts, ch 48, §32  
NEW section

PART 3

LIBRARY COMPACT

**256.70 Library compact authorized.**

The division of libraries and information services of the department of education is hereby authorized to enter into interstate library compacts on behalf of the state of Iowa with any state bordering on Iowa which legally joins therein in substantially the following form.

The contracting states agree that:

ARTICLE I — PURPOSE

Because the desire for the services provided by public libraries transcends governmental boundaries and can be provided most effectively by giving such services to communities of people regardless of jurisdictional lines, it is the policy of the states who are parties to this compact to cooperate and share their responsibilities in providing joint and cooperative library services in areas where the distribution of population makes the provision of library service on an interstate basis the most effective way to provide adequate and efficient services.

ARTICLE II — PROCEDURE

The appropriate state library officials and agencies

having comparable powers with those of the Iowa commission of libraries of the party states or any of their political subdivisions may, on behalf of said states or political subdivisions, enter into agreements for the cooperative or joint conduct of library services when they shall find that the execution of agreements to that end as provided herein will facilitate library services.

ARTICLE III — CONTENT

Any such agreement for the cooperative or joint establishment, operation or use of library services, facilities, personnel, equipment, materials or other items not excluded because of failure to enumerate shall, as among the parties of the agreement:

1. Detail the specific nature of the services, facilities, properties or personnel to which it is applicable;
2. Provide for the allocation of costs and other financial responsibilities;
3. Specify the respective rights, duties, obligations and liabilities;
4. Stipulate the terms and conditions for duration, renewal, termination, abrogation, disposal of joint or common property, if any, and all other matters which may be appropriate to the proper effectuation and performance of said agreement.

ARTICLE IV — CONFLICT OF LAWS

Nothing in this compact or in any agreement entered into hereunder shall alter, or otherwise impair any obligation imposed on any public library by otherwise applicable laws, or be constituted to supersede.

ARTICLE V — ADMINISTRATOR

Each state shall designate a compact administrator with whom copies of all agreements to which the state or any subdivision thereof is party shall be filed. The administrator shall have such powers as may be conferred by the laws of the administrator's state and may consult and cooperate with the compact administrators of other party states and take such steps as may effectuate the purposes of this compact.

ARTICLE VI — EFFECTIVE DATE

This compact shall become operative when entered in by two or more entities having the powers enumerated herein.

ARTICLE VII — RENUNCIATION

This compact shall continue in force and remain

binding upon each party state until six months after any such state has given notice of repeal by the legislature. Such withdrawal shall not be construed to relieve any party to an agreement authorized by articles II and III of the compact from the obligation of that agreement prior to the end of its stipulated period of duration.

ARTICLE VIII — SEVERABILITY — CONSTRUCTION

The provisions of this compact shall be severable. It is intended that the provisions of this compact be reasonably and liberally construed.

93 Acts, ch 48, §33  
NEW section

**256.71 Administrator.**

The administrator of the division of libraries and information services shall be the compact administrator. The compact administrator shall receive copies of all agreements entered into by the state or its political subdivisions and other states or political subdivisions; consult with, advise and aid such governmental units in the formulation of such agreements; make such recommendations to the governor, legislature, governmental agencies and units as the administrator deems desirable to effectuate the purposes of this compact and consult and co-operate with the compact administrators of other party states.

93 Acts, ch 48, §34  
NEW section

**256.72 Agreements.**

The compact administrator and the chief executive of a county, city, or library board may enter into agreements with other states or their political subdivisions pursuant to the compact. The agreements made pursuant to this compact on behalf of the state of Iowa shall be made by the compact administrator. The agreements made on behalf of a political subdivision shall be made after due notice to and consultation with the compact administrator.

93 Acts, ch 48, §35  
NEW section

**256.73 Enforcement.**

The agencies and officers of this state and its subdivisions shall enforce this compact and do all things appropriate to effect its purpose and intent which may be within their respective jurisdiction.

93 Acts, ch 48, §36  
NEW section

**256.74 through 256.79 Reserved.**

SUBCHAPTER V

PUBLIC BROADCASTING

**256.80 Definitions.**

As used in this subchapter unless the context otherwise requires:

1. "Administrator" means the administrator of the public broadcasting division of the department of education.

2. "Board" means the Iowa public broadcasting board.

3. "Broadcast" means communications through a system that is receivable by the general public with programming designed for a large group of users.

4. "Narrowcast" means communications through systems that are directed toward a narrowly defined audience.

5. "Radio and television facility" means transmitters, towers, studios, and all necessary associated equipment for broadcasting, including closed circuit television.

93 Acts, ch 48, §37  
NEW section

**256.81 Public broadcasting division created — administrator — duties.**

1. The public broadcasting division of the department of education is created. The chief administrative officer of the division is the administrator who shall be appointed by and serve at the pleasure of the Iowa public broadcasting board. The governor shall set the division administrator's salary unless otherwise provided by law. Educational programming shall be the highest priority of the division. The director of the department of education and the state board of education are not liable for the activities of the division of public broadcasting.

2. The administrator shall do all of the following:

a. Direct and 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.

93 Acts, ch 48, §38  
NEW section

**256.82 Board — advisory committees.**

1. The Iowa public broadcasting board is created to plan, establish, and operate educational radio and television facilities and other telecommunications services including narrowcast and broadcast systems to serve the educational needs of the state. The board shall be composed of nine members selected in the following manner:

a. Four members shall be appointed by the governor so that the portion of the board membership appointed under this paragraph includes two male board members and two female board members at all times:

(1) One member shall be appointed from the business community other than the commercial broadcasting industry and the telecommunications industry.

(2) One member shall be appointed from the commercial broadcast industry.

(3) One member shall be appointed from the membership of a fund-raising nonprofit organiza-

tion financially assisting the Iowa public broadcasting division.

(4) One member shall represent the general public.

b. Five members shall be selected in the manner provided in this paragraph and the gender balance of the membership shall be coordinated among the associations and boards making the appointments so that not more than three members serving under this paragraph at the same time are of the same gender.

(1) One member shall be appointed by the state association of private colleges and universities.

(2) One member shall be appointed jointly by the superintendents of the community colleges created by chapter 260C.

(3) One member shall be appointed jointly by the administrators of the area education agencies created by chapter 273.

(4) One member who is knowledgeable about telecommunications shall be appointed by the state board of regents.

(5) One member shall be appointed by the state board of education.

2. Board members shall serve a three-year term commencing on July 1 of the year of appointment. A vacancy shall be filled in the same manner as the original appointment for the remainder of the term.

Membership on the board does not constitute holding a public office and members shall not be required to take and file oaths of office before serving. A member shall not be disqualified from holding any public office or employment by reason of appointment to the board nor shall a member forfeit an office or employment by reason of appointment to the board.

3. The board shall appoint at least two advisory committees, each of which has no more than a simple majority of members of the same gender, as follows:

a. Advisory committee on the operation of the narrowcast system. The advisory committee shall be composed of members from among the users of the narrowcast system including representatives of institutions under the state board of regents, community colleges, area education agencies, classroom teachers, school district administrators, school district boards of directors, the department of economic development, the department of education, and private colleges and universities.

b. Advisory committee on journalistic and editorial integrity. The division shall be governed by the national principles of editorial integrity developed by the editorial integrity project.

Duties of the advisory committees, and of additional advisory committees the board may from time to time appoint, shall be specified in rules of internal management adopted by the board.

Members of advisory committees shall receive actual expenses incurred in performing their official duties.

93 Acts, ch 48, §39  
NEW section

### 256.83 Meetings.

1. The board shall elect from among its members a president and a vice president to serve a one-year term. The board shall meet at least four times annually and shall hold special meetings at the call of the president or in the absence of the president by the vice president or by the president upon written request of four members. The board shall establish procedures and requirements relating to quorum, place, and conduct of meetings.

2. Board members shall receive actual expenses incurred in performing their official duties.

93 Acts, ch 48, §40  
NEW section

### 256.84 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. The design plan shall be updated at least every two years. 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.

93 Acts, ch 48, §41  
NEW section

**256.85 Purchase of energy efficiency packages.**

The public broadcasting division of the department of education may use the state of Iowa facilities improvement corporation to purchase energy efficiency packages for its ultrahigh frequency transmitters.

93 Acts, ch 48, §42  
NEW section

**256.86 Competition with private sector.**

It is the intent of the general assembly that the division shall not compete with the private sector by actively seeking revenue from its operations. It is not the intent of the general assembly to prohibit the receipt of charitable contributions as defined by section 170 of the Internal Revenue Code. The board, the governor, or the administrator may apply for and accept federal or nonfederal gifts, loans, or grants of funds and may use the funds for projects under this chapter.

93 Acts, ch 48, §43  
NEW section

**256.87 Costs and fees — capital equipment replacement revolving fund.**

1. The board may provide noncommercial production or reproduction services for other public agencies, nonprofit corporations or associations organized under state law, or other nonprofit organizations, and may collect the costs of providing the services from the public agency, corporation, association, or organization, plus a separate equipment usage fee in an amount determined by the board and based upon the equipment used. The costs shall be deposited to the credit of the board. The separate equipment usage fee shall be deposited in the capital equipment replacement revolving fund.

2. The board may establish a capital equipment replacement revolving fund into which shall be deposited equipment usage fees collected under subsection 1 and funds from other sources designated for deposit in the capital equipment replacement revolving fund. The board may expend moneys from the capital equipment replacement revolving fund to purchase technical equipment for operating the educational radio and television facility.

93 Acts, ch 48, §44  
NEW section

**256.88 Trusts.**

Notwithstanding section 633.63, the board may accept and administer trusts and may authorize nonprofit foundations acting solely for the support of educational telecommunications including the broadcast and narrowcast systems to accept and administer trusts deemed by the board to be beneficial to the operation of the educational radio and television facility. The board and the foundations may act as trustees in such instances.

93 Acts, ch 48, §45  
NEW section

**256.89 State plan.**

The board shall cause to be developed and adopt a state educational telecommunications design plan. Any agency of the state and any political subdivision of the state shall submit plans for the development of educational telecommunications systems to the board to be coordinated with the state educational telecommunications design plan adopted by the board. Private institutions and entities may submit educational telecommunications proposals for coordination.

93 Acts, ch 48, §46  
NEW section

**256.90 Narrowcast operations.**

The board shall not use, permit use, or permit resale of its telecommunications narrowcast system for other than educational purposes. The board, in the establishment and operation of its telecommunications narrowcast system, shall use facilities and services of the private telecommunications industry companies to the greatest extent possible and is prohibited from constructing telecommunications facilities unless comparable facilities are not available from the private telecommunications industry at comparable quality and price.

Notwithstanding chapter 476, the provisions of chapter 476 shall not apply to a public utility in furnishing a telecommunications service or facility to the board.

93 Acts, ch 48, §47  
NEW section

## CHAPTER 256B

### SPECIAL EDUCATION

#### 256B.8 Exceptions.

It is not incumbent upon the school districts to keep a child requiring special education in regular instruction when the child cannot sufficiently profit from the work of the regular classroom, nor to keep a child requiring special education in the special class or instruction for children requiring special education when it is determined by the diagnostic educational team that the child can no longer benefit from the instruction or needs more specialized instruction available in special schools. However, the school district shall count the child requiring special education in the enrollment as provided in sections 256B.9, 257.6, and 273.9 and shall ensure that appropriate educational provisions are made for the child requiring special education.

An area education agency director of special education may request approval from the department of education to continue the special education program of a person beyond the person's twenty-first birthday if the person had an accident or prolonged illness

that resulted in delays in the initiation of or interruptions in that person's special education program. Approval may be granted by the department to continue the special education program of that person for up to three years or until the person's twenty-fourth birthday.

No provision of this chapter shall be construed to require or compel any person who is a member of a well-recognized church or religious denomination and whose religious convictions, in accordance with the tenets or principles of the person's church or religious denomination, are opposed to medical or surgical treatment for disease to take or follow a course of physical therapy, or submit to medical treatment, nor shall any parent or guardian who is a member of such church or religious denomination and who has such religious convictions be required to enroll a child in any course or instruction which utilizes medical or surgical treatment for disease.

93 Acts, ch 101, §102  
Unnumbered paragraph 1 amended

## CHAPTER 256C

### FAMILY RESOURCE CENTER DEMONSTRATION PROGRAM

#### 256C.1 Family resource center demonstration program established.

If the general assembly appropriates moneys for the establishment of family resource centers, the department of education, in conjunction with the child development coordinating council, shall establish and coordinate a family resource center demonstration program to provide comprehensive child development and child care services, remedial educational and literacy services, and supportive services to parents who are recipients of assistance under the family investment program and other parents in need of services. The program shall provide for the establishment of family resource centers by the school year commencing July 1, 1994, which shall be located in at least three public schools, one located in a large school district, one located in a medium-sized school district, and one located in a small school district. For purposes of this section a large school district is a district with an actual enrollment of five thousand or more pupils; a medium-sized school district is a district with an actual enrollment that is greater than one thousand one hundred ninety-nine pupils,

but less than five thousand pupils; and a small school district is a district with an actual enrollment of one thousand one hundred ninety-nine or fewer pupils.

93 Acts, ch 150, §1  
Section amended  
Name change applied editorially

#### 256C.2 Grant criteria — advisory committees.

The child development coordinating council shall develop a four-year grant program and the criteria and process to be used in selecting school district grant recipients. Criteria for the selection shall include the service requirements contained in section 256C.3 and a method for prioritizing grant applications based on illustrated efforts to meet the critical social welfare needs of the children and families in the surrounding community. Criteria for the selection shall also include a requirement that the program administrator, whose primary responsibility is to administer the family resource center, have at least two years of experience in early childhood education or development, demonstrated skills in community development, and a master's degree in a re-

lated field such as community service, health, human services, child development, parent support, or home economics, or at least five years of experience as an administrator of a licensed early childhood education or development program. Critical social welfare needs that may entitle a grant application to priority, if the application includes methods of amelioration of an identified community problem, shall include, but are not limited to, a significant infant mortality rate in the community, a significant rate of incidence of teenage pregnancy in the community, a significant number of single-parent families in the community that are living below the federal poverty guidelines, a lack of available affordable child care within the community, a significant number of children qualifying for free or reduced price lunches within the district, and a significant illiteracy rate within the community. The department shall assist the council in creating a grant application process and shall provide technical assistance to districts chosen to establish a family resource center.

A district applying for a grant under this section shall agree, for each dollar of grant funds, to provide twenty cents in matching cash or in-kind resources. Grants may be awarded for four years, beginning July 1, 1994, and ending June 30, 1998. Up to ten percent of the moneys appropriated for the grant program may be used by the council for staffing, technical assistance, and external evaluation development. 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 section.

Each school district that receives a grant and establishes a family resource center, as part of the district program, shall also establish an advisory committee to the center that shall advise the center on program and services planning and development. The advisory committee shall also establish service goals for the center and create an evaluation process to permit the committee to assess the center's progress toward achieving the goals. A majority of the members of each advisory committee shall consist of parents who participate in programs or receive services at the center. Other members of the committee may include, but are not limited to, school officials, home economists, child care providers, public or private child and family service agency providers, recreational service providers, health care professionals, and other members of the community.

93 Acts, ch 150, §2, 3  
Unnumbered paragraph 1 amended  
NEW unnumbered paragraph 2

### **256C.3 Family resource centers — services provided.**

Each family resource center shall address all of the following, and by July 1, 1997, shall offer all of the following:

1. Child development and education services

that meet the requirements established for early childhood programs under chapter 256A.

2. All-day child care for children ages three and older who are not enrolled in school, before and after school child care for children ages twelve and younger who are enrolled in school during the time school is in session, and full-day child care for children ages twelve and younger who are enrolled in school during the time when school is not in session. All child care shall comply with federal and state child day care requirements.

3. Support services to parents of newborn infants to ascertain the parents' and infants' needs, provide the parents and infants with referrals to other services and organizations, and, if necessary, provide education in parenting skills to parents of newborn infants.

4. Support and educational services to parents whose children are participants in the child care services portion of the family resource center demonstration program and who are interested in obtaining a high school diploma or a high school equivalency diploma under chapter 259A. Parents and their preschool age children may attend classes in parenting and child learning skills together so as to promote the mutual pursuit of education and to enhance interaction between parent and child.

5. Training, technical assistance, and other support by the family resource center staff to family day care providers in the community. The center may serve as an information and referral clearinghouse for other child care needs and services in the community and shall coordinate the center's information and efforts with any child care delivery systems that may already exist in the community. The center may also provide an adolescent pregnancy prevention program, and other programs as the community determines, for adolescents emphasizing responsible decision making and communication skills.

6. Coordinated health and nutrition services for young children.

7. Other services deemed necessary or appropriate by the advisory committee.

8. A sliding scale for payment of child day care expenses provided at the family resource center based on an individual's ability to pay for services.

A family resource center shall coordinate services provided with existing federal, state, and local programs both to avoid duplication and to provide continuity of services. A family resource center shall, if possible, be located in a school building or in an existing community facility. Regardless of where the center is located, the school district shall be the primary decision-making body in any partnership established to create a family resource center. The establishment of a family resource center is a comprehensive school transformation program under chapter 294A.

93 Acts, ch 150, §4-6  
Unnumbered paragraph 1 amended  
Subsection 5 amended  
NEW subsection 6 and former subsections 6 and 7 renumbered as 7 and 8

## CHAPTER 257

### FINANCING SCHOOL PROGRAMS

#### 257.3 Foundation property tax.

1. *Amount of tax.* Except as provided in subsections 2 and 3, 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.

A reorganized school district which meets the requirements of this section for reduced property tax rates, but failed to vote on reorganization or dissolution prior to November 30, 1990, and failed to certify such action to the department of education by September 1, 1991, shall cause to be levied a foundation property tax of four dollars and sixty cents per thousand dollars of assessed valuation on all eligible taxable property pursuant to this section. 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.

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. *Subsequent reorganization.* If a reorganized school district, whose foundation property tax is reduced under subsection 2, reorganizes within five school years from the time of its original reorganization to which subsection 2 applies, the resulting reorganized school district shall cause to be levied a foundation property tax on the taxable property in that portion of the new reorganized district which, in the year preceding the latest reorganization, was within the original reorganized school district to which subsection 2 applies equal to one dollar per thousand dollars of assessed value less than the rate the original reorganized district would have levied under subsection 2 for the same school year if there had been no new reorganization. In succeeding school years, the foundation property tax on that portion of the new reorganized school district shall be increased by forty cents for the first succeeding year and by twenty cents per year thereafter until it reaches the rate of five dollars and forty cents per thousand dollars of assessed valuation.

4. *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, 2, or 3 on the property of a railway corporation, or on its trustee if the corporation has been declared bankrupt or is in bankruptcy proceedings.

93 Acts, ch 180, §92-95

Contingent effective date of 1993 amendments, 93 Acts, ch 180, §97

Subsection 1 amended

Subsection 2, NEW unnumbered paragraph 3

NEW subsection 3 and former subsection 3 renumbered as 4

Subsection 4 amended

#### 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 June 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.

93 Acts, ch 1, §3  
Subsection 3 amended

**257.8 State percent of growth — allowable growth.**

1. *State percent of growth.* The state percent of growth for a budget year shall be established by statute which shall be enacted within thirty days of the submission in the base year of the governor's budget under section 8.21. The establishment of the state percent of growth for a budget year shall be the only subject matter of the bill which enacts the state percent of growth for a budget year.

2. *Allowable growth calculation.* The department of management shall calculate the regular program allowable growth for a budget year by multiplying the state percent of growth for the budget year

by the regular program state cost per pupil for the base year and shall calculate the special education support services allowable growth for the budget year by multiplying the state percent of growth for the budget year by the special education support services state cost per pupil for the base year.

3. *Combined allowable growth.* The combined allowable growth per pupil for each school district is the sum of the regular program allowable growth per pupil and the special education support services allowable growth per pupil for the budget year, which may be modified as follows:

a. By the school budget review committee under section 257.31.

b. By the department of management under section 257.36.

State percent of growth established at two and one tenth percent for school budget year beginning July 1, 1993, 93 Acts, ch 3  
Footnote added, section not amended

**257.11 Supplementary weighting plan.**

In order to provide additional funds for school districts which send their resident pupils to another school district or to a community college for classes, which jointly employ and share the services of teachers under section 280.15, which use the services of a teacher employed by another school district, or which jointly employ and share the services of a school superintendent under section 280.15 or 273.7A, a supplementary weighting plan for determining enrollment is adopted as follows:

1. *Regular curriculum.* Pupils in a regular curriculum attending all their classes in the district in which they reside, taught by teachers employed by that district, and having administrators employed by that district, are assigned a weighting of one.

2. *Shared classes or teachers.* If the school budget review committee certifies to the department of management that the shared classes or teachers would otherwise not be implemented without the assignment of additional weighting, pupils attending classes in another school district or a community college, attending classes taught by a teacher who is employed jointly under section 280.15, or attending classes taught by a teacher who is employed by another school district, are assigned a weighting of one plus an additional portion equal to one times the percent of the pupil's school day during which the pupil attends classes in another district or community college, attends classes taught by a teacher who is jointly employed under section 280.15, or attends classes taught by a teacher who is employed by another school district.

School districts that have executed whole grade sharing agreements under section 282.10 through 282.12 beginning with the budget year beginning on July 1, 1993, and that received supplementary weighting for shared teachers or classes under this subsection for the school year ending prior to the effective date of the whole grade sharing agreement shall include in its supplementary weighting amount additional pupils added by the application of the supplementary weighting plan, equal to the pupils

added by the application of the supplementary weighting plan pursuant to this subsection in the budget year beginning July 1, 1992. If at any time after July 1, 1993, a district ends a whole grade sharing agreement with the original district and does not enter into a whole grade sharing agreement with an alternative district, the school district shall reduce its supplementary weighting amount by the number of pupils added by the application of the supplementary weighting in this subsection in the budget year beginning July 1, 1992, in the budget year that the whole grade sharing agreement is terminated.

3. *Whole grade sharing.* For the budget years beginning July 1, 1991, and July 1, 1992, in districts that have executed whole grade sharing agreements under sections 282.10 through 282.12, the school budget review committee shall assign a weighting equal to one plus an additional portion of one times the percent of the pupil's school day in which a pupil attends classes in another district or a community college, attends classes taught by a teacher who is employed jointly under section 280.15, or attends classes taught by a teacher who is employed by another district. The assignment of additional weighting to a school district shall continue for a period of five years. If the school district reorganizes during that five-year period, the assignment of the additional weighting shall be transferred to the reorganized district until the expiration of the five-year period. If a school district was receiving additional weighting for whole grade sharing under section 442.39, subsection 2, Code 1989, the district shall continue to be assigned additional weighting for whole grade sharing by the school budget review committee under this subsection so that the district is assigned the additional weighting for whole grade sharing for a total period of five years.

4. *Pupils ineligible.* A pupil eligible for the weighting plan provided in section 256B.9 is not eligible for the weighting plan provided in this section.

5. *Shared superintendents.* For the budget years beginning July 1, 1991, and July 1, 1992, pupils enrolled in a school district in which the superintendent is employed jointly under section 280.15 or under section 273.7A, are assigned a weighting of one plus an additional portion of one for the superintendent who is jointly employed times the percent of the superintendent's time in which the superintendent is employed in the school district. However, the total additional weighting assigned under this subsection for a budget year for a school district shall not exceed seven and one-half and the total additional weighting added cumulatively to the enrollment of school districts sharing a superintendent shall not exceed twelve and one-half. The assignment of additional weighting to a school district shall continue for a period of five years. If the school district reorganizes during that five-year period, the assignment of the additional weighting shall be transferred to the reorganized district until the expiration of the five-year period.

If a district was receiving additional weighting for superintendent sharing or administrator sharing under section 442.39, subsection 4, Code 1989, the district shall continue to be assigned additional weighting for superintendent sharing or administrator sharing by the school budget review committee under this subsection so that the district is assigned the additional weighting for sharing for a total period of five years.

6. *Shared mathematics, science, and language courses.* For the budget years beginning July 1, 1991, and July 1, 1992, a school district receiving additional funds under subsection 2 or 3 for its pupils at the ninth grade level and above that are enrolled in sequential mathematics courses at the advanced algebra level and above; chemistry, advanced chemistry, physics or advanced physics courses; or foreign language courses at the second year level and above shall have an additional weighting of one pupil added to its total.

7. *Calculation of weights.* The school budget review committee shall calculate the weights to be used under subsections 2 and 3 to the nearest one-hundredth of one and under subsection 5 to the next highest one-thousandth of one. To the extent possible, the moneys generated by the weighting shall be equivalent to the moneys generated by the one-tenth, five-tenths, and twenty-five thousandths weighting provided in section 442.39, Code 1989.

93 Acts, ch 180, §96

Contingent effective date of subsection 2, unnumbered paragraph 2; 93 Acts ch 180, §97

Subsection 2, NEW unnumbered paragraph 2

## **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 six 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. For the purposes of this paragraph, the weighted enrollment for the period of six years following the effective date of reorganization shall include the supplementary weighting in the base year used for determining the combined district cost for the first year of 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 paragraph, 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 period provided in this paragraph. For the purposes of this paragraph, the weighted enrollment continues for a period of six years following the effective date of reorganization and shall include the supplementary weighting in the base year used for determining the combined district cost for the first year of the reorganization.

93 Acts, ch 160, §1, 2  
Contingent effective date of 1993 amendments, see 93 Acts, ch 180, §97  
Section amended

#### **257.14 Budget adjustment.**

For the budget years commencing July 1, 1991, July 1, 1992, July 1, 1993, July 1, 1994, and July 1, 1995, if the department of management determines that the regular program district cost of a school district for a budget year is less than the total of the regular program district cost plus any adjustment added under this section for the base year for that school district, the department of management shall provide a budget adjustment for that district for that budget year that is equal to the difference.

For the budget year beginning July 1, 1991, for a school district, the department of management shall use as the district's base year regular program district cost the product of the district's regular program district cost per pupil calculated as regular program district cost per pupil would have been calculated for the budget year under section 442.9, Code 1989, multiplied by the district's budget enrollment as budget enrollment would have been calculated under section 442.4, Code 1989, for the budget year, and shall add to that amount the amount added to district cost pursuant to section 442.21, Code 1989.

93 Acts, ch 179, §17  
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 appli-

cation of the special education weighting plan under section 256B.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 April 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.

93 Acts, ch 1, §4  
Unnumbered paragraph 2 amended

#### **257.29 Educational improvement program.**

An educational improvement program is established to provide additional funding for school districts in which the regular program district cost per pupil for a budget year is one hundred ten percent of the regular program state cost per pupil for the budget year and which have approved the use of the instructional support program established in section 257.18. A board of directors that wishes to consider participating in the educational improvement program shall hold a hearing on the question of participation and the maximum percent of the regular program district cost of the district that will be used. The hearing shall be held in the manner provided in section 257.18 for the instructional support program. Following the hearing, the board may direct the county commissioner of elections to submit the question to the qualified electors of the school district at the next following regular school election or a special election held not later than the following February 1. If a majority of those voting on the question favors participation in the program, the board shall adopt a resolution to participate and shall certify the results of the election to the department of management and the district shall participate in the program. If a majority of those voting on the question does not favor participation, the district shall not participate in the program.

The educational improvement program shall provide additional revenues each fiscal year equal to a specified percent of the regular program district cost of the district, as determined by the board but not more than the maximum percent authorized by the electors if an election has been held. Certification of a district's participation 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 April 15 of the base year.

The educational improvement program shall be funded by either an educational improvement property tax or by a combination of an educational improvement property tax and an educational improvement income surtax. The method of raising the educational improvement moneys shall be determined by the board. Subject to the limitation in section 298.14, if the board uses a combination of an educational improvement property tax and an educational improvement income surtax, the board shall determine the percent of income surtax to be imposed, expressed as full percentage points, not to exceed twenty percent.

The department of management shall establish the amount of the educational improvement property tax to be levied or the amount of the combination of the educational improvement property tax to be levied and the amount of the school district income surtax to be imposed for each school year that the educational improvement amount is authorized. The educational improvement property tax and income surtax, if an income surtax is imposed, shall be levied and imposed, collected, and paid to the school district in the manner provided for the instructional support program in sections 257.21 through 257.26. Moneys received by a school district under the educational improvement program are miscellaneous income.

Once approved at an election, the authority of the board to use the educational improvement program shall continue until the board votes to rescind the educational improvement program or the voters of the school district by majority vote order the discontinuance of the program. The board shall call an election to vote on the proposition whether to discontinue the program upon the receipt of a petition signed by not less than one hundred eligible electors or thirty percent of the number of electors voting at the last preceding school election, whichever is greater.

Participation in an educational improvement program is not affected by a change in the boundaries of the school district, except as otherwise provided in this section. If each school district involved in school reorganization under chapter 275 has approved an educational improvement program, and if the voters have not voted upon the question of participation in the program in the reorganized district, the educational improvement program shall be in effect for the reorganized district that has been approved for the least amount and the shortest time in any of the districts.

Notwithstanding the requirement in the first unnumbered paragraph of this section that the regular program district cost per pupil for a budget year is one hundred ten percent of the regular state cost per pupil, the board of directors may participate in the educational improvement program as provided in this section if the school district had adopted an enrichment levy of fifteen percent of the state cost per pupil multiplied by the budget enrollment in the district prior to July 1, 1992, and upon expiration of the period for which the enrichment levy was adopted,

adopts a resolution for the use of the instructional support program established in section 257.18. The maximum percent of the regular district cost of the district that may be used under this paragraph shall not exceed five percent.

93 Acts, ch 1, §5  
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 au-

thorized 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 256B.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 256B.9. The committee shall certify the balance of funds for each school district to the director of the department of management.

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 260D and section 257.32.

93 Acts, ch 101, §202

1993 amendment to subsection 14 retroactive to July 1, 1992 for determination of balance for year ending June 30, 1992, 93 Acts, ch 101, §209

Subsection 14, unnumbered paragraph 2 stricken

Subsections 12 and 16, references to transferred sections corrected editorially

### 257.33 Prior enrichment approval.

If the electors of a school district approved the use of the additional enrichment amount prior to July 1, 1991, under chapter 442 or section 279.43, as they appeared in Code 1991, the approval for use of the enrichment amount shall continue in effect until the expiration of the period for which it was approved and districts may use the additional enrichment amount during that period. However, section 257.28 applies to the use of the additional enrichment amount.

Use of the additional enrichment amounts approved under chapter 442, Code 1991, is not affected by a change in the boundaries of the school district, except as otherwise provided in this section. If each school district involved in a school reorganization under chapter 275 has approved the use of the additional enrichment amount, and if the voters have not voted upon the question of participation in the instructional support program in the reorganized district, the use of the additional enrichment amount shall be in effect for the reorganized district that has been approved for the least amount and the shortest time in any of the districts.

93 Acts, ch 8, §1

NEW unnumbered paragraph 2

### 257.36 Special education support services balances.

Notwithstanding chapters 256B and 273 and sections of this chapter relating to the moneys available to area education agencies for special education support services, for each school year, the department of education may direct the department of management to deduct amounts from the portions of school district budgets that fund special education support services in an area education agency. The total amount deducted in an area shall be based upon excess special education support services unreserved

and undesignated fund balances in that area education agency for a school year as determined by the department of education. The department of management shall determine the amount deducted from each school district in an area education agency on a proportional basis. The department of management shall determine from the amounts deducted from the portions of school district budgets that fund area education agency special education support services the amount that would have been local property taxes and the amount that would have been state aid and for the next following budget year shall increase the district's total state school aid available

under this chapter for area education agency special education support services and reduce the district's property tax levy for area education agency special education support services by the amount necessary for the property tax portion of the deductions made under this section during the budget year.

The amount deducted from a school district's budget shall not affect the calculation of the state cost per pupil or its district cost per pupil in that school year or a subsequent year.

Section not amended  
Unnumbered paragraph 1, reference to transferred chapter corrected editorially

## CHAPTER 257A

### FIRST IN THE NATION IN EDUCATION

#### **257A.9 Iowa state fair scholarship fund created.**

The Iowa state fair scholarship fund is established in the office of treasurer of state. Notwithstanding section 12C.7, interest earned on money in the Iowa

state fair scholarship fund shall be deposited into the fund and may be used by the governing board only for Iowa state fair scholarship awards.

93 Acts, ch 179, §18  
NEW section

## CHAPTER 258

### VOCATIONAL EDUCATION

#### **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 students 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 260C.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 260C.23, subsection 1.

Section not amended  
Subsection 3, paragraph d, reference to transferred section corrected editorially

**258.18 School-to-work transition system.**

The departments of education, employment services, and economic development shall develop a statewide school-to-work transition system in consultation with local school districts, community colleges, and labor, business, and industry interests. Initially the development of the system shall focus upon youth apprenticeship and as development continues shall incorporate additional recommendations regarding expansion of other school-to-work opportunities for high school youths. The system shall be designed to attain the following objectives:

1. Motivate youths to stay in school and become productive citizens.
2. Set high standards by promoting higher academic performance levels.

3. Connect work and learning so that the classroom is linked to worksite learning and experience.

4. Ready students for work in order to improve their prospects for immediate employment after leaving school on paths that provide significant opportunity to continued education and career development.

5. Engage employers and workers by promoting their participation in the education of youth in order to ensure the development of a skilled, flexible, entry-level workforce.

6. Provide a framework to position the state to access federal resources for state youth apprenticeship systems and local programs.

93 Acts, ch 97, §13  
NEW section

## CHAPTER 260C

### COMMUNITY COLLEGES

**260C.1 Statement of policy.**

It is hereby declared to be the policy of the state of Iowa and the purpose of this chapter to provide for the establishment of not more than fifteen areas which shall include all of the area of the state and which may operate community colleges offering to the greatest extent possible, educational opportunities and services in each of the following, when applicable, but not necessarily limited to:

1. The first two years of college work including preprofessional education.
2. Vocational and technical training.
3. Programs for in-service training and retraining of workers.
4. Programs for high school completion for students of post-high school age.
5. Programs for all students of high school age who may best serve themselves by enrolling for vocational and technical training while also enrolled in a local high school, public or private.
6. Programs for students of high school age to provide advanced college placement courses not taught at a student's high school while the student is also enrolled in the high school.
7. Student personnel services.
8. Community services.
9. Vocational education for persons who have academic, socioeconomic, or other handicaps which prevent succeeding in regular vocational education programs.
10. Training, retraining, and all necessary preparation for productive employment of all citizens.
11. Vocational and technical training for persons who are not enrolled in a high school and who have not completed high school.

12. Developmental education for persons who are academically or personally underprepared to succeed in their program of study.

93 Acts, ch 101, §203  
NEW subsection 12

**260C.15 Conduct of elections.**

1. Regular elections held annually by the merged area for the election of members of the board of directors as required by section 260C.11, for the renewal of the twenty and one-fourth cents per thousand dollars of assessed valuation levy authorized in section 260C.22, or for any other matter authorized by law and designated for election by the board of directors of the merged area, shall be held on the date of the school election as fixed by section 277.1. The election notice shall be made a part of the local school election notice published as provided in section 49.53 in each local school district where voting is to occur in the merged area election and the election shall be conducted by the county commissioner of elections pursuant to chapters 39 to 53 and section 277.20.

2. A candidate for member of the board of directors of a merged area shall be nominated by a petition signed by not less than fifty eligible electors of the director district from which the member is to be elected. The petition shall state the number of the director district from which the candidate seeks election, and the candidate's name and status as an eligible elector of the director district. Signers of the petition, in addition to signing their names, shall show their residence, including street and number if any, the school district in which they reside, and the date they signed the petition. A person may sign

nomination petitions 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. The petition shall include the affidavit of the candidate being nominated, stating the candidate's name and residence, and that the individual is a candidate, is eligible for the office sought, and if elected will qualify for the office.

3. Nomination papers in behalf of candidates for member of the board of directors of a merged area shall be filed with the secretary of the board not earlier than sixty-five days nor later than five o'clock p.m. on the fortieth day prior to the election at which members of the board are to be elected. The secretary shall deliver all nomination petitions so filed, together with the text of any public measure being submitted by the board of directors to the electorate, to the county commissioner of elections who is responsible under section 47.2 for conducting elections held for the merged area, not later than five o'clock p.m. on the day following the last day on which nomination petitions can be filed. That commissioner shall certify the names of candidates, and the text and summary of any public measure being submitted to the electorate, to all county commissioners of elections in the merged area by the thirty-fifth day prior to the election.

4. The votes cast in the election shall be canvassed and abstracts of the votes cast shall be certified as required by section 277.20. In each county whose commissioner of elections is responsible under section 47.2 for conducting elections held for a merged area, the county board of supervisors shall convene on the last Monday in September or at the last regular board meeting in September, canvass the abstracts of votes cast and declare the results of the voting. The commissioner shall at once issue certificates of election to each person declared elected, and shall certify to the merged area board in substantially the manner prescribed by section 50.27 the result of the voting on any public question submitted to the voters of the merged area. Members elected to the board of directors of a merged area shall qualify by taking the oath of office prescribed in section 277.28.

93 Acts, ch 35, §1  
Subsection 4 amended

#### **260C.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. However, the sticker is not required to be affixed to an unmarked vehicle used for purposes of providing law enforcement or security.

93 Acts, ch 26, §3  
Section amended

#### **260C.21 Election to incur indebtedness.**

No indebtedness shall be incurred under section 260C.19 until authorized by an election. A proposition to incur indebtedness and issue bonds for community college purposes shall be deemed carried in a merged area if approved by a sixty percent majority of all voters voting on the proposition in the area. However, if the costs of utilities are paid by a community college with funds derived from the levy authorized under section 260C.22, the community college may use the general fund moneys that would have been used to pay the costs of utilities for capital expenditures, may invest the funds, or may incur indebtedness without an election, provided that the payments on the indebtedness incurred, and any interest on the indebtedness, can be made using general funds of the community college and the total payments on the principal and interest on the indebtedness do not exceed the amount of the costs of the utilities.

Section not amended  
Reference to transferred section corrected editorially

#### **260C.22B Duties of state board.**

The state board for community colleges shall:

1. Adopt and establish policies for programs and services of the department which relate to community colleges.

2. Prescribe standards and procedures for the approval of practitioner preparation programs and professional development programs under section 256.7, subsection 3.

3. Review and make recommendations that relate to community colleges in the five-year plan for the achievement of educational goals.

4. Adopt the following interim annual approval process, which shall be in effect for community colleges until the implementation of section 260C.47.

a. For purposes of this section, "approval standards" shall include standards for administration, qualifications and assignment of personnel, curriculum, facilities and sites, requirements for awarding of diplomas and other evidence of educational achievement, guidance and counseling, support services for students with special needs, instruction, instructional materials, maintenance, and library.

b. The department of education shall supervise and evaluate the educational program in the several community colleges of the state for the purpose of the improvement and approval of such institutions.

c. The director of the department of education shall make recommendations and suggestions in writing to each community college if the department determines, after due investigation, that deficiencies exist.

d. The director of the department of education shall maintain a list of approved community colleges, and the director shall remove from the approved list for cause, after due investigation and notice, a community college which fails to comply with the approval standards. A community college which is removed from the approved list pursuant to this section is ineligible to receive state financial aid dur-

ing the period of removal. The director shall allow a reasonable period of time, which shall be at least one year, for compliance with approval standards if a community college is making a good faith effort and substantial progress toward full compliance or if failure to comply is due to factors beyond the control of the board of directors of the merged area operating the institution. In allowing time for compliance, the director shall follow consistent policies, taking into account the circumstances of each case. The reasonable period of time for compliance may be, but need not be, given prior to the one-year notice requirement that is provided in this section.

*e.* The director of the department of education shall give a community college which is to be removed from the approved list at least one year's notice. The notice shall be given by registered or certified mail addressed to the superintendent of the community college and shall specify the reasons for removal. The notice shall also be sent by ordinary mail to each member of the board of directors of the community college, and to the news media which serve the merged area where the school is located; but any good faith error or failure to comply with this sentence shall not affect the validity of any action by the director. If, during the year, the community college remedies the reasons for removal and satisfies the director that it will thereafter comply with the laws and approval standards, the director shall continue the community college on the approved list and shall transmit to the community college notice of the action by registered or certified mail.

*f.* At any time during the year after notice is given, the board of directors of the community college may request a public hearing before the director of the department of education, by mailing a written request to the director by registered or certified mail. The director shall promptly set a time and place for the public hearing, which shall be either in Des Moines or in the affected merged area. At least thirty days' notice of the time and place of the hearing shall be given by registered or certified mail addressed to the superintendent of the community college. At least ten days before the hearing, notice of the time and place of the hearing and the reasons for removal shall also be published by the department in a newspaper of general circulation in the merged area where the community college is located.

*g.* At the hearing the community college may be represented by counsel and may present evidence. The director of the department of education may provide for the hearing to be recorded or reported. If requested by the community college at least ten days before the hearing, the director shall provide for the hearing to be recorded or reported at the expense of the community college, using any reasonable method specified by the community college. Within ten days after the hearing, the director shall render a written decision, and shall affirm, modify, or vacate the action or proposed action to remove the community college from the approved list. The board of di-

rectors of the community college may request a review of the decision of the director by the state board. The state board may affirm, modify, or vacate the decision, or may direct a rehearing before the director.

*h.* This subsection is void and shall be stricken from the Code effective June 30, 1995, except as provided in section 260C.47.

93 Acts, ch 82, §2  
Continuation of approval process under subsection 4 if agreement not reached by July 1, 1994, § 260C 47(1)  
NEW subsection 4

### **260C.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 on at least an annual basis.

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 institutions 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 employ-

ee 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.

19. Develop and implement a written policy, which is disseminated during student registration or orientation, addressing the following four areas relating to sexual abuse:

- a. Counseling.
- b. Campus security.
- c. Education, including prevention, protection, and the rights and duties of students and employees of the community college.
- d. Facilitating the accurate and prompt reporting of sexual abuse to the duly constituted law enforcement authorities.

20. File a copy of the annual report required by the federal Student Right-To-Know and Campus Security Act, Pub. L. No. 101-542, with the division of criminal and juvenile justice planning of the department of human rights, along with a copy of the written policy developed pursuant to subsection 19.

93 Acts, ch 82, §3  
Subsection 15 amended

### **260C.25 Duties of director.**

The director shall:

1. Designate a community college as an "area vocational education school" within the meaning of, and for the purpose of administering, the Act of Congress designated the "Vocational Education Act of 1963". A community college shall not be so designated by the director of the department of education for the expenditure of funds under 20 U.S.C. 35c(a)(5), which has not been designated and classified as a community college by the state board.

2. Change boundaries of director districts in a merged area when the board fails to change boundaries as required by law.

3. Make changes in boundaries of merged areas with the approval of the board of directors of each merged area affected by the change. When the boundaries of a merged area are changed, the director of the department of education may authorize the board of directors of the merged area to levy additional taxes upon the property within the merged area, or any part of the merged area, and distribute the taxes so that all parts of the merged area are paying their share toward the support of the college.

4. Administer, allocate, and disburse federal or state funds made available to pay a portion of the cost of acquiring sites for and constructing, acquiring, or remodeling facilities for community colleges, and establish priorities for the use of such funds.

5. Administer, allocate, and disburse federal or state funds available to pay a portion of the operating costs of community colleges.

6. Approve or disapprove, in a manner as the director of the department of education may prescribe,



sites and buildings to be acquired, erected, or remodeled for use by community colleges.

7. Propose administrative rules to carry out this chapter subject to approval of the state board.

8. Enter into contracts with local school boards within the area that have and maintain a technical or vocational high school and with private schools or colleges in the co-operative or merged areas to provide courses or programs of study in addition to or as a part of the curriculum made available in the community college.

9. Make arrangements with boards of merged areas and local school districts to permit students attending high school to participate in vocational-technical programs and advanced college placement courses and obtain credit for such participation for application toward the completion of a high school diploma. The granting of credit is subject to the approval of the director of the department of education.

10. Prescribe a uniform system of accounting for community colleges.

11. Ensure that community colleges that provide intercollegiate athletics as a part of their program comply with section 216.9.

93 Acts, ch 82, §4  
Subsection 11 stricken and former subsection 12 renumbered as 11

**260C.33 Joint action with board of regents.**  
Repealed effective July 1, 1993, by 93 Acts, ch 82, § 10-12. See § 260C.22B(4).

**260C.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 pro-

vide 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 260D.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 bargaining agreement of the merged area with the largest number of contact hours eligible for general aid, as defined under section 260D.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.

Section not amended  
Unnumbered paragraph 3, reference to transferred section corrected editorially

#### **260C.47 Accreditation of community college programs.**

1. The state board of education shall establish an accreditation process for community college programs by July 1, 1994. The process shall be jointly developed and agreed upon by the department of education and the community colleges. The state accreditation process shall be integrated with the accreditation process of the north central association of colleges and schools, including the evaluation cycle, the self-study process, and the criteria for evaluation, which shall incorporate the standards for community colleges developed under section 260C.48; and shall identify and make provision for the needs of the state that are not met by the association's accreditation process. If a joint agreement has not been reached by July 1, 1994, the approval process provided under section 260C.22B, subsection 4, shall remain the required accreditation process for community colleges. For the academic year commencing July 1, 1995, and in succeeding school years, the department of education shall use a two-component process for the continued accreditation of community college programs.

a. The first component consists of submission of required data by the community colleges and annual

monitoring by the department of education of all community colleges for compliance with state program evaluation requirements adopted by the state board.

b. The second component consists of the use of an accreditation team appointed by the director of the department of education, to conduct an evaluation, including an on-site visit of each community college, with a comprehensive evaluation to occur during the same year as the evaluation by the north central association of colleges and schools, and an interim evaluation midway between comprehensive evaluations. The number and composition of the accreditation team shall be determined by the director, but the team shall include members of the department of education staff and community college staff members from community colleges other than the community college that conducts the programs being evaluated for accreditation.

c. Rules adopted by the state board shall include provisions for coordination of the accreditation process under this section with activities of accreditation associations, which are designed to avoid duplication in the accreditation process.

2. Prior to a visit to a community college, members of the accreditation team shall have access to the program audit report filed with the department for that community college. After a visit to a community college, the accreditation team shall determine whether the accreditation standards for a program have been met and shall make a report to the director and the state board, together with a recommendation as to whether the program of the community college should remain accredited. The accreditation team shall report strengths and weaknesses, if any, for each program standard and shall advise the community college of available resources and technical assistance to further enhance strengths and improve areas of weakness. A community college may respond to the accreditation team's report.

3. The state board shall determine whether a program of a community college shall remain accredited. If the state board determines that a program of a community college does not meet accreditation standards, the director of the department of education, in cooperation with the board of directors of the community college, shall establish a plan prescribing the procedures that must be taken to correct deficiencies in meeting the program standards, and shall establish a deadline date for correction of the deficiencies. The deadline for correction of deficiencies under a plan shall be no later than June 30 of the year following the on-site visit of the accreditation team. The plan is subject to approval of the state board. Plans shall include components which address meeting program deficiencies, sharing or merger options, discontinuance of specific programs or courses of study, and any other options proposed by the state board or the accreditation team to allow the college to meet the program standards.

4. During the time specified in the plan for its implementation, the community college program re-

mains accredited. The accreditation team shall revisit the community college and shall determine whether the deficiencies in the standards for the program 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 in the program have been corrected.

5. If the deficiencies have not been corrected in a program of a community college, the community college board shall take one of the following actions within sixty days from removal of accreditation:

a. Merge the deficient program or programs with a program or programs from another accredited community college.

b. Contract with another educational institution for purposes of program delivery at the community college.

c. Discontinue the program or programs which have been identified as deficient.

6. The director of the department of education shall give a community college which has a program which fails to meet accreditation standards at least one year's notice prior to removal of accreditation of the program. The notice shall be given by certified mail or restricted certified mail addressed to the superintendent of the community college and shall specify the reasons for removal of accreditation of the program. The notice shall also be sent by ordinary mail to each member of the board of directors of the community college. Any good faith error or failure to comply with the notice requirements shall not affect the validity of any action by the director. If, during the year, the community college remedies the reasons for removal of accreditation of the program and satisfies the director that the community college will comply with the accreditation standards for that program in the future, the director shall continue the accreditation of the program of the community college and shall transmit notice of the action to the community college by certified mail or restricted certified mail.

7. The action of the director to remove a community college's accreditation of the program may be appealed to the state board. At the hearing, the community college may be represented by counsel and may present evidence. The state board may provide for the hearing to be recorded or reported. If requested by the community college at least ten days before the hearing, the state board shall provide for the hearing to be recorded or reported at the expense of the community college, using any reasonable method specified by the community college. Within ten days after the hearing, the state board shall render a written decision, and shall affirm, modify, or vacate the action or proposed action to remove the college's accreditation of the program. Action by the state board is final agency action for purposes of chapter 17A.

93 Acts, ch 82, § 5, 6, 11  
Subsection 1, unnumbered paragraph 1 and paragraphs a and b stricken and rewritten

**260C.48 Standards for accrediting community college programs.**

1. The state board shall develop standards and rules for the accreditation of community college programs. Standards developed shall be general in nature so as to apply to more than one specific program of instruction.

2. Standards developed shall include a provision that the standard academic work load for an instructor in arts and science courses shall be fifteen credit hours per school term, and the maximum academic work load for any instructor shall be sixteen credit hours per school term, for classes taught during the normal school day. In addition thereto, any faculty member may teach a course or courses at times other than the regular school week, involving total class instruction time equivalent to not more than a three-credit-hour course. The total work load for such instructors shall not exceed the equivalent of eighteen credit hours per school term.

3. Standards developed shall include provisions requiring equal access in recruitment, enrollment, and placement activities for students with special education needs. The provisions shall include a requirement that students with special education needs shall receive instruction in the least restrictive environment with access to the full range of program offerings at a college, through, but not limited to, adaptation of curriculum, instruction, equipment, facilities, career guidance, and counseling services.

93 Acts, ch 82, § 7, 8  
Subsection 1 amended  
Subsection 2 stricken and former unnumbered paragraphs 1 and 2 numbered as subsections 2 and 3

**260C.49 Staff development program.** Repealed by 93 Acts, ch 179, § 32.

**260C.50 Staff development account.** Repealed by 93 Acts, ch 179, § 32.

**260C.51 Staff development plan.** Repealed by 93 Acts, ch 179, § 32.

**260C.52 Submission of plan.** Repealed by 93 Acts, ch 179, § 32.

**260C.53 Report.** Repealed by 93 Acts, ch 179, § 32.

**260C.54 Reversion.** Repealed by 93 Acts, ch 179, § 32.

**260C.55 Payments.** Repealed by 93 Acts, ch 179, § 32.

## CHAPTER 260D

### FUNDING FOR COMMUNITY COLLEGES

Appropriations, 93 Acts, ch 179, §1, 2, 30  
Funding formula study, 93 Acts, ch 101, §208

#### 260D.9 Area school moneys.

The difference between the amount of an area school's budget and the sum of the amount of state general aid plus the amount raised by the tax levy under section 260C.17 may include tuition, student fees, revenues received from property tax levies other than the levy established in section 260C.17, federal moneys, and other moneys received by the area school.

Section not amended  
Reference to transferred section corrected editorially

#### 260D.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 260C.45 and 260C.46. There is appropriated from the general fund of the state to the department of education for the fiscal year beginning July 1, 1995, 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 260C.39. Funds received under section 260C.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 260C.45, 260C.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.

93 Acts, ch 179, §19  
Unnumbered paragraph 1 amended

## CHAPTER 260F

### SMALL BUSINESS NEW JOBS TRAINING

#### 260F.6 Job training fund.

1. There is established for the community colleges a community college job training fund in the department of economic development. 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 businesses for program costs, moneys transferred from the Iowa em-

ployment retraining fund to the community college job training fund on July 1, 1992, plus the repayments, including interest, of loans made from that retraining fund, and interest earned from moneys in the community college job training fund.

2. To provide funds for the present payment of the costs of a training program by the business, the community college may provide to the business 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, if the agreement provides it as a loan, 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 260E for the previous twelve months. The rate shall be computed by the department of economic development.

93 Acts, ch 180, §44  
Subsection 1 amended

### 260F.8 Allocation.

1. For the fiscal year beginning July 1, 1992, and subsequent years, the department of economic development shall make funds available to the community colleges. The department shall allocate by formula at the beginning of the fiscal year from the

moneys in the fund an amount for each merged area to be used to provide the financial assistance for proposals of businesses located in the merged area whose applications have been approved by the department. The financial assistance shall be provided by the department from the amount set aside for that merged area. If any portion of the moneys set aside for a merged area have not been used or committed by March 1 of the fiscal year, that portion is available for use by the department to provide financial assistance to businesses located in other merged areas. The department shall adopt by rule a formula for this set-aside based on population and per capita income of the merged area.

2. Moneys available to the community colleges for this program may be used to provide grants to train for new jobs or retain existing jobs when the project costs are less than five thousand dollars. If the project is for a consortium of businesses, project costs shall not exceed an average of five thousand dollars per business.

93 Acts, ch 180, §45  
Section amended

## CHAPTER 261

### COLLEGE STUDENT AID COMMISSION

#### 261.2 Duties of commission — federal cooperation.

The commission shall:

1. Prepare and administer a state plan for higher education facilities which shall be the state plan submitted to the secretary of education, in connection with the participation of this state in programs authorized by the federal "*Higher Education Facilities Act of 1963*" (P.L. 88-204), [77 Stat. L. 363; 20 U.S.C. 701] together with any amendments thereto.

2. Provide for administrative hearings to every applicant for funds authorized under the "*Higher Education Facilities Act of 1963*" (P. L. 88-204), [77 Stat. L. 363; 20 U.S.C. 701] together with any amendments thereto, in regard to the priority assigned to such application for funds by said commission or to any other determination of the state commission adversely affecting the applicant.

3. Apply for, receive, administer, expend, and account for such federal moneys necessary for its own administrative expenses as authorized by the federal "*Higher Education Facilities Act of 1963*" (P. L. 88-204), [77 Stat. L. 363; 20 U.S.C. 701] together with any amendments thereto.

4. Prepare and administer a state plan for a state supported and administered scholarship program. The state plan shall provide for scholarships to de-

serving students of Iowa, matriculating in Iowa universities, colleges, community colleges, or schools of professional nursing. Eligibility of a student for receipt of a scholarship shall be based upon academic achievement and completion of advanced level courses prescribed by the commission.

5. Receive, administer, and allot a tuition loan fund for the benefit of Iowa resident students enrolled in Iowa studying to be physicians or osteopathic physicians and surgeons and who agree to become general practitioners (family doctors) and practice in Iowa.

Said fund shall be allotted to students for not more than three years of study and shall be in the nature of a loan. Such loan shall have as one of its terms that fifty percent thereof shall be canceled at the end of five years of the general practice in Iowa with an additional ten percent to be canceled each year thereafter until the entire loan may be canceled. No interest shall be charged on any part of the loan thus canceled. Additional terms and conditions of said loan shall be established by the college student aid commission so as to facilitate the purpose of this section.

Chapter 8 shall apply to this subsection except that section 8.5 shall not apply.

6. Administer the tuition grant program under this chapter.

7. Prepare a state plan, complete with fiscal implications, for a state matching program to match federal funds paid under the GI Bill Improvement Act of 1977 Public Law 95-202 to a veteran who is an Iowa resident for the purpose of repaying any school loans received by such veteran from the United States veterans administration.

8. Prepare and administer the Iowa science and mathematics loan program under this chapter.

9. Administer the supplemental grant program under this chapter.

10. Prepare and administer the occupational therapist loan program under this chapter.

11. Review reports filed by accredited private institutions under section 261.9, subsection 1, to determine compliance.

12. Develop and implement, in cooperation with the state board of regents, an educational program and marketing strategies designed to inform parents about the options available for financing a college education and the need to accumulate the financial resources necessary to pay for a college education. The educational program shall include, but not be limited to, distribution of informational material to public and nonpublic elementary schools for distribution to parents and guardians of five-year and six-year old children.

13. Approve transfers from the scholarship and tuition grant reserve fund under section 261.20.

14. Adopt rules relating to the administration of a displaced workers financial aid program under section 261.5.

15. Develop and implement, in cooperation with the judicial district departments of correctional services and the department of corrections, a program to assist criminal offenders in applying for federal and state aid available for higher education.

16. Develop and implement, in cooperation with the department of human services and the judicial department, a program to assist juveniles who are sixteen years of age or older and who have a case permanency plan under chapter 232 or 237 or are otherwise under the jurisdiction of chapter 232 in applying for federal and state aid available for higher education.

93 Acts, ch 179, §20

Notice regarding amendment to subsection 4, 93 Acts, ch 179, §31  
Subsection 4 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-one million five hundred twenty-three thousand nine hundred thirty 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 four hundred seventy-four thousand eight hundred 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 eighty-five thousand seven hundred eighty 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.

93 Acts, ch 179, §21

Subsections 1, 2, and 3 amended

### **261.85 Appropriation.**

There is appropriated from the general fund of the state to the commission for each fiscal year the sum of two million eight hundred ninety-eight thousand eight hundred forty 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.

93 Acts, ch 179, §22

Unnumbered paragraph 1 amended

## 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 260C, or an accredited private institution as defined in section 261.9, subsection 1.

2. “*Eligible pupil*” means a pupil classified by the board of directors of a school district, by the state board of regents for pupils of the school for the deaf and the Iowa braille and sight saving school, or by the authorities in charge of an accredited nonpublic school as a ninth or tenth grade pupil who is identified according to the school district’s gifted and talented criteria and procedures, pursuant to section 257.43, as a gifted and talented child, or an eleventh or twelfth grade pupil, during the period the pupil is participating in the enrollment option provided 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.

93 Acts, ch 69, §1  
 Subsection 1, reference to transferred chapter corrected editorially  
 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 nonsectarian 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 which the pupil attends. 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 or the school for the deaf or the Iowa braille and sight saving 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.

93 Acts, ch 69, §2  
 Section amended

#### 261C.5 High school credits.

A school district, the school for the deaf, the Iowa braille and sight saving school, or accredited nonpublic school shall grant high school academic or vo-

catiional-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, the state board of regents for the school for the deaf and the Iowa braille and sight saving school, 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, the school for the deaf, the Iowa braille and sight saving school, 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.

93 Acts, ch 69, §3  
 Section amended

#### 261C.6 School district payments.

Not later than June 30 of each year, a school district shall pay a tuition reimbursement amount to an eligible postsecondary institution that has enrolled its resident eligible pupils under this chapter. For pupils enrolled at the school for the deaf and the Iowa braille and sight saving school, the state board of regents shall pay a tuition reimbursement amount by June 30 of each year. The amount of tuition reimbursement for each separate course shall equal the lesser of:

1. The actual and customary costs of tuition, textbooks, materials, and fees directly related to the course taken by the eligible student.
2. Two hundred fifty dollars.

A pupil is not eligible to enroll on a full-time basis in an eligible postsecondary institution and receive payment for all courses in which a student is enrolled. If an eligible postsecondary institution is a community college established under chapter 260C, the contact hours of a pupil for which a tuition reimbursement amount is received are not contact hours eligible for general aid under chapter 260D.

93 Acts, ch 69, §4  
 Unnumbered paragraph 1 amended  
 Unnumbered paragraph 2, references to transferred chapters corrected editorially

**261C.8 Prohibition on charges.**

An eligible postsecondary institution that enrolls an eligible pupil under this chapter shall not charge that pupil for tuition, textbooks, materials, or fees directly related to the course in which the pupil is enrolled except that the pupil may be required to purchase equipment that becomes the property of the pupil. However, if the pupil fails to complete and receive credit for the course, the pupil is responsible for all costs directly related to the course as provided in section 261C.6 and shall reimburse the school district for its costs. If the pupil is under eighteen years of age, the pupil's parent, guardian, or custodian shall sign the student registration form indicating that the parent, guardian, or custodian is responsible for all costs directly related to the course, if the pupil fails to complete and receive credit for the course.

If the local area education agency verifies that the

pupil was unable to complete the course for reasons including but not limited to the pupil's physical incapacity, death in the family, or the pupil's move to another school district, a verification by the area education agency shall constitute a waiver to the requirement that the pupil, pupil's parent, guardian, or legal custodian pay the costs of the course to the school district.

93 Acts, ch 117, §1  
Section amended

**261C.9 Tuition refund.**

An eligible postsecondary institution shall make pro rata adjustments to tuition reimbursement amounts based upon federal guidelines established pursuant to 20 U.S.C. § 1091b.

93 Acts, ch 117, §2  
NEW section

**CHAPTER 262****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 272. 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.

4A. The board shall, whenever technically feasible, purchase and use degradable loose foam packing material manufactured from grain starches or other renewable resources, unless the cost of the packing material is more than ten percent greater than the cost of packing material made from nonrenewable resources. For the purposes of this subsection, "packing material" means material, other than an exterior packing shell, that is used to stabilize, protect, cushion, or brace the contents of a package.

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; 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; and shall comply with the requirements for the purchase of lubricating oils and industrial oils as established pursuant to section 18.22.

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 in-

stitutions 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 or-

ganization 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 on at least an annual basis.

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.

27. Develop and implement a written policy, which is disseminated during registration or orientation, addressing the following four areas relating to sexual abuse:

- a. Counseling.
- b. Campus security.
- c. Education, including prevention, protection, and the rights and duties of students and employees of the institution.
- d. Facilitating the accurate and prompt reporting of sexual abuse to the duly constituted law enforcement authorities.

28. File a copy of the annual report required by the federal Student Right-To-Know and Campus Security Act, Pub. L. No. 101-542, with the division of criminal and juvenile justice planning of the department of human rights, along with a copy of the written policy developed pursuant to subsection 27.

93 Acts, ch 176, §39  
NEW subsection 4A

**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. However, the sticker is not required to be affixed to an unmarked vehicle used for purposes of providing law enforcement or security.

93 Acts, ch 26, §4  
Subsection 2 amended

**262.33A Fire and environmental safety — report — expenditures.**

It is the intent of the general assembly that each institution of higher education under the control of the state board of regents shall, in consultation with the state fire marshal, identify and correct all critical fire and environmental safety deficiencies. The state fire marshal shall report annually to the joint subcommittee on education appropriations. The report shall include, but is not limited to, the identified deficiencies in fire and environmental safety at the institutions, and plans for correction of the deficiencies and for compliance with this section. Commencing July 1, 1993, each institution under the control of the state board of regents shall expend annually for fire safety and deferred maintenance at least the amount budgeted for these purposes for the fiscal year beginning July 1, 1992, in addition to any moneys appropriated from the general fund for these purposes in succeeding years.

93 Acts, ch 179, §23  
NEW section

**CHAPTER 267**

**LIVESTOCK HEALTH ADVISORY COUNCIL**

**267.8 Livestock disease research fund.**

There is created in the office of the treasurer of state a fund to be known as the livestock disease research fund. Any balance in said fund on June 30 of

each fiscal year shall revert to the general fund.

93 Acts, ch 179, §24  
NEW section

## CHAPTER 272

### EDUCATIONAL EXAMINERS BOARD

#### 272.33 Evaluator license.

Effective July 1, 1990, in addition to licenses required under rules adopted pursuant to this chapter, an individual employed as an administrator, supervisor, school service person, or teacher by a school district, area education agency, or community college, who conducts evaluations of the performance of individuals holding licenses under this chapter, shall possess an evaluator license. Individuals who do not directly supervise licensed teaching faculty are exempt from this section.

By July 1, 1990, the board of educational examiners shall adopt rules establishing requirements for an evaluator license including but not limited to renewal requirements, fees, and suspension and revocation of evaluator licenses. An approved program shall include provisions for determining that an applicant for an evaluator license has satisfactorily completed the program. The state board of education shall work with institutions of higher education under the state

board of regents, private colleges and universities, community colleges, and area education agencies to ensure that the courses required under subsection 1 are offered throughout the state at convenient times and at reasonable cost. The requirements shall include completion of a program approved by the state board of education as follows:

1. For evaluation of teachers, the development of skills including but not limited to analysis of lesson plans, classroom observation, analysis of data, performance improvement strategies, and communication skills.

2. For evaluation of licensed employees other than teachers, the development of skills including but not limited to communication skills, analysis of employee performance, analysis of data, and performance improvement strategies.

A license is valid for a period of five years from its issuance.

93 Acts, ch 82, §9  
Unnumbered paragraph 1 amended

## CHAPTER 273

### AREA EDUCATION AGENCIES

#### 273.1 Intent.

It is the intent of the general assembly to provide an effective, efficient, and economical means of identifying and serving children from under five years of age through grade twelve who require special education and any other children requiring special education as defined in section 256B.2; to provide for media services and other programs and services for pupils in grades kindergarten through twelve and children requiring special education as defined in section 256B.2; to provide a method of financing the programs and services; and to avoid a duplication of programs and services provided by any other school corporation in the state; and to provide services to school districts under a contract with those school districts.

Section not amended  
Reference to transferred section corrected editorially

#### 273.2 Area education agencies established — powers — services and programs.

There are established throughout the state fifteen area education agencies, each of which is governed by an area education agency board of directors. The

boundaries of an area education agency shall not divide a school district. The director of the department of education shall change boundaries of area education agencies to take into account mergers of local school districts and changes in boundaries of local school districts, when necessary to maintain the policy of this chapter that a local school district shall not be a part of more than one area education agency.

An area education agency established under this chapter is a body politic as a school corporation for the purpose of exercising powers granted under this chapter, and may sue and be sued. An area education agency may hold property and execute lease-purchase agreements pursuant to section 273.3, subsection 7, and if the lease exceeds ten years or the purchase price of the property to be acquired pursuant to a lease-purchase agreement exceeds twenty-five thousand dollars, the area education agency shall conduct a public hearing on the proposed lease-purchase agreement and receive approval from the area education agency board of directors and the director of the department of education before entering into the agreement.

The area education agency board shall furnish educational services and programs as provided in sections 273.1 to 273.9 and chapter 256B to the pupils enrolled in public or nonpublic schools located within its boundaries which are on the list of accredited schools pursuant to section 256.11. The programs and services provided shall be at least commensurate with programs and services existing on July 1, 1974. The programs and services provided to pupils enrolled in nonpublic schools shall be comparable to programs and services provided to pupils enrolled in public schools within constitutional guidelines.

The area education agency board shall provide for special education services and media services for the local school districts in the area and shall encourage and assist school districts in the area to establish programs for gifted and talented children.

The area education agency board may provide for the following programs and services to local school districts, and at the request of local school districts to providers of child development services who have received grants under chapter 256A from the child development coordinating council, within the limits of funds available:

1. In-service training programs for employees of school districts and area education agencies, provided at the time programs and services are established they do not duplicate programs and services available in that area from the universities under the state board of regents and from other universities and four-year institutions of higher education in Iowa.

2. Educational data processing pursuant to section 256.9, subsection 11.

3. Research, demonstration projects and models, and educational planning for children under five years of age through grade twelve and children requiring special education as defined in section 256B.2 as approved by the state board of education.

4. Auxiliary services for nonpublic school pupils as provided in section 256.12. However, if auxiliary services are provided their funding shall be based on the type of service provided.

5. Other educational programs and services for children under five years through grade twelve and children requiring special education as defined in section 256B.2 and for employees of school districts and area education agencies as approved by the state board of education.

The board of directors of an area education agency shall not establish programs and services which duplicate programs and services which are or may be provided by the community colleges under the provisions of chapter 260C. An area education agency shall contract, whenever practicable, with other school corporations for the use of personnel, buildings, facilities, supplies, equipment, programs, and services.

Section not amended

Unnumbered paragraphs 3 and 6 and subsections 3 and 5, references to transferred sections corrected editorially

### **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 256B.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 256B.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 256B and 257.

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.

Section not amended

Subsection 2, reference to transferred section corrected editorially

## CHAPTER 275

### REORGANIZATION OF SCHOOL DISTRICTS

#### 275.1 Declaration of policy — surveys — definitions.

It is the policy of the state to encourage economical and efficient school districts which will ensure an equal educational opportunity to all children of the state. All areas of the state shall be in school districts maintaining kindergarten and twelve grades. If a school district ceases to maintain kindergarten and twelve grades except as otherwise provided in section 28E.9, 256.13, 280.15, 282.7, subsection 1 or subsections 1 and 3, or 282.8, it shall reorganize within six months or the state board shall attach the school district not maintaining kindergarten and twelve grades to one or more adjacent districts. Voluntary reorganizations under this chapter shall be commenced only if the affected school districts are contiguous or marginally adjacent to one another. A reorganized district shall meet the requirements of section 275.3.

If a district is attached, division of assets and liabilities shall be made as provided in sections 275.29 to 275.31. The area education agency boards shall develop detailed studies and surveys of the school districts within the area education agency and all adjacent territory for the purpose of providing for reorganization of school districts in order to effect more economical operation and the attainment of higher standards of education in the schools. The plans shall be revised periodically to reflect reorganizations which may have taken place in the area education agency and adjacent territory.

As used in this chapter unless the context otherwise requires:

1. "*Eligible elector*" means eligible elector as defined in section 39.3, subsection 6.
2. "*Initial board*" means the board of a newly reorganized district that is selected pursuant to section 275.25 or 274.41\* and functions until the organizational meeting following the fourth regular school election held after the effective date of the reorganization.
3. "*Marginally adjacent district*" or "*marginally adjacent territory*" means a district or territory which is separated from a second district or territory by property which is part of a third school district which completely surrounds one of the two districts.
4. "*Qualified elector*" means qualified elector as defined in section 39.3, subsection 10.
5. "*Regular board*" means the board of a reorganized district that begins to function at the organizational meeting following the fourth regular school election held after the effective date of the school reorganization, and is comprised of members who were elected to the current terms or were appointed to replace members who were elected.

6. "*School districts affected*" means the school districts named in the reorganization petition whether a school district is affected in whole or in part.

93 Acts, ch 160, §3

\*Section 275.41 probably intended, corrective legislation pending

NEW subsection 2 and former subsections 2 and 3 renumbered as 3 and 4  
NEW subsection 5 and former subsection 4 renumbered as 6

#### 275.2 Scope of surveys.

The scope of the studies and surveys shall include the following matters in the various districts in the area education agency and all districts adjacent to the area education agency: The adequacy of the educational program, pupil enrollment, property valuations, existing buildings and equipment, natural community areas, road conditions, transportation, economic factors, individual attention given to the needs of students, the opportunity of students to participate in a wide variety of activities related to the total development of the student, and other matters that may bear on educational programs meeting minimum standards required by law. The plans shall also include suggested alternate plans that incorporate the school districts in the area education agency into reorganized districts that meet the enrollment standards specified in section 275.3 and may include alternate plans proposed by school districts for sharing programs under section 28E.9, 256.13, 280.15, 282.7, or 282.10 as an alternative to school reorganization.

93 Acts, ch 160, §4

Section amended

#### 275.12 Petition — method of election.

1. A petition describing the boundaries, or accurately describing the area included therein by legal descriptions, of the proposed district, which boundaries or area described shall conform to plans developed or the petition shall request change of the plan, shall be filed with the area education agency administrator of the area education agency in which the greatest number of qualified electors reside. However, the area education agency administrator shall not accept a petition if any of the school districts affected have approved the issuance of general obligation bonds at an election pursuant to section 296.6 during the preceding six-month period. The petition shall be signed by qualified electors in each existing school district or portion affected equal in number to at least twenty percent of the number of qualified electors or four hundred qualified electors, whichever is the smaller number.

2. The petition filed under subsection 1 shall also state the name of the proposed school district and the number of directors which may be either five or

seven and the method of election of the school directors of the proposed district. The method of election of the directors shall be one of the following optional plans:

a. Election at large from the entire district by the electors of the entire district.

b. Division of the entire school district into designated geographical single director or multi-director subdistricts on the basis of population for each director, to be known as director districts, each of which director districts shall be represented on the school board by one or more directors who shall be residents of the director district but who shall be elected by the vote of the electors of the entire school district. The boundaries of the director districts and the area and population included within each district shall be such as justice, equity, and the interests of the people may require. Changes in the boundaries of director districts shall not be made during a period commencing sixty days prior to the date of the annual school election. Insofar as may be practicable, the boundaries of the districts shall follow established political or natural geographical divisions.

c. Election of not more than one-half of the total number of school directors at large from the entire district and the remaining directors from and as residents of designated single-member or multi-member director districts into which the entire school district shall be divided on the basis of population for each director. In such case, all directors shall be elected by the electors of the entire school district. Changes in the boundaries of director districts shall not be made during a period commencing sixty days prior to the date of the annual school election.

d. Division of the entire school district into designated geographical single director or multi-director subdistricts on the basis of population for each director, to be known as director districts, each of which director districts shall be represented on the school board by one or more directors who shall be residents of the director district and who shall be elected by the voters of the director district. Place of voting in the director districts shall be designated by the commissioner of elections. Changes in the boundaries of director districts shall not be made during a period commencing sixty days prior to the date of the annual school election.

e. In districts having seven directors, election of three directors at large by the electors of the entire district, one at each annual school election, and election of the remaining directors as residents of and by the electors of individual geographic subdistricts established on the basis of population and identified as director districts. Boundaries of the subdistricts shall follow precinct boundaries, insofar as practicable, and shall not be changed less than sixty days prior to the annual school election.

3. If the petition proposes the division of the school district into director districts, the boundaries of such proposed director districts shall be described in the petition.

4. The area education agency board in reviewing the petition as provided in sections 275.15 and 275.16 shall review the proposed method of election of school directors and may change or amend the plan in any manner, including the changing of boundaries of director districts if proposed, or to specify a different method of electing school directors as may be required by law, justice, equity, and the interest of the people. In the action, the area education agency board shall follow the same procedure as is required by sections 275.15 and 275.16 for other action on the petition by the area education agency board. The area education agency shall ascertain that director district boundary lines comply with the provisions of section 275.23A, subsection 1, and shall make adjustments as necessary.

5. The petition may also include a provision that the voter-approved physical plant and equipment levy provided in section 298.2 will be voted upon at the election conducted under section 275.18.

93 Acts, ch 160, §5  
Subsection 4 amended

**275.15 Hearing — decision — publication — appeal.**

At the hearing, which shall be held within ten days of the final date set for filing objections, interested parties, both petitioners and objectors, may present evidence and arguments, and the area education agency board shall review the matter on its merits and within ten days after the conclusion of any hearing, shall rule on the objections and shall enter an order fixing the boundaries for the proposed school corporation as will in its judgment be for the best interests of all parties concerned, having due regard for the welfare of adjoining districts, or dismiss the petition.

The area education agency board, when entering the order fixing the boundaries, shall consider all available evidence including, but not limited to, information presented by the petitioners, all objections requesting territory exclusion, reorganization studies and plans, geographical patterns evidenced by students using open enrollment to attend school in another district pursuant to section 282.18, potential travel distances required of students, and geographic configuration of the proposed district. The exclusion of territory shall represent a balance between the rights of the objectors and the welfare of the reorganized district.

If the petition is not dismissed and the board determines that additional information is required in order to fix boundary lines of the proposed school corporation, the board may continue the hearing for no more than thirty days. The date of the continued hearing shall be announced at the original meeting. Additional objections in the form required in section 275.14 may be considered if filed with the administrator within five days, not including Saturdays, Sundays, or holidays, after the date of the original board hearing. If the hearing is continued, the area education agency administrator may conduct one or more meetings with the boards of directors of the af-

affected districts. Notice of any such meeting must be given at least forty-eight hours in advance by the area education agency administrator in the manner provided in section 21.4. The area education agency board may request that the administrator make alternative recommendations regarding the boundary lines of the proposed school corporation. The area education agency board shall make a decision on the boundary lines within ten days following the conclusion of the continued hearing.

The administrator shall at once publish the decision in the same newspaper in which the original notice was published. Within twenty days after the publication, the decision rendered by the area education agency board may be appealed to the district court in the county involved by any school district affected. For purposes of appeal, only those school districts who filed reorganization petitions are school districts affected. An appeal from a decision of an area education agency board or joint area education agency boards under section 275.4, 275.16, or this section is subject to appeal procedures under this chapter and is not subject to appeal under chapter 290.

93 Acts, ch 160, §6  
Unnumbered paragraph 2 stricken and rewritten

### 275.22 Canvass and return.

The precinct election officials shall count the ballots, and make return to and deposit the ballots with the county commissioner of elections, who shall enter the return of record in the commissioner's office. The election tally lists, including absentee ballots, shall be listed by individual school district. The county commissioner of elections shall certify the results of the election to the area education agency administrator. If the majority of the votes cast by the qualified electors is in favor of the proposition, as provided in section 275.20, a new school corporation shall be organized. If the majority of votes cast is opposed to the proposition, a new petition describing the identical or similar boundaries shall not be filed for at least six months from the date of the election. If territory is excluded from the reorganized district, action pursuant to section 274.37 shall be taken prior to the effective date of reorganization. The secretary of the new school corporation shall file a written description of the boundaries as provided in section 274.4.

93 Acts, ch 160, §7  
Section amended

### 275.25 Election of directors.

1. If the proposition to establish a new school district carries under the method provided in this chapter, the area education agency administrator with whom the petition was filed shall give written notice of a proposed date for a special election for directors of the newly formed school district to the commissioner of elections of the county in the district involved in the reorganization which has the greatest taxable base. The proposed date shall be as soon as possible pursuant to sections 39.2, subsec-

tions 1 and 2, and 47.6, subsections 1 and 2, but not later than the third Tuesday in January of the calendar year in which the reorganization takes effect. The election shall be conducted as provided in section 277.3, and nomination petitions shall be filed pursuant to section 277.4, except as otherwise provided in this subsection. Nomination petitions shall be filed with the secretary of the board of the existing school district in which the candidate resides, signed by not less than ten eligible electors of the newly formed district, and filed not less than twenty-eight days before the date set for the special school election. The school secretary, or the secretary's designee, shall be present in the secretary's office until five p.m. on the final day to file the nomination papers. The nomination papers shall be delivered to the commissioner no later than five p.m. on the twenty-seventh day before the election.

If the special election is held in conjunction with the regular school election, the filing deadlines for the regular school election apply.

2. The number of directors of a school district is either five or seven as provided in section 275.12. In school districts that include a city of fifteen thousand or more population as shown by the most recent decennial federal census, the board shall consist of seven members elected in the manner provided in subsection 3. If it becomes necessary to increase the membership of a board, two directors shall be added according to the procedure described in section 277.23.

The county board of supervisors shall canvass the votes and the county commissioner of elections shall report the results to the area education agency administrator who shall notify the persons who are elected directors.

3. The directors who are elected and qualify to serve shall serve until their successors are elected and qualify. At the special election, the newly elected director receiving the most votes shall be elected to serve until the director's successor qualifies after the fourth regular school election date occurring after the effective date of the reorganization; the two newly elected directors receiving the next largest number of votes shall be elected to serve until the directors' successors qualify after the third regular school election date occurring after the effective date of the reorganization; and the two newly elected directors receiving the next largest number of votes shall be elected to serve until the directors' successors qualify after the second regular school election date occurring after the effective date of the reorganization. However, in districts that include all or a part of a city of fifteen thousand or more population and in districts in which the proposition to establish a new corporation provides for the election of seven directors, the three newly elected directors receiving the most votes shall be elected to serve until the directors' successors qualify after the fourth regular school election date occurring after the effective date of the reorganization.

4. The board of the newly formed district shall



organize within fifteen days after the special election upon the call of the area education agency administrator. The new board shall have control of the employment of personnel for the newly formed district for the next following school year under section 275.33. Following the first organizational meeting of the board of the newly formed district, the board may establish policy, organize curriculum, enter into contracts, complete planning, and take action as necessary for the efficient management of the newly formed community school district.

5. Section 49.8, subsection 4 does not permit a director to remain on the board of a school district after the effective date of a boundary change which places the director's residence outside the boundaries of the district. Vacancies caused by this occurrence on a board shall be filled in the manner provided in sections 279.6 and 279.7.

6. The board of the newly formed district shall appoint an acting superintendent and an acting board secretary. The appointment of the acting superintendent shall not be subject to the continuing contract provisions of sections 279.20, 279.23, and 279.24.

93 Acts, ch 143, §43  
Subsection 1 amended

#### **275.28 Plan of division of assets and liabilities.**

In addition to setting up the territory to comprise the reorganized districts, a reorganization petition may provide for a division of assets and liabilities of the old districts between reorganized districts. If no provision is made in the petition for division of assets and liabilities, or if territory is excluded from the reorganized district by the petition or by the area education agency board of directors, the division shall be made under the provisions of sections 275.29 to 275.31.

93 Acts, ch 160, §8  
Section amended

#### **275.29 Division of assets and liabilities after reorganization.**

Between July 1 and July 20, the board of directors of the newly formed school district shall meet with the boards of the school districts affected by the organization of the new school corporation, including the boards of districts receiving territory of the school districts affected, for the purpose of reaching joint agreement on an equitable division of the assets of the several school corporations or parts of school corporations and an equitable distribution of the liabilities of the affected corporations or parts of corporations. In addition, if outstanding bonds are in existence in any district, the initial board of directors of the newly formed school district shall meet with the boards of all school districts affected prior to April 15 prior to the school year the reorganization is effective to determine the distribution of the bonded indebtedness between the districts so that the newly formed district may certify its budget under the procedures specified in chapter 24. The boards shall

consider the mandatory levy required in section 76.2 and shall assure the satisfaction of outstanding obligations of each affected school corporation. If the petition includes plans for the distribution of the bonded indebtedness, the exclusion of territory from the reorganized district does not require action pursuant to this section.

93 Acts, ch 1, §6, 93 Acts, ch 160, §9  
See Code editor's note to §6A 10  
Section amended

#### **275.30 Arbitration.**

If the boards cannot agree on such division and distribution, the matters on which they differ shall be decided by disinterested arbitrators, one selected by the initial board of directors of the newly formed district, one by each of the boards of directors of the school districts affected, and one selected jointly by the boards of directors of contiguous districts receiving territory of the school district affected. If the number of arbitrators selected is even, a disinterested arbitrator shall be added by the area education agency administrator. The decision of the arbitrators shall be made in writing and filed with the secretary of the new corporation, and a party to the proceedings may appeal the decision to the district court by serving notice on the secretary of the new corporation within twenty days after the decision is filed. The appeal shall be tried in equity and a decree entered determining the entire matter, including the levy, collection, and distribution of any necessary taxes.

93 Acts, ch 160, §10  
Section amended

**275.32 School buildings — tax levy.** Repealed by 93 Acts, ch 160, § 18. See § 279.39.

#### **275.33 Contracts of new district.**

1. The terms of employment of superintendents, principals, and teachers, for the school year following the effective date of the formation of the new district shall not be affected by the formation of the new district, except in accordance with the provisions of sections 279.15 to 279.18 and 279.24 and the authority and responsibility to offer new contracts or to continue, modify, or terminate existing contracts pursuant to sections 279.12, 279.13, 279.15 to 279.21, 279.23, and 279.24 for the school year beginning with the effective date of the reorganization shall be transferred from the boards of the existing districts to the board of the new district on the third Tuesday of January prior to the school year the reorganization is effective.

2. The collective bargaining agreement of the district with the largest basic enrollment for the year prior to the reorganization, as defined in section 257.6, in the new district shall serve as the base agreement and the employees of the other districts involved in the formation of the new district shall automatically be accreted to the bargaining unit of that collective bargaining agreement for purposes of negotiating the 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 districts which are party to the reorganization, then that agreement shall serve as the base agreement, and the employees of the other districts involved in the formation of the new district shall automatically be accreted to the bargaining unit of that collective bargaining agreement for purposes of negotiating the contracts for the following years without further action by the public employment relations board. The board of the newly formed district, using the base agreement as its existing contract, shall bargain with the combined employees of the existing districts for the school year beginning with the effective date of the reorganization. The bargaining shall be completed by the dates specified in section 20.17 prior to the school year in which the reorganization becomes effective or within one hundred eighty days after the organization of the new board, whichever is later. If a bargaining agreement was already concluded by the board and employees of the existing district with the contract serving as the base agreement for the school year beginning with the effective date of the reorganization, that agreement shall be void. However, if the base agreement contains multiyear provisions affecting school years subsequent to the effective date of the reorganization, the base agreement shall remain in effect as specified in the agreement.

The provisions of the base agreement shall apply to the offering of new contracts, or continuation, modification, or termination of existing contracts as provided in subsection 1 of this section.

93 Acts, ch 1, §7, 14, 93 Acts, ch 160, §11  
See Code editor's note  
Subsection 2 amended

### **275.36 Submission of change to electors.**

If a petition for a change in the number of directors or in the method of election of school directors, describing the boundaries of the proposed director districts, if any, signed by eligible electors of the school district equal in number to at least thirty percent of those who voted in the last previous annual school election in the school district, but not less than one hundred persons, and accompanied by affidavit as required by section 275.13 be filed with the school board of a school district, not earlier than six months and not later than sixty-seven days before a regular or special school election, the school board shall submit such proposition to the voters at the election. If a proposition for a change in the number of directors or in the method of election of school directors submitted to the voters under this section is rejected, it shall not be resubmitted to the voters of the district in substantially the same form within the next three years; if it is approved, no other proposal may be submitted to the voters of the district under this section within the next six years.

93 Acts, ch 143, §44  
1993 amendment effective January 1, 1994, 93 Acts, ch 143, §52  
Section amended

### **275.41 Alternative method for director elections — temporary appointments.**

1. As an alternative to the method specified in section 275.25 for electing directors in a newly formed community school district, the procedure specified in this section may be used and if used, the petition filed under section 275.12 shall state the number of directors on the initial board. If two districts are named in the petition, either five or seven directors shall serve on the initial board. If three or more districts are named in the petition, either seven or nine directors shall serve on the initial board. The petition shall specify the number of directors to be retained from each district, and those numbers shall be proportionate to the populations of the districts. If the exclusion of territory from a reorganization affects the proportionate balance of directors among the affected districts specified in the petition, or if the proposal specified in the petition does not comply with the requirement for proportionate representation, the area education board shall modify the proposal. However, all districts affected shall retain at least one member.

2. Prior to the organization meeting of the newly formed district, the boards of the former districts shall designate directors to be retained as members to serve on the initial board, and if the total number of directors determined under subsection 1 is an even number, that number of directors shall function and may within five days of the organizational meeting appoint one additional director by unanimous vote with all directors voting. Otherwise, the board shall function until a special election can be held to elect an additional director. The procedure for calling the special election shall be the procedure specified in section 275.25. If there is an insufficient number of board members eligible to be retained from a former school district, the board of the former school district may appoint members to fill the vacancies. A vacancy occurs if there is an insufficient number of former board members who reside in the newly formed district or if there is an insufficient number who are willing to serve on the board of the newly formed district.

3. Prior to the effective date of the reorganization, the initial board shall approve a plan that commences at the second regular school election held after the effective date of the merger and is completed at the fourth regular school election held after the effective date of the merger, to replace the initial board with the regular board. If the petition specifies a number of directors on the regular board to be different from the number of directors on the initial board, the plan shall provide that the number specified in the petition for the regular board is in place by the time the regular board is formed. The plan shall provide that as nearly as possible one-third of the members of the board shall be elected each year, and if a special election was held to elect a member to create an odd number of members on the board,

the term of that member shall end at the organizational meeting following the fourth regular school election held after the effective date.

4. The board of the newly formed district shall organize within forty-five days after the approval of the merger upon the call of the area education agency administrator. The new board shall have control of the employment of all personnel for the newly formed district for the ensuing school year. Following the organization of the new board the board shall have authority to establish policy, organize curriculum, enter into contracts and complete such planning and take such action as is essential for the efficient management of the newly formed community school district.

5. The board of the newly formed district shall appoint an acting superintendent and an acting board secretary. The appointment of the acting superintendent shall not be subject to the continuing contract provision of sections 279.20, 279.23, and 279.24.

Section 49.8, subsection 4, shall not permit a director to remain on the board of a school district after the effective date of a boundary change which places the director's residence outside the boundaries of the district. Vacancies so caused on any board shall be filled in the manner provided in sections 279.6 and 279.7.

93 Acts, ch 160, §12, 13  
Subsection 1 amended  
Subsections 2-7 stricken and rewritten as subsections 2 and 3 and former subsections 8 and 9 renumbered as 4 and 5

**275.51 Dissolution commission.**

As an alternative to school district reorganization prescribed in this chapter, the board of directors of a school district may establish a school district disso-

lution commission to prepare a proposal of dissolution of the school district and attachment of all of the school district to one or more contiguous school districts and to include in the proposal a division of the assets and liabilities of the dissolving school district. A school district dissolution commission shall be established by the board of directors of a school district if a dissolution proposal has been prepared by eligible electors who reside within the district. The proposal must contain the names of the proposed members of the commission and be accompanied by a petition which has been signed by at least twenty percent of the eligible electors.

The dissolution commission shall consist of seven members appointed by the board for a term of office ending either with a report to the board that no proposal can be approved or on the date of the election on the proposal. Members of the dissolution commission must be eligible electors who reside in the school district, not more than three of whom may be members of the board of directors of the school district. Members shall be appointed from throughout the school district and should represent the various socioeconomic factors present in the school district.

Members of the dissolution commission shall serve without compensation and may be appointed to a subsequent commission. A vacancy on the commission shall be filled in the same manner as the original appointment was made.

The board of the school district shall certify to the area education agency board that a commission has been formed, the names and addresses of commission members, and that the commission members represent the various geographic areas and socioeconomic factors present in the district.

93 Acts, ch 160, §14  
Unnumbered paragraph 1 amended

## CHAPTER 277

### SCHOOL ELECTIONS

**277.4 Nominations required.**

Nomination papers for all candidates for election to office in each school district shall be filed with the secretary of the school board not more than sixty-four days, nor less than forty days before the election. Nomination petitions shall be filed not later than five p.m. on the last day for filing. If the school board secretary is not readily available during normal office hours, the secretary may designate a full-time employee of the school district who is ordinarily available to accept nomination papers under this section. On the final date for filing nomination papers the office of the school secretary shall remain open until five p.m.

Each candidate shall be nominated by petition. If the candidate is running for an at-large seat in the district, the petition must be signed by eligible electors equal in number to not less than one percent of the qualified electors of the district or one hundred eligible electors of the district, whichever is less. If the candidate is running for a seat in a director district, the petition must be signed by eligible electors equal in number to not less than one percent of the qualified electors in the director district or one hundred eligible electors in the district, whichever is less. Signers of nomination petitions shall include their addresses and the date of signing, and must reside in the same director district as the candidate if direc-

tors are elected by the voters of a director district, rather than at large. A person may sign nomination petitions 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. The petition shall be filed with the affidavit of the candidate being nominated, stating the candidate's name, place of residence, that such person is a candidate and is eligible for the office the candidate seeks, and that if elected the candidate will qualify for the office.

The secretary of the school board shall accept the petition for filing if on its face it appears to have the requisite number of signatures and if it is timely filed. The secretary of the school board shall note

upon each petition and affidavit accepted for filing the date and time that the petition was filed. The secretary of the school board shall deliver all nomination petitions, together with the complete text of any public measure being submitted by the board to the electorate, to the county commissioner of elections not later than five o'clock p.m. on the day following the last day on which nomination petitions can be filed.

Any person on whose behalf nomination petitions have been filed under this section may withdraw as a candidate by filing a signed statement to that effect with the secretary at any time prior to five o'clock p.m. on the thirty-fifth day before the election.

93 Acts, ch 143, §45  
Unnumbered paragraph 2 amended

## CHAPTER 279

### DIRECTORS — POWERS AND DUTIES

#### **279.7 Vacancies filled by special election — qualification — tenure.**

If a vacancy or vacancies occur among the elective officers or members of a school board and the remaining members of the board have not filled the vacancy within thirty days after the vacancy occurs, or when the board is reduced below a quorum, the secretary of the board, or if there is no secretary, the area education agency administrator, shall call a special election in the district, subdistrict, or subdistricts, as the case may be, to fill the vacancy or vacancies. The county commissioner of elections shall publish the notices required by law for special elections, and the election shall be held not sooner than thirty days nor later than forty days after the thirtieth day following the occurrence of the vacancy. If the secretary fails for more than three days to call an election, the administrator shall call it.

Any appointment by the board to fill any vacancy in an elective office on or after the day notice has been given for a special election to fill such vacancy as provided herein shall be null and void.

In any case of a special election as provided herein to fill a vacancy occurring among the elective officers or members of a school board before the expiration of a full term, the person so elected shall qualify within ten days thereafter in the manner required by section 277.28 and shall hold office for the residue of the unexpired term and until a successor is elected, or appointed, and qualified.

Nomination petitions shall be filed in the manner provided in section 277.4, except that the petitions shall be filed not less than twenty-five days before the date set for the election.

93 Acts, ch 67, §1  
Unnumbered paragraph 1 amended

#### **279.19B Coaching endorsement and authorization.**

The board of directors of a school district may employ for head coach of any interscholastic athletic activities or for assistant coach of any interscholastic athletic activity, an individual who possesses a coaching authorization issued by the board of educational examiners or possesses a teaching license with a coaching endorsement issued pursuant to chapter 272. However, a board of directors of a school district shall consider applicants with qualifications described below, in the following order of priority:

1. A qualified individual who possesses a valid teaching license with a proper coaching endorsement.

2. A qualified individual who possesses a coaching authorization issued by the board of educational examiners.

Qualifications are to be determined by the board of directors or their designee on a case-by-case basis.

An individual who has been issued a coaching authorization or who possesses a teaching license with a coaching endorsement but is not issued a teaching contract under section 279.13 and who is employed by the board of directors of a school district serves at the pleasure of the board of directors and is not subject to sections 279.13 through 279.19, and 279.27. Subsection 1 of section 279.19A applies to coaching authorizations.

93 Acts, ch 66, §1, 2  
Former unnumbered paragraph 1 stricken  
Former unnumbered paragraph 2 divided and amended

#### **279.21 Principals.**

The board of directors of a school district may employ principals, under the provisions of section

279.23. A principal shall hold a current valid principal's certificate. Notwithstanding the provisions of section 279.23, after serving at least nine months, a principal may be employed for a term of not to exceed two years.

The principal, under the supervision of the superintendent of the school district and pursuant to rules and policies of the board of directors of the school district, shall be responsible for administration and operation of the attendance center to which the principal is assigned.

The principal shall, pursuant to the policies adopted by the board of directors of the school district, be responsible for the planning, management, operation, and evaluation of the educational program offered at the attendance center to which the principal is assigned and shall submit recommendations to the superintendent regarding the appointment, assignment, promotion, transfer and dismissal of all personnel assigned to the attendance center. The principal shall perform such other duties as may be assigned by the superintendent.

For purposes of this section and sections 279.23, 279.23A, 279.24, and 279.25, the term "principal" includes school principals, associate principals, and assistant principals.

93 Acts, ch 32, §1  
NEW unnumbered paragraph 4

### **279.23 Continuing contract for administrators.**

Contracts with administrators shall be in writing and shall contain all of the following:

1. The term of employment which for all administrators except for superintendents may be a term of up to two years. Superintendents may be employed under section 279.20 for a term not to exceed three years.
2. The length of time during the school year services are to be performed.
3. The compensation per week of five consecutive days or month of four consecutive weeks.
4. A statement that the contract is invalid if the administrator is under contract with another board of directors in this state covering the same period of time, until such contract shall have been released or terminated by its provisions.
5. Such other matters as may be agreed upon.

The contract shall be signed by the president and the administrator and shall be filed with the secretary of the board before the administrator enters upon performance of the contract. A contract shall not be tendered by an employing board to an administrator under its jurisdiction prior to March 15. A contract shall not be required to be signed by the administrator and returned to the board in less than twenty-one days after being tendered.

Except as otherwise specifically provided, an administrator's contract shall be governed by the provisions of this section and sections 279.23A, 279.24, and 279.25 and not by section 279.13. For purposes of this section and sections 279.23A, 279.24, and 279.25, the term "administrator" includes school su-

perintendents, assistant superintendents, educational directors employed by school districts for grades kindergarten through twelve, educational directors employed by area education agencies under chapter 273, principals, assistant principals, other certified school supervisors employed by school districts for grades kindergarten through twelve as defined under section 20.4, and other certified school supervisors employed by area education agencies under chapter 273.

93 Acts, ch 32, §2  
Subsection 1 and unnumbered paragraph 3 amended

### **279.24 Contract with administrators — automatic continuation or termination.**

An administrator's contract shall remain in force and effect for the period stated in the contract. The contract shall be automatically continued in force and effect for additional one-year periods beyond the end of its original term, except and until the contract is modified or terminated by mutual agreement of the board of directors and the administrator, or until terminated as provided by this section.

If the board of directors is considering termination of an administrator's contract, prior to any formal action, the board may arrange to meet in closed session, in accordance with the provisions of section 21.5, with the administrator and the administrator's representative. The board shall review the administrator's evaluation, review the reasons for nonrenewal, and give the administrator an opportunity to respond. If, following the closed session, the board of directors and the administrator are unable to mutually agree to a modification or termination of the administrator's contract, or the board of directors and the administrator are unable to mutually agree to enter into a one-year nonrenewable contract, the board of directors shall follow the procedures in this section.

An administrator may file a written resignation with the secretary of the school board on or before May 1 of each year or the date specified by the school board for return of the contract, whichever date occurs first.

Administrators employed in a school district for less than two consecutive years are probationary administrators. However, a school board may waive the probationary period for any administrator who has previously served a probationary period in another school district and the school board may extend the probationary period for an additional year with the consent of the administrator. If a school board determines that it should terminate a probationary administrator's contract, the school board shall notify the administrator not later than May 15 that the contract will not be renewed beyond the current year. The notice shall be in writing by letter, personally delivered, or mailed by certified mail. The notification shall be complete when received by the administrator. Within ten days after receiving the notice, the administrator may request a private conference with the school board to discuss the reasons for termination. The school board's decision to ter-

minate a probationary administrator's contract shall be final unless the termination was based upon an alleged violation of a constitutionally guaranteed right of the administrator.

The school board may, by majority vote of the membership of the school board, cause the contract of an administrator to be terminated. If the school board determines that it should consider the termination of a nonprobationary administrator's contract, the following procedure shall apply:

On or before May 15, the administrator shall be notified in writing by a letter personally delivered or mailed by certified mail that the school board has voted to consider termination of the contract. The notification shall be complete when received by the administrator.

The notice shall state the specific reasons to be used by the school board for considering termination which for all administrators except superintendents shall be for just cause.

Within five days after receipt of the written notice that the school board has voted to consider termination of the contract, the administrator may request in writing to the secretary of the school board that the notification be forwarded to the board of educational examiners along with a request that the board of educational examiners submit a list of five qualified administrative law judges to the parties. Within three days from receipt of the list the parties shall select an administrative law judge by alternately removing a name from the list until only one name remains. The person whose name remains shall be the administrative law judge. The parties shall determine by lot which party shall remove the first name from the list. The hearing shall be held no sooner than ten days and not later than thirty days following the administrator's request unless the parties otherwise agree. If the administrator does not request a hearing, the school board, not later than May 31, may determine the continuance or discontinuance of the contract. School board action shall be by majority roll call vote entered on the minutes of the meeting. Notice of school board action shall be personally delivered or mailed to the administrator.

The administrative law judge selected shall notify the secretary of the school board and the administrator in writing concerning the date, time, and location of the hearing. The school board may be represented by a legal representative, if any, and the administrator shall appear and may be represented by counsel or by representative, if any. A transcript or recording shall be made of the proceedings at the hearing. A school board member or administrator is not liable for any damage to an administrator or school board member if a statement made at the hearing is determined to be erroneous as long as the statement was made in good faith.

The administrative law judge shall, within ten days following the date of the hearing, make a proposed decision as to whether or not the administrator should be dismissed, and shall give a copy of the proposed decision to the administrator and the

school board. Findings of fact shall be prepared by the administrative law judge. The proposed decision of the administrative law judge shall become the final decision of the school board unless within ten days after the filing of the decision the administrator files a written notice of appeal with the school board, or the school board on its own motion determines to review the decision.

If the administrator appeals to the school board, or if the school board determines on its own motion to review the proposed decision of the administrative law judge, a private hearing shall be held before the school board within five days after the petition for review, or motion for review, has been made or at such other time as the parties agree. The private hearing is not subject to chapter 21. The school board may hear the case de novo upon the record as submitted before the administrative law judge. In cases where there is an appeal from a proposed decision or where a proposed decision is reviewed on motion of the school board, an opportunity shall be afforded to each party to file exceptions, present briefs and present oral arguments to the school board which is to render the final decision. The secretary of the school board shall give the administrator written notice of the time, place, and date of the hearing. The school board shall meet within five days after the hearing to determine the question of continuance or discontinuance of the contract. The school board shall make findings of fact which shall be based solely on the evidence in the record and on matters officially noticed in the record.

The decision of the school board shall be in writing and shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. Each conclusion of law shall be supported by cited authority or by reasoned opinion.

When the school board has reached a decision, opinion, or conclusion, it shall convene in open meeting and by roll call vote determine the continuance or discontinuance of the administrator's contract. The record of the private conference and findings of fact and exceptions shall be exempt from the provisions of chapter 22. The secretary of the school board shall immediately personally deliver or mail notice of the school board's action to the administrator.

The administrator may within thirty days after notification by the school board of discontinuance of the contract appeal to the district court of the county in which the administrative office of the school district is located.

The court may affirm the school board's action. The court shall reverse, modify, or grant any other appropriate relief from the school board's action, equitable or legal, and including declaratory relief, if substantial rights of the administrator have been prejudiced because the school board's action is any of the following:

1. In violation of constitutional or statutory provisions.
2. In excess of the statutory authority of the school board.
3. In violation of school board policy or rule.
4. Made upon unlawful procedure.
5. Affected by other error of law.
6. Unsupported by a preponderance of the evidence in the record made before the school board when that record is reviewed as a whole.
7. Unreasonable, arbitrary, or capricious, or characterized by an abuse of discretion or clearly unwarranted exercise of discretion.

93 Acts, ch 32, §3, 4  
 Unnumbered paragraph 1 amended  
 NEW unnumbered paragraph 2

**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. However, the sticker is not required to be affixed to an unmarked vehicle used for purposes of providing law enforcement or security.

93 Acts, ch 26, §5  
 Section amended

**279.38A Membership in other organizations.**

Duly elected members of boards of directors and designated administrators of school corporations may join, including the payment of dues, and participate in local, regional, and national organizations which directly relate to the functions of the board of directors.

93 Acts, ch 117, §3  
 NEW section

**279.39 School buildings.**

The board of any school corporation shall establish attendance centers and provide suitable buildings for each school in the district and may at the regular or a special meeting call a special election to submit to the qualified electors of the district the question of voting a tax or authorizing the board to issue bonds, or both.

93 Acts, ch 160, §15  
 NEW section

**279.54 School district income surtax.**

If a majority of those voting in an election approves raising the additional enrichment amount for an asbestos project under section 279.53 and this section, not later than April 15 of the previous school year the board shall certify to the department of management that the required procedures have been carried out, the method of funding the amount to be raised, and the department of management shall establish the amount of additional enrichment property tax to be levied or the amount of the combination of the enrichment property tax and the amount of enrichment income surtax to be imposed for each school year for which the additional enrichment amount for an asbestos project is authorized. The enrichment property tax and income surtax, if an income surtax is imposed, shall be levied and imposed, collected, and paid to the school district in the manner provided for the instructional support program in sections 257.21 through 257.26.

Moneys received are miscellaneous income for purposes of chapter 257.

93 Acts, ch 1, §8  
 Section amended

**CHAPTER 280**

**UNIFORM SCHOOL REQUIREMENTS**

**280.4 Limited English proficiency — weighting.**

1. 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 limited English proficient. When the student is limited English proficient, both public and nonpublic

schools shall provide special instruction, which shall include but need not be limited to either instruction in English as a second language or transitional bilingual instruction until the student is fully English proficient or demonstrates a functional ability to speak, read, write, and understand the English language. As used in this section, “*limited English proficient*” means a student’s language background is in a language other than English, and the student’s pro-

iciency in English is such that the probability of the student's academic success in an English-only classroom is below that of an academically successful peer with an English language background. "Fully English proficient" means a student who is able to read, understand, write, and speak the English language and to use English to ask questions, to understand teachers and reading materials, to test ideas, and to challenge what is being asked in the classroom.

2. The department of education shall adopt rules relating to the identification of limited English proficient students who require special instruction under this section and to application procedures for funds available under this section.

3. In order to provide funds for the excess costs of instruction of limited English proficient students above the costs of instruction of pupils in a regular curriculum, students identified as limited English proficient shall be 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 percent 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 2, 1991.

93 Acts, ch 127, §3  
Section stricken and rewritten

### 280.8 Special education.

The board of directors of each public school district shall make adequate educational provisions for each resident child requiring special education appropriate to the nature and severity of the child's handicapping condition pursuant to rules promulgated by the department under the provisions of chapters 256B and 273.

Section not amended  
Reference to transferred chapter corrected editorially

### 280.13 Requirements for interscholastic athletic contests and competitions.

A public school shall not participate in or allow students representing a public school to participate in any extracurricular interscholastic athletic contest or competition which is sponsored or administered by an organization as defined in this section, unless the organization is registered with the department of education, files financial statements with the department in the form and at the intervals prescribed by the director of the department of education, and is in compliance with rules which the state board of education adopts for the proper administration, supervision, operation, adoption of eligibility requirements, and scheduling of extracurricular interscholastic athletic contests and competitions and the organizations. For the purposes of this section "organization" means a corporation, association, or organization which has as one of its primary purposes the sponsoring or administration of extracurricular interscholastic athletic contests or competitions, but does not include an agency of this state, a public or private school or school board, or an athletic conference or other association whose interscholastic contests or competitions do not include more than twenty-four schools.

93 Acts, ch 101, §204  
Section amended

### 280.14 School requirements.

The board or governing authority of each school or school district subject to the provisions of this chapter shall establish and maintain adequate administration, school staffing, personnel assignment policies, teacher qualifications, certification requirements, facilities, equipment, grounds, graduation requirements, instructional requirements, instructional materials, maintenance procedures and policies on extracurricular activities. In addition the board or governing authority of each school or school district shall provide such principals as it finds necessary to provide effective supervision and administration for each school and its faculty and student body. An individual who is employed or contracted as a superintendent by a school or school district may also serve as an elementary principal in the same school or school district.

93 Acts, ch 4, §2  
Section amended



## CHAPTER 282

### SCHOOL ATTENDANCE AND TUITION

**282.3 Admission and exclusion of pupils.**

1. The board may exclude from school children under the age of six years when in its judgment such children are not sufficiently mature to be benefited by regular instruction, or any child who is found to be physically or mentally unable to attend school under section 299.5, or whose presence in school has been found to be injurious to the health of other pupils, or is inefficiently taught for the scholastic year at a state institution. However, the board shall provide special education programs and services under chapters 256B, 257, and 273 for all children requiring special education.

2. The conditions of admission to public schools for work in the year immediately preceding the first grade and in the first grade shall be as follows:

A child under the age of six years on the fifteenth of September of the current school year shall not be admitted to a public school unless the board of directors of the school has adopted and put into effect courses of study for the school year immediately preceding the first grade, approved by the department of education, and has employed a practitioner or practitioners for this work with standards of training approved by the board of educational examiners.

No child shall be admitted to school work for the year immediately preceding the first grade unless the child is five years of age on or before the fifteenth of September of the current school year.

No child shall be admitted to the first grade unless the child is six years of age on or before the fifteenth of September of the current school year; except that a child under six years of age who has been admitted to school work for the year immediately preceding the first grade under conditions approved by the department of education, or who has demonstrated the possession of sufficient ability to profit by first-grade work on the basis of tests or other means of evaluation recommended or approved by the department of education, may be admitted to first grade at any time before December 31.

3. Nothing herein provided shall prohibit a school board from requiring the attainment of a greater age than the age requirements herein set forth.

Section not amended  
Subsection 1, reference to transferred chapter corrected editorially

**282.6 Tuition.**

Every school shall be free of tuition to all actual residents between the ages of five and twenty-one years and to resident honorably discharged soldiers, sailors, and marines, as many months after becoming twenty-one years of age as they have spent in the military or naval service of the United States before

they became twenty-one, provided, however, fees may be charged covering instructional costs for a summer school or drivers education program. The board of education may, in a hardship case, exempt a student from payment of the above fees. Every person, however, who shall attend any school after graduation from a four-year course in an approved high school or its equivalent shall be charged a sufficient tuition fee to cover the cost of the instruction received by such person.

This section shall not apply to tuition authorized by chapter 260C.

For purposes of this section, “resident” means a person who is physically present in a district, whose residence has not been established in another district by operation of law, and who meets any of the following conditions:

1. Is in the district for the purpose of making a home and not solely for school purposes.

2. Meets the definitional requirements of the term “homeless individual” under 42 U.S.C. § 11302(a) and (c).

3. Lives in a residential correctional facility in the district.

Section not amended  
Unnumbered paragraph 2, reference to transferred chapter corrected editorially

**282.11 Procedure.**

Not less than ninety days prior to signing a whole grade sharing agreement whereby all or a substantial portion of the pupils in a grade in the district will attend school in another district, the board of directors of each school district that is negotiating, extending, or renewing a sharing agreement, shall publicly announce its intent to negotiate a sharing agreement under section 21.4, subsection 1. Within thirty days of the board’s public notice, a petition may be filed with the department of education requesting that a feasibility study be completed. The petition shall be signed by twenty percent of the eligible electors in the district. The director of the department of education may determine that a feasibility study conducted by the board satisfies the request, provided that the study conforms with the criteria contained in section 256.9.

Not less than thirty days prior to signing a whole grade sharing agreement whereby all or a substantial portion of the pupils in a grade in the district will attend school in another district, the board of directors of each school district that is a party to a proposed sharing agreement shall hold a public hearing at which the proposed agreement is described, and at which the parent or guardian of an affected pupil and certificated employees of the school district shall

have an opportunity to comment on the proposed agreement. Within the thirty-day period prior to the signing of the agreement, the parent or guardian of an affected pupil may request the board of directors to send the pupil to another contiguous school district. For the purposes of this section, "affected pupils" are those who under the whole grade sharing agreement are attending or scheduled to attend the school district specified in the agreement, other than the district of residence, during the term of the agreement. The request shall be based upon one of the following:

1. That the agreement will not meet the educational program needs of the pupil.
2. That adequate consideration was not given to geographical factors.

The board shall allow or disallow the request prior to the signing of the agreement, or the request shall be deemed granted. If the board disallows the request, the board shall indicate the reasons why the request is disallowed and shall notify the parent or guardian that the decision of the board may be appealed as provided in this section.

If the board disallows the request of a parent or guardian of an affected pupil, the parent or guardian, not later than March 1, may appeal the sending of that pupil to the school district specified in the agreement, to the state board of education. The basis for the appeal shall be the same as the basis for the request to the board. An appeal shall specify a contiguous school district to which the parent or guardian wishes to send the affected pupil. If the parent or guardian appeals, the standard of review of the appeal is a preponderance of evidence that the parent's or guardian's hardship outweighs the benefits and integrity of the sharing agreement. The state board may require the district of residence to pay tuition to the contiguous school district specified by the parent or guardian, or may deny the appeal by the parent or guardian. If the state board requires the district of residence to pay tuition to the contiguous school district specified by the parent or guardian, the tuition shall be equal to the tuition established in the sharing agreement. The decision of the state board is binding on the boards of directors of the school districts affected, except that the decision of the state board may be appealed by either party to the district court.

93 Acts, ch 160, §16  
Unnumbered paragraph 2 amended

### **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. Reserved.

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 280.4, subsection 4, 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

256B, 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. However, a receiving district may 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 boards of both the sending and receiving districts agree to this arrangement. 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 transportation 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 ineligible to participate in interscholastic athletic contests and athletic competitions during the pupil's first ninety school days of enrollment in the district except that the pupil may participate immediately in an interscholastic sport

if the district of residence and the other school district jointly participate in the sport, if 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. A pupil who has paid tuition and attended school, or has attended 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 also eligible to participate immediately 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. For purposes of this subsection, "*school days of enrollment*" do not include enrollment in summer school.

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.

20. Notwithstanding the general limitations contained in this section, in appeals to the state board from decisions of school boards relating to student transfers under open enrollment, the state board shall exercise broad discretion to achieve just and equitable results which are in the best interest of the affected child or children.

93 Acts, ch 149, §1  
 Subsection 3 stricken  
 Subsection 9, reference to transferred chapter corrected editorially

## CHAPTER 285

### STATE AID FOR TRANSPORTATION

Payment of claims for nonpublic school pupil transportation under §285 2, appropriation limited for 1993-1994 fiscal year; 93 Acts, ch 180, §14

#### 285.1 When entitled to state aid.

1. The board of directors in every school district shall provide transportation, either directly or by reimbursement for transportation, for all resident pupils attending public school, kindergarten through twelfth grade, except that:

a. Elementary pupils shall be entitled to transportation only if they live more than two miles from the school designated for attendance.

b. High school pupils shall be entitled to transportation only if they live more than three miles from the school designated for attendance.

c. Children attending prekindergarten programs offered or sponsored by the district may be provided transportation services.

For the purposes of this subsection, high school means a school which commences with either grade nine or grade ten, as determined by the board of directors of the school district or by the governing authority of the nonpublic school in the case of nonpublic schools.

Boards in their discretion may provide transportation for some or all resident pupils attending public school or pupils who attend nonpublic schools who are not entitled to transportation. Boards in their discretion may collect from the parent or guardian of the pupil not more than the pro rata cost for such optional transportation, determined as provided in subsection 12.

To the extent that this section as amended re-

quires transportation which was not required before August 15, 1973, the board of directors shall not be required to provide such transportation before July 1, 1978.

2. Any pupil may be required to meet a school bus on the approved route a distance of not to exceed three-fourths of a mile without reimbursement.

3. In a district where transportation by school bus is impracticable, where necessary to implement a whole grade sharing agreement under section 282.10, or where school bus service is not available, the board may require parents or guardians to furnish transportation for their children to the schools designated for attendance. Except as provided in section 285.3, the parent or guardian shall be reimbursed for such transportation service for public and nonpublic school pupils by the board of the resident district in an amount equal to eighty dollars plus seventy-five percent of the difference between eighty dollars and the previous school year's statewide average per pupil transportation cost, as determined by the department of education.

However, a parent or guardian shall not receive reimbursement for furnishing transportation for more than three family members who attend elementary school and one family member who attends high school.

4. In all districts where unsatisfactory roads or other conditions make it advisable, the board at its discretion may require the parents or guardians of public and nonpublic school pupils to furnish transportation for their children up to two miles to connect with vehicles of transportation. The parents or guardians shall be reimbursed for such transportation by the boards of the resident districts at the rate of twenty-eight cents per mile per day, one way, per family for the distance from the pupil's residence to the bus route.

5. Where transportation by school bus is impracticable or not available or other existing conditions warrant it, arrangements may be made for use of common carriers according to uniform standards established by the director of the department of education and at a cost based upon the actual cost of service and approved by the board.

6. When the school designated for attendance of pupils is engaged in the transportation of pupils, the sending or designating school shall use these facilities and pay the pro rata cost of transportation except that a district sending pupils to another school may make other arrangements when it can be shown that such arrangements will be more efficient and economical than to use facilities of the receiving school, providing such arrangements are approved by the board of the area education agency.

7. If a local board closes either elementary or high school facilities and is approved by the board of the area education agency to operate its own transportation equipment, the full cost of transportation shall be paid by the board for all pupils living beyond the statutory walking distance from the school designated for attendance.

8. Transportation service may be suspended upon any day or days, due to inclemency of the weather, conditions of roads, or the existence of other conditions, by the board of the school district operating the buses, when in their judgment it is deemed advisable and when the school or schools are closed to all children.

9. Distance to school or to a bus route shall in all cases be measured on the public highway only and over the most passable and safest route as determined by the area education agency board, starting in the roadway opposite the private entrance to the residence of the pupil and ending in the roadway opposite the entrance to the school grounds or designated point on bus route.

10. The board in any district providing transportation for nonresident pupils shall collect the pro rata cost of transportation from the district of pupil's residence for all properly designated pupils so transported.

11. Boards in districts operating buses may transport nonresident pupils who attend public school, kindergarten through junior college, who are not entitled to free transportation provided they collect the pro rata cost of transportation from the parents.

12. The pro rata cost of transportation shall be based upon the actual cost for all the children transported in all school buses. It shall include one-seventh of the original net cost of the bus and other items as determined and approved by the director of the department of education but no part of the capital outlay cost for school buses and transportation equipment for which the school district is reimbursed from state funds or that portion of the cost of the operation of a school bus used in transporting pupils to and from extra-curricular activities shall be included in determining the pro rata cost. In a district where, because of unusual conditions, the cost of transportation is in excess of the actual operating cost of the bus route used to furnish transportation to nonresident pupils, the board of the local district may charge a cost equal to the cost of other schools supplying such service to that area, upon receiving approval of the director of the department of education.

13. When a local board fails to pay transportation costs due to another school for transportation service rendered, the board of the creditor corporation shall file a sworn statement with the area education agency board specifying the amount due. The agency board shall check such claim and if the claim is valid shall certify to the county auditor. The auditor shall transmit to the county treasurer an order directing the county treasurer to transfer the amount of such claim from the funds of the debtor corporation to the creditor corporation and the treasurer shall pay the same accordingly.

14. Resident pupils attending a nonpublic school located either within or without the school district of the pupil's residence shall be entitled to transportation on the same basis as provided for resident

public school pupils under this section. The public school district providing transportation to a nonpublic school pupil shall determine the days on which bus service is provided, which shall be based upon the days for which bus service is provided to public school pupils, and the public school district shall determine bus schedules and routes. In the case of nonpublic school pupils the term "school designated for attendance" means the nonpublic school which is designated for attendance by the parents of the nonpublic school pupil.

15. If the nonpublic school designated for attendance is located within the public school district in which the pupil is a resident, the pupil shall be transported to the nonpublic school designated for attendance as provided in this section.

16. *a.* If the nonpublic school designated for attendance of a pupil is located outside the boundary line of the school district of the pupil's residence, the pupil may be transported by the district of residence to a public school or other location within the district of the pupil's residence. A public school district in which a nonpublic school is located may establish school bus collection locations within its district from which nonresident nonpublic school pupils may be transported to and from a nonpublic school located in the district. If a pupil receives such transportation, the district of the pupil's residence shall be relieved of any requirement to provide transportation.

*b.* As an alternative to paragraph "a" of this subsection, subject to section 285.9, subsection 3, where practicable, and at the option of the public school district in which a nonpublic school pupil resides, the school district may transport a nonpublic school pupil to a nonpublic school located outside the boundary lines of the public school district if the nonpublic school is located in a school district contiguous to the school district which is transporting the nonpublic school pupils, or may contract with the contiguous public school district in which a nonpublic school is located for the contiguous school district to transport the nonpublic school pupils to the nonpublic school of attendance within the boundary lines of the contiguous school district.

*c.* If the nonpublic school designated for attendance of a pupil is located outside the boundary line of the school district of the pupil's residence and the district of residence meets the requirements of subsections 14 to 16 of this section by using subsection 17, paragraph "c", of this section and the district in which the nonpublic school is located is contiguous to the district of the pupil's residence and is willing to provide transportation under subsection 17, paragraph "a" or "b", of this section, the district in which the nonpublic school is located may provide transportation services, subject to section 285.9, subsection 3, and may make the claim for reimbursement under section 285.2. The district in which the nonpublic school is located shall notify the district of the pupil's residence that it is making the claim for reimbursement, and the district of the pupil's residence

shall be relieved of the requirement for providing transportation and shall not make a claim for reimbursement for those nonpublic school pupils for which a claim is filed by the district in which the nonpublic school is located.

17. The public school district may meet the requirements of subsections 14 to 16 by any of the following:

*a.* Transportation in a school bus operated by a public school district.

*b.* Contracting with private parties as provided in section 285.5. However, contracts shall not provide payment in excess of the average per pupil transportation costs of the school district for that year.

*c.* Utilizing the transportation reimbursement provision of subsection 3.

*d.* Contracting with a contiguous public school district to transport resident nonpublic school pupils the entire distance from the nonpublic pupil's residence to the nonpublic school located in the contiguous public school district or from the boundary line of the public school district to the nonpublic school.

18. The director of the department of education may review all transportation arrangements to see that they meet all legal and established uniform standard requirements.

19. Transportation authorized by this chapter is exempt from all laws of this state regulating common carriers.

20. Transportation for which the pro rata cost or other charge is collected shall not be provided outside the state of Iowa except in accordance with rules adopted by the department of education in accordance with chapter 17A. The rules shall take into account any applicable federal requirements.

21. Boards in districts operating buses may in their discretion transport senior citizens, children, handicapped and other persons and groups, who are not otherwise entitled to free transportation, and shall collect the pro rata cost of transportation. Transportation under this subsection shall not be provided when the school bus is being used to transport pupils to or from school unless the board determines that such transportation is desirable and will not interfere with or delay the transportation of pupils.

22. Notwithstanding subsection 1, paragraph "a", a parent or guardian of an elementary pupil entitled to transportation pursuant to subsection 1, may request that a child day care facility be designated for purposes of subsection 9 rather than the residence of the pupil. The request shall be submitted for a period of time of at least one semester and may not be submitted more than twice during a school year.

93 Acts, ch 127, §4  
Subsection 1, NEW paragraph c

### **285.10 Powers and duties of local boards.**

The powers and duties of the local school boards shall be to:

1. Provide transportation for each resident pupil

who attends public school, and each resident pupil who attends a nonpublic school, and who is entitled to transportation under the laws of this state.

2. Establish, maintain and operate bus routes for the transportation of pupils so as to provide for the economical and efficient operation thereof without duplication of facilities, and to properly safeguard the health and safety of the pupils transported.

3. Purchase or lease buses and other transportation facilities, and maintain same, and to enter into contracts for transportation subject to any provisions of law affecting same.

4. Employ such drivers and other employees as may be necessary and prescribe their qualifications and adopt rules for their conduct.

5. Exercise any and all powers and duties relating to transportation of pupils enjoined upon them by law.

6. Shall purchase liability insurance and other insurance coverage which the board deems advisable to insure the school district, its officers, employees and agents against liability incurred as a result of operating school buses, including but not limited to liability to pupils or other persons lawfully transported. Section 670.7 shall apply to such insurance. However, the board of directors in its discretion shall determine the insurance coverages and limits, and the school district and directors shall not be liable as a result of any such discretionary decision.

7. When a school qualifies to purchase buses, they may be purchased as follows:

a. From funds available in the general operating fund or funds in the schoolhouse fund which are raised by the physical plant and equipment levy.

b. May purchase buses and enter into contracts to pay for such buses over a five-year period as follows: One-fourth of the cost when the bus is delivered and the balance in equal annual installments, plus simple interest due. The interest rate shall be

the lowest rate available and shall not exceed the rate in effect under section 74A.2. The bus shall serve as security for balance due. Competitive bids on comparable equipment shall be requested on all school bus body and chassis purchases and shall be based upon minimum construction standards established by the department of education. Separate body and chassis bids shall be requested unless the bus is constructed as an integral unit, inseparable as to body and chassis, by the manufacturer or is a used or demonstrator bus.

8. Boards in school districts which have sufficient resident pupils they are required to transport to warrant the purchase of transportation equipment may purchase buses needed to provide the transportation.

9. In the discretion of the board, furnish a school bus and services of a qualified driver to an organization of, or sponsoring activities for, senior citizens, children, handicapped or other persons and groups in this state. The board shall charge and collect an amount sufficient to reimburse all costs of furnishing the bus and driver except when the bus is used for transporting pupils to and from extracurricular activities sponsored by the school. A school bus shall be used as provided in this subsection only at times when it is not needed for transportation of pupils.

10. In the discretion of the board furnish a school bus and services of a qualified driver for transportation of persons other than pupils to activities in which pupils from the school are participants or are attending the activity or for which the school is a sponsor. The board shall charge and collect an amount sufficient to reimburse all costs of furnishing the bus and driver. A school bus shall be used as provided in this subsection only at times when it is not needed for transportation of pupils.

93 Acts, ch 127, §5  
Subsection 7, paragraph b amended

## CHAPTER 291

### PRESIDENT, SECRETARY, AND TREASURER OF BOARD

#### 291.2 Bonds of secretary and treasurer.

The secretary and treasurer, within ten days after appointment and before entering upon the duties of the office, shall execute to the school corporation a surety bond in an amount sufficient to cover current operations as determined by the board. All such bonds shall be continued to the faithful discharge of the duties of the office. The amount and sufficiency of all surety bonds shall be determined and approved by the board and shall be filed with the president. The cost of the surety bond shall be paid by the

school corporation. If a single person serves as secretary and treasurer, pursuant to section 279.3 or 260C.12, only one bond is necessary for that person. The secretary and treasurer may give bond under a single bond covering other employees of the district.

93 Acts, ch 127, §6  
Section stricken and rewritten

#### 291.7 Monthly receipts, disbursements, and balances.

The secretary of each district shall file monthly



with the board of directors a complete statement of all receipts and disbursements from the various funds during the preceding month, and also the balance remaining on hand in the various funds at the close of the period covered by the statement, which

monthly statements shall be open to public inspection.

93 Acts, ch 127, §7  
Section amended

## CHAPTER 294A

### EDUCATIONAL EXCELLENCE PROGRAM — TEACHERS

#### 294A.2 Definitions.

For the purposes of this chapter:

1. *"Certified enrollment in a school district"* for the school years beginning July 1, 1987, July 1, 1988, and July 1, 1989, means that district's basic enrollment for the budget year beginning July 1, 1987, as defined in section 442.4, Code 1989. For each school year thereafter, certified enrollment in a school district means that district's basic enrollment for the budget year as defined in section 442.4, Code 1989, or section 257.2.

2. *"Enrollment served"* for the fiscal years beginning July 1, 1987, July 1, 1988, and July 1, 1989, means that area education agency's enrollment served for the budget year beginning July 1, 1987. For each school year thereafter, enrollment served means that area education agency's enrollment served for the budget year. Enrollment served shall be determined under section 257.37.\*

3. *"General training requirements"* means requirements prescribed by a board of directors that provide for the acquisition of additional semester hours of graduate credit from an institution of higher education approved by the state board of education or the completion of staff development activities licensed by the board of educational examiners, except for programs developed by practitioner preparation institutions and area education agencies, for renewal of licenses issued under chapter 272.

4. *"Specialized training requirements"* means requirements prescribed by a board of directors to meet specific needs of the school district identified by the board of directors that provide for the acquisition of clearly defined skills through formal or informal education that are beyond the requirements necessary for initial licensing under chapter 272.

5. *"Teacher"* means an individual holding a practitioner's license issued under chapter 272, issued by the board of educational examiners, who is employed in a nonadministrative position by a school district or area education agency pursuant to a contract issued by a board of directors under section 279.13. A teacher may be employed in both an administrative and a nonadministrative position by a board of directors and shall be considered a part-time teacher

for the portion of time that the teacher is employed in a nonadministrative position.

Effective July 1, 1988, *"teacher"* includes a licensed individual employed on less than a full-time basis by a school district through a contract between the school district and an institution of higher education with a practitioner preparation program in which the licensed teacher is enrolled in any practitioner preparation program.

6. *"Teacher's regular compensation"* means the annual salary specified in a teacher's contract pursuant to the salary schedule adopted by the board of directors or negotiated under chapter 20. It does not include pay earned by a teacher for performance of additional noninstructional duties and does not include the costs of the employer's share of fringe benefits.

\*Section 257.37 was vetoed by the governor, 89 Acts, ch 135, §37  
Section not amended

Subsections 3 and 4, references to transferred chapter corrected editorially

#### 294A.12 Goal.

The goal of phase III is to enhance the quality, effectiveness, and performance of Iowa's teachers by promoting teacher excellence. This will be accomplished through the development of performance-based pay plans and supplemental pay plans requiring additional instructional work assignments which may include specialized training or differential training, or both.

It is the intent of the general assembly that school districts and area education agencies incorporate into their planning for performance-based pay plans and supplemental pay plans, implementation of recommendations from recently issued national and state reports relating to the requirements of the educational system for meeting future educational needs, especially as they relate to the preparation, working conditions, and responsibilities of teachers, including but not limited to assistance to new teachers, development of teachers as instructional leaders in their schools and school districts, using teachers for evaluation and diagnosis of other teachers' techniques, and the implementation of sabbatical leaves. It is also the intent of the general assembly that a performance-based pay plan and supplemental pay

plan submitted by a district include a parent involvement policy designed to increase student achievement and self-esteem by bringing home and school into closer relationship and that provides methods by which parents and teachers may cooperate intelligently in the education of children. It is further the intent of the general assembly that real and fundamental change in the educational system must emerge from the school site if the education system is to remain relevant and that plans funded in this program must be an integral part of a comprehensive school district or area education agency effort toward meeting identified district or agency goals or needs.

93 Acts, ch 105, §1  
Unnumbered paragraph 2 amended

#### **294A.14 Phase III payments.**

For each fiscal year, the department shall allocate the remainder of the moneys appropriated by the general assembly to the fund for phase III, subject to section 294A.18. If fifty million dollars is allocated for phase III, the payments for an approved plan for a school district shall be equal to the product of a district's certified enrollment and ninety-eight dollars and sixty-three cents, and for an area education agency shall be equal to the product of an area education agency's enrollment served and four dollars and sixty cents. If the moneys allocated for phase III are either greater than or less than fifty million dollars, the department of education shall adjust the amount for each student in certified enrollment and each student in enrollment served based upon the amount allocated for phase III.

If a school district has discontinued grades under section 282.7, subsection 1, or students attend school in another school district, under an agreement with the board of the other school district, the board of directors of the district of residence either shall transmit the phase III moneys allocated to the district for those students based upon the full-time equivalent attendance of those students to the board of the school district of attendance of the students or shall transmit to the board of the school district of attendance of the students a portion of the phase III moneys allocated to the district of residence based upon an agreement between the board of the resident district and the board of the district of attendance.

A plan shall be developed using the procedure specified under section 294A.15. The plan shall provide for the establishment of a performance-based pay plan, a supplemental pay plan, a combination of the two pay plans, or comprehensive school transformation programs, and shall include a budget for the cost of implementing the plan. In addition to the costs of providing additional salary for teachers and the amount required to pay the employers' share of the federal social security and Iowa public employees' retirement system, or a pension and annuity retirement system established under chapter 294, and payments on the additional salary, the budget may include costs associated with providing specialized or general training. Moneys received under phase III

shall not be used to employ additional employees of a school district, except that phase III moneys may be used to employ substitute teachers, part-time teachers, and other employees needed to implement plans that provide innovative staffing patterns or that require that a teacher employed on a full-time basis be absent from the classroom for specified periods for fulfilling other instructional duties. However, all teachers employed are eligible to receive additional salary under an approved plan.

For the purpose of this section, a performance-based pay plan shall provide for salary increases for teachers who demonstrate superior performance in completing assigned duties. The plan shall include the method used to determine superior performance of a teacher. For school districts, the plan may include assessments of specific teaching behavior, assessments of student performance, assessments of other characteristics associated with effective teaching, or a combination of these criteria.

For school districts, a performance-based pay plan may provide for additional salary for individual teachers, for teachers assigned to a specific discipline, or for all teachers assigned to an attendance center. For area education agencies, a performance-based pay plan may provide for additional salary for individual teachers, for additional salary for all teachers assigned to a specific discipline within an area education agency, or for additional salary for individual teachers assigned to a multidisciplinary team within an area education agency. If the plan provides additional salary for all teachers assigned to an attendance center, specific discipline, or multidisciplinary team, the receipt of additional salary by those teachers shall be determined on the basis of whether that attendance center, specific discipline, or multidisciplinary team meets specific objectives adopted for that attendance center, specific discipline, or multidisciplinary team. For school districts, the objectives may include, but are not limited to, decreasing the dropout rate, increasing the attendance rate, or accelerating the achievement growth of students enrolled in that attendance center through the use of learning techniques that may include, but are not limited to, reading instruction in phonics or whole language techniques.

If a performance-based pay plan provides additional salary for individual teachers:

1. The plan may provide for salary moneys in addition to the existing salary schedule of the school district or area education agency and may require the participation by the teacher in specialized training requirements.

2. The plan may provide for salary moneys by replacing the existing salary schedule or as an option to the existing salary schedule and may include specialized training requirements, general training requirements, and experience requirements.

A supplemental pay plan may provide for supplementing the costs of vocational agriculture programs as provided in section 294A.17.

For the purpose of this section, a supplemental

pay plan in a school district shall provide for the payment of additional salary to teachers who participate in either additional instructional work assignments or specialized training during the regular school day or during an extended school day, school week, or school year. A supplemental pay plan in an area education agency shall provide for the payment of additional salary to teachers who participate in either additional work assignments or improvement of instruction activities with school districts during the regular school day or during an extended school day, school week, or school year.

For school districts, additional instructional work assignments may include but are not limited to general curriculum planning and development, vertical articulation of curriculum, horizontal curriculum coordination, development of educational measurement practices for the school district, participation in assessment activities leading to certification by the national board for professional teaching standards, attendance at workshops and other programs for service as cooperating teachers for student teachers, development of plans for assisting beginning teachers during their first year of teaching, attendance at summer staff development programs, development of staff development programs for other teachers to be presented during the school year, participation in family support programs, and other plans locally determined in the manner specified in section 294A.15 and approved by the department of education under section 294A.16 that are of equal importance or more appropriately meet the educational needs of the school district.

For area education agencies, additional instructional work assignments may include but are not limited to providing assistance and support to school districts in general curriculum planning and development, providing assistance to school districts in vertical articulation of curriculum and horizontal curriculum coordination, development of educational measurement practices for school districts in the area education agency, development of plans for assisting beginning teachers during their first year of teaching, attendance or instruction at summer staff development programs, development of staff development programs for school district teachers to be presented during the school year, participation in family support programs, and other plans determined in the manner specified in section 294A.15 and approved by the department of education under section 294A.16 that are of equal importance or more appropriately meet the educational needs of the area education agency.

Any summer school program, for which the teacher's salary is paid or supplemented under a supplemental pay plan, shall be open to nonpublic school students in the manner provided in section 256.12.

For purposes of this section, "*comprehensive school transformation*" means activities which focus on the improvement of student achievement and the attainment of student achievement goals under sections 280.12 and 280.18. A comprehensive school

transformation plan submitted by a school district shall demonstrate the manner in which the components of the plan are integrated with a school's student achievement goals. Components of the plan may include, but are not limited to, providing salary increases to teachers who implement site-based shared decision making, building-based goal-oriented compensation mechanism, or approved innovative educational programs; who focus on student outcomes; who direct accountability for student achievement or accountability for organizational success; and who work to foster relationships between a school and businesses or public agencies which provide health and social services.

93 Acts, ch 101, §205, 93 Acts, ch 105, §2, 93 Acts, ch 179, §25  
See Code editor's note to §6A.10  
Unnumbered paragraph 5 amended  
Unnumbered paragraphs 9 and 10 amended

#### **294A.16 Plan — moneys.**

A plan adopted by the board of directors of a school district or area education agency shall be submitted to the department of education not later than May 31 of a school year for that school year for a school district, and not later than June 15 of a school year for that school year for an area education agency. Amendments to multiple year plans may be submitted annually.

If a school district uses teachers under a contract between the district and the area education agency in which the district is located and both the school district and the area education agency have approved phase III plans, the school district shall transmit to the employing area education agency a portion of its phase III moneys based upon the portion that the salaries of teachers employed by the area education agency and assigned to the school district for the school year bears to the total teacher salaries paid in the district for that school year, including the salaries of the teachers employed by the area education agency. If the area education agency has an approved phase III plan and the school district does not, the department of management shall transmit phase III moneys to the area education agency for those teachers from the phase III money that would have been paid to the school district if the school district had had an approved phase III plan using the formula that would have been used if the school district had had an approved phase III plan.

The department of education shall review each plan and its budget and notify the department of management of the names of school districts and area education agencies with approved plans. In considering the approval of a plan submitted by a school district, the department shall give emphasis to plans which include a comprehensive school transformation plan or which include a component which is part of a statewide systemic school transformation initiative. In considering the approval of a plan submitted by an area education agency, the department shall give emphasis to plans which are integrated with and supportive of the comprehensive school transformation plans submitted by the school districts within the area education agency.

A school district or area education agency, which receives money for a school year for an approved phase III plan, may retain up to fifty percent of the moneys allocated to the district or area education agency for the next succeeding school year, in order to continue the approved plan. Any of the retained phase III moneys remaining in the district or area education agency account after the second year of the plan shall revert to the general fund of the state as provided in section 8.33.

Any moneys allocated or retained for an approved phase III plan, and any interest accrued on the moneys, shall not be commingled with state aid payments made, under sections 257.16 and 257.35, to a school district or area education agency and shall be accounted for by the school district or area education agency separately from state aid payment accounts.

93 Acts, ch 101, §206  
Unnumbered paragraph 1 amended

#### **294A.25 Appropriation.**

1. For the fiscal year beginning July 1, 1990, there is appropriated from the general fund of the state to the department of education the amount of ninety-two million one hundred thousand eighty-five dollars to be used to improve teacher salaries. For each fiscal year in the fiscal period commencing July 1, 1991, and ending June 30, 1993, there is appropriated an amount equal to the amount appropriated for the fiscal year beginning July 1, 1990, plus an amount sufficient to pay the costs of the additional funding provided for school districts and area education agencies under sections 294A.9 and 294A.14. For each fiscal year beginning on or after July 1, 1993, there is appropriated the sum which was appropriated for the fiscal year commencing July 1, 1992, including supplemental payments. The moneys shall be distributed as provided in this section.

2. The amount of one hundred fifteen thousand five hundred dollars to be paid to the department of human services for distribution to its licensed classroom teachers at institutions under the control of the department of human services for payments for phase II based upon the average student yearly enrollment at each institution as determined by the department of human services.

3. The amount of ninety-four thousand six hundred dollars to be paid to the state board of regents for distribution to licensed classroom teachers at the Iowa braille and sight saving school and the Iowa school for the deaf for payments of minimum salary supplements for phase I and payments for phase II based upon the average yearly enrollment at each school as determined by the state board of regents.

4. Commencing with the fiscal year beginning

July 1, 1988, the amount of one hundred thousand dollars to be paid to the department of education for distribution to the tribal council of the Sac and Fox Indian settlement located on land held in trust by the secretary of the interior of the United States. Moneys allocated under this subsection shall be used for the purposes specified in section 256.30.

5. Commencing with the fiscal year beginning July 1, 1990, the amount of sixty thousand dollars for the ambassador to education program under section 256.43.

5A. Reserved.

6. For the fiscal year beginning July 1, 1990, and succeeding fiscal years, the remainder of moneys appropriated in subsection 1 to the department of education shall be deposited in the educational excellence fund to be allocated in an amount to meet the minimum salary requirements of this chapter for phase I, in an amount to meet the requirements for phase II, and the remainder of the appropriation for phase III.

7. Commencing with the fiscal year beginning July 1, 1993, the amount of fifty thousand dollars for geography alliance, seventy thousand dollars for gifted and talented, and one hundred eighty thousand dollars for a management information system from additional funds transferred from phase I to phase III.

8. For the fiscal year beginning July 1, 1993, to the department of education from phase III moneys the amount of seven hundred fifty thousand dollars for support for the operations of the new Iowa schools development corporation and for school transformation design and implementation projects administered by the corporation and the amount of seven hundred fifty thousand dollars for purposes specified in the math and science grant program under section 256.36, which may include support for the early mathematics prognostic testing program at Iowa state university of science and technology. However, the funds appropriated for purposes specified in the math and science grant program under section 256.36 are contingent on the receipt of federal funding from the state systemic initiative for improving mathematics and science education grant. If federal funding from the state systems initiative for improving mathematics and science education is not received, the amount of two hundred fifty thousand dollars shall be used, in addition to any other appropriations, for the operations of the new Iowa schools development corporation and for school transformation design and implementation projects administered by the corporation.

93 Acts, ch 179, §26 28, 34  
Additional appropriation, reduction, 93 Acts, ch 179 §3, 93 Acts, ch 180, §19  
Subsection 5A temporarily amended and then stricken  
NEW subsections 7 and 8

## CHAPTER 298

### SCHOOL TAXES AND BONDS

#### **298.2 Imposition of physical plant and equipment levy.**

1. A physical plant and equipment levy of not exceeding one dollar per thousand dollars of assessed valuation in the district is established except as otherwise provided in this subsection. The physical plant and equipment levy consists of the regular physical plant and equipment levy of not exceeding thirty-three cents per thousand dollars of assessed valuation in the district and a voter-approved physical plant and equipment levy of not exceeding sixty-seven cents per thousand dollars of assessed valuation in the district. However, the voter-approved physical plant and equipment levy may consist of a combination of a physical plant and equipment property tax levy and a physical plant and equipment income surtax as provided in subsection 3 with the maximum amount levied and imposed limited to an amount that could be raised by a sixty-seven cent property tax levy. The levy limitations of this subsection are subject to subsection 5.

2. The board of directors of a school district may certify for levy by April 15 of a school year a tax on all taxable property in the school district for the regular physical plant and equipment levy.

3. The board may, and upon the written request of not less than one hundred eligible electors or thirty percent of the number of eligible electors voting at the last regular school election, whichever is greater, shall, direct the county commissioner of elections to provide for submitting the proposition of levying the voter-approved physical plant and equipment levy for a period of time authorized by the voters in the notice of election, not to exceed ten years, in the notice of the regular school election. The proposition is adopted if a majority of those voting on the proposition at the election approves it. The voter-approved physical plant and equipment levy shall be funded either by a physical plant and equipment property tax or by a combination of a physical plant and equipment property tax and a physical plant and equipment income surtax, as determined by the board. However, if the board intends to enter into a rental or lease arrangement under section 279.26, or intends to enter into a loan agreement under section 297.36, only a property tax shall be levied for those purposes. Subject to the limitations of section 298.14, if the board uses a combination of a physical plant and equipment property tax and a physical plant and equipment surtax, for each fiscal year the board shall determine the percent of income surtax to be imposed expressed as full percentage points, not to exceed twenty percent.

If a combination of a property tax and income surtax is used, by April 15 of the previous school year,

the board shall certify the percent of the income surtax to be imposed and the amount to be raised to the department of management and the department of management shall establish the rate of the property tax and income surtax for the school year. The physical plant and equipment property tax and income surtax shall be levied or imposed, collected, and paid to the school district in the manner provided for the instructional support program in sections 257.21 through 257.26.

4. The proposition to levy the voter-approved physical plant and equipment levy is not affected by a change in the boundaries of the school district, except as otherwise provided in this section. If each school district involved in a school reorganization under chapter 275 has adopted the voter-approved physical plant and equipment levy or the sixty-seven and one-half cents per thousand dollars of assessed value schoolhouse levy under section 278.1, subsection 7, Code 1989, prior to July 1, 1991, and if the voters have not voted upon the proposition to levy the voter-approved physical plant and equipment levy in the reorganized district, the existing voter-approved physical plant and equipment levy or the existing schoolhouse levy, as applicable, is in effect for the reorganized district for the least amount and the shortest time for which it is in effect in any of the districts.

Authorized levies for the period of time approved are not affected as a result of a failure of a proposition proposed to expand the purposes for which the funds may be expended.

5. If the board of directors of a school district in which the voters have authorized the schoolhouse tax prior to July 1, 1991, has entered into a rental or lease arrangement under section 279.26, Code 1989, or has entered into a loan agreement under section 297.36, Code 1989, the levy shall continue for the period authorized and the maximum levy that can be authorized under the voter-approved physical plant and equipment levy is reduced by the rate of the schoolhouse tax.

93 Acts, ch 1, §9, 10  
Subsection 2 amended  
Subsection 3, unnumbered paragraph 2 amended

#### **298.4 District management levy.**

The board of directors of a school district may certify for levy by April 15 of a school year, a tax on all taxable property in the school district for a district management levy. The revenue from the tax levied in this section shall be placed in the district management subfund of the general fund of the school district. The district management levy shall be expended only for the following purposes:

1. To pay the cost of unemployment benefits as provided in section 96.31.
2. To pay the costs of liability insurance and the costs of a judgment or settlement relating to liability together with interest accruing on the judgment or settlement to the expected date of payment.
3. To pay the costs of insurance agreements under section 296.7.
4. To pay the costs of a judgment under section 298.16.
5. To pay the cost of early retirement benefits to employees under section 279.46.

Notwithstanding section 291.13, unencumbered funds collected from the levies authorized in sections 96.31, 279.46, and 296.7 prior to July 1, 1991, may be expended for the purposes listed in subsections 1, 3, and 5.

93 Acts, ch 1, §11  
Unnumbered paragraph 1 amended

#### **298.7 Contract for use of library — tax levy.**

1. The board of directors of a school corporation in which there is no free public library may contract with a free public library for the free use of the library by the residents of the school district, and pay the library the amount agreed upon for the use of the library as provided by law. During the existence of the contract, the board shall certify annually a tax sufficient to pay the library the consideration agreed upon, not exceeding twenty cents per thousand dollars of assessed value of the taxable property of the district. During the existence of the contract, the school corporation is relieved from the requirement that the school treasurer withhold funds for library purposes. This section does not apply in townships where a contract for other library facilities is in existence.

2. However, if a school district which is qualified to contract for library services under subsection 1 levies a tax not to exceed twenty cents per thousand dollars of assessed valuation of the taxable property for school library purposes in the fiscal year before a reorganization involving the district, the tax levy shall remain valid for succeeding fiscal years, and shall be levied and collected against the taxable property of the former district which is part of the reorganized district for school library purposes. The contract and the tax levy may be discontinued by a petition signed by eligible electors residing in the former district. The petition requesting the discontinuance must be signed by no fewer than one hundred eligible electors or thirty percent of the number voting at the last preceding school election in the former district, whichever is greater. The petition must be filed with the secretary of the board of directors of the school district at least seventy-five days before the next regular school election. The proposal to discontinue the levy shall be deemed adopted if the vote in favor of the discontinuance is equal to at least a majority of the total vote cast on the proposal by the electors of the former school district.

93 Acts, ch 74, §1  
Section amended

#### **298.10 Levy for cash reserve.**

The board of directors of a school district may certify for levy by April 15 of a school year, a tax on all taxable property in the school district in order to raise an amount for a necessary cash reserve for a school district's general fund. The amount raised for a necessary cash reserve does not increase a school district's authorized expenditures as defined in section 257.7.

93 Acts, ch 1, §12  
Section amended

## CHAPTER 299

### COMPULSORY EDUCATION

#### **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 and ages of each pupil of the ac-

credited nonpublic school who is of compulsory attendance age and the grade level of each pupil, during the preceding year and from the time of the last preceding report to the time at which a report is required. In addition, the report shall identify all students of compulsory attendance age who were truant as defined by law or school policy and the number of days of truancy for the period covered by the report, and children who dropped out, withdrew from enrollment, or transferred to another Iowa school and the date their attendance ceased at the accredited nonpublic school. The secretary shall retain one of

the reports and file the other with the secretary of the area education agency.

93 Acts, ch 101, §207  
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 256B, 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.

Section not amended  
Reference to transferred chapter corrected editorially

**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 256B, 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.

Section not amended  
Reference to transferred chapter corrected editorially

**CHAPTER 299A**

**PRIVATE INSTRUCTION**

**299A.9 Children requiring special education.**

A child of compulsory attendance age who is identified as requiring special education under chapter 256B 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 re-

ferred for evaluation under chapter 256B 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.

Section not amended  
Unnumbered paragraphs 1 and 2, references to transferred chapter corrected editorially

**CHAPTER 300**

**EDUCATIONAL AND RECREATIONAL TAX**

**300.2 Tax levy.**

The board of directors of a school district may, and upon receipt of a petition signed by eligible electors equal in number to at least twenty-five percent of the number of voters at the last preceding school election, shall, direct the county commissioner of elections to submit to the qualified electors of the

school district the question of whether to levy a tax of not to exceed thirteen and one-half cents per thousand dollars of assessed valuation for public educational and recreational activities authorized under this chapter. If at the time of filing the petition, it is more than three months until the next regular school election, the board of directors shall sub-

mit the question at a special election within sixty days. Otherwise, the question shall be submitted at the next regular school election.

If a majority of the votes cast upon the proposition is in favor of the proposition, the board shall certify the amount required for a fiscal year to the county board of supervisors by April 15 of the preceding fiscal year. The board of supervisors shall levy the amount certified. The amount shall be placed in the schoolhouse fund of the district and shall be used only for the purposes specified in this chapter.

The proposition to levy the public recreation and playground tax is not affected by a change in the

boundaries of a school district, except as otherwise provided in this section. If each district involved in school reorganization under chapter 275 has adopted the public recreation and playground tax, and if the voters have not voted upon the proposition to levy the public recreation and playground tax in the reorganized district, the existing public recreation and playground tax shall be in effect for the reorganized district for the least amount that has been approved in any of the districts and until discontinued pursuant to section 300.3.

93 Acts, ch 1, §13, 93 Acts, ch 160, §17  
Unnumbered paragraph 2 amended  
NEW unnumbered paragraph 3

## CHAPTER 301

### TEXTBOOKS

#### 301.1 Adoption — purchase and sale.

The board of directors of each and every school district is hereby authorized and empowered to adopt textbooks for the teaching of all branches that are now or may hereafter be authorized to be taught in the public schools of the state, and to contract for and buy said books and any and all other necessary school supplies at said contract prices, and to sell the same to the pupils of their respective districts at cost, loan such textbooks to such pupils free, or rent them to such pupils at such reasonable fee as the board shall fix, and said money so received shall be returned to the general fund.

Textbooks adopted and purchased by a school district may, and shall to the extent funds are appropriated by the general assembly, be made available to pupils attending nonpublic schools upon request of the pupil or the pupil's parent under comparable terms as made available to pupils attending public schools. As used in this paragraph, "textbooks"

means books; book substitutes, including reusable workbooks; loose-leaf or bound manuals; and computer software materials used as book substitutes.

93 Acts, ch 63, §1  
Unnumbered paragraph 2 amended

#### 301.10 Textbook suppliers.

A person or firm desiring to furnish books or supplies under this chapter shall do all of the following:

1. At or before the time of filing a bid, make available samples of all textbooks included in the bid, accompanied by lists giving the lowest wholesale and contract prices for the textbooks.

2. If requested by the department of education, make available a machine-readable version of a textbook purchased by a school district to the department in the best available format for electronic braille translation.

93 Acts, ch 59, §2  
Section stricken and rewritten

## CHAPTER 301A

### COMPUTER INITIATIVE — EDUCATIONAL TECHNOLOGY CONSORTIUM

Chapter repealed June 30, 1997, see §301A 8

#### 301A.1 Computer initiative.

In order to meet the present and future technological needs of the children of this state, it is the intent of the general assembly that all pupils enrolled in the public and nonpublic schools of this state have access to computers and computer technology in their

schools and in their homes and that educational software be developed to assist pupils in learning and to enhance their technological skills.

93 Acts, ch 162, §1  
NEW section



**301A.2 Educational technology consortium.**

No later than July 1, 1993, the governor, in consultation with the president of the senate, the majority and minority leaders of the senate, and the speaker of the house, and the majority and minority leaders of the house, shall establish an educational technology consortium. Members of the consortium appointed by the governor shall represent both the public and private sectors and be knowledgeable about the present and future development of computers, telecommunications systems, and computer software.

Members appointed by the governor, in consultation with the president of the senate, the majority and minority leaders of the senate, and the speaker of the house, and the majority and minority leaders of the house, may represent, but are not limited to, the following:

1. Manufacturers and sellers of computer hardware and software.
  2. Entertainment and information companies.
  3. Broadcasting and film companies.
  4. Telephone, cable television, and information transmission companies.
  5. Printing and publishing companies.
  6. Other technology service companies.
  7. Educational practitioners from all levels of the education system.
  8. Iowa department of economic development.
  9. Librarians.
  10. Iowa department of education.
  11. 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 a nonvoting member.
  12. A member of the house of representatives to be appointed by the speaker of the house, after consultation with the majority leader and the minority leader of the house, to serve as a nonvoting member.
- All appointments shall comply with sections 69.16 and 69.16A.

93 Acts, ch 162, §2  
NEW section

**301A.3 Development of plan.**

The consortium shall develop a plan for computer hardware and software for the use of children in this state. In developing its plan, the consortium shall examine the need for ensuring equal access to educational technology and make recommendations relating to optimal specifications for educational technology and software that is needed for school

and home use. The consortium shall consider options for encouraging the development of products that meet the optimal specifications if, in the consortium's estimation, such products will not be available at a reasonable price within the next three years.

The consortium shall also consider the development of a risk management plan to cover the potential for loss and damage to components of the hardware and software. The consortium shall also promote cooperation with other states which might share in the development of the hardware and software.

In carrying out the duties described in this section, the consortium shall coordinate its work with the work of the educational technology commission established by the department of education.

93 Acts, ch 162, §3  
NEW section

**301A.4 Consortium considerations.**

As it develops its recommendations, the consortium shall consider the following:

1. Capabilities needed for the hardware system, including but not limited to processing, memory, display, audio capabilities, storage capacity, input devices, connectivity, ability to be upgraded, portability, durability, telecommunication capabilities, expandability, obsolescence, versatility for running diverse software, and usability for school and home.
2. Capabilities needed for the software for home and school use, including but not limited to present educational needs and potential for meeting future needs of the education system. The members of the consortium shall consult with representatives of educational agencies, educational institutions, school corporations, and nonpublic schools, and with licensed education practitioners in considering existing educational software and the potential for developing new educational software.
3. Economic development benefits, including but not limited to the following:
  - a. The feasibility of manufacturing or assembling the computer and peripheral devices in this state and whether maintenance and support services can be based in this state.
  - b. Determination, given the size of the proposed acquisition, of whether new commercial interests would be fostered or existing commercial interests could expand due to the markets created by the sales of the hardware and software.
  - c. Consideration of whether market opportunities exist by the proposed acquisition for the devel-

opment of educational software that have potential for sales in other states or nations.

*d.* Consideration of whether coordination of acquisition needs for multiple commercial interests for computer processing power and memory is possible or advisable, and if so, identification of the benefits.

*e.* Potential for improving the technological skills not only of students but of their parents or guardians for computers in their homes.

4. The current computer hardware inventories of the school districts and of the parents or guardians of pupils enrolled in public school districts.

5. Multimedia presentation hardware and software currently used or available for use by a school district.

93 Acts, ch 162, §4  
NEW section

#### **301A.5 Exemption from antitrust laws.**

Notwithstanding any contrary provision of the Code, for purposes of participating in the computer initiative for schools, commercial interests shall be exempt from a challenge under any applicable state antitrust laws and, if necessary, the consortium shall seek exemption from federal antitrust laws or similar laws in the regulation of trade or commerce for those commercial interests.

93 Acts, ch 162, §5  
NEW section

#### **301A.6 Methods of acquisition.**

The consortium shall estimate the number of

units to be acquired to optimize economies of scale in acquisitions. The consortium shall develop recommendations relating to funding options for the acquisition of the hardware and software. These include, but are not limited to, use of student fees, use of existing technology acquisition budgets, user charges using a sliding fee scale, charges for information transmission, taxation of those entities in the private sector benefiting from the acquisition, use of federal moneys, use of grants and gifts, generation of royalties from the sale of software developed for the initiative, use of in-kind contributions, and coordination of existing spending by schools, students, or parents.

93 Acts, ch 162, §6  
NEW section

#### **301A.7 Report.**

On January 15, 1994, and each January 15 thereafter, the consortium shall file a report of its progress with the governor and the general assembly. The report shall be filed with the governor, the senate, and the house of representatives using both a paper format and electronic technology.

93 Acts, ch 162, §7  
NEW section

#### **301A.8 Repeal.**

This chapter is repealed June 30, 1997.

93 Acts, ch 162, §8  
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, and other cultural matters. In fulfilling this responsibility, the department will be advised and assisted by the state historical society and its board of trustees, and the Iowa arts council.

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 throughout the state the study and presentation of the performing and fine arts and public interest and participation in them.

*c.* Implement tourism-related art and history projects as directed by the general assembly.

*d.* 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.

3. The department shall consist of the following:

*a.* Historical division.

*b.* Arts division.

*c.* Other divisions created by rule.

*d.* Administrative section.

4. The director may create, combine, eliminate, alter or reorganize the organization of the department by rule.

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. 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.

93 Acts, ch 48, §48  
Section amended

**303.1A Director's duties.**

The duties of the director shall include, but are not limited to, the following:

- 1. Adopt rules that are necessary for the effective administration of the department.
- 2. Direct and administer the programs and services of the department.
- 3. Prepare the departmental budget request by September first of each year on the forms furnished, and including the information required by the department of management.
- 4. Accept, receive, and administer grants or other funds or gifts from public or private agencies including the federal government for the various divisions and the department.
- 5. Appoint and approve the technical, professional, secretarial, and clerical staff necessary to accomplish the purposes of the department subject to chapter 19A.

The director may appoint a member of the staff to be acting director who shall have the powers delegated by the director in the director's absence. The director may delegate the powers and duties of that office to the administrators.

93 Acts, ch 48, §49  
Unnumbered paragraph 1 amended  
Unnumbered paragraphs 2 and 3 amended and combined

**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.

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 his-

toric 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 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 implementation and enforcement of this subsection and subchapter VI of this chapter.

93 Acts, ch 48, §50, 51  
Subsection 1 amended  
Subsection 3 stricken and former subsection 4 renumbered as 3

**303.2A Intradepartmental advisory council.** Repealed by 93 Acts, ch 48, § 55.

**303.4 State historical society of Iowa — board of trustees.**

1. A state historical society board of trustees is established consisting of twelve members selected as follows:

a. Three members shall be elected by the members of the state historical society according to rules established by the board of trustees.

b. The governor shall appoint one member from each of the state’s congressional districts.

c. The governor shall appoint four members from the state at large, at least one of whom shall be on the faculty of a college or university in the state engaged in a discipline related to the activities of the historical society.

2. The term of office of members of the board of trustees is three years commencing and ending as provided in section 69.19. The terms of office of the governor’s appointees are staggered terms of three years each, so that three members are appointed each year.

93 Acts, ch 18, §1  
Transition to twelve-member board, 93 Acts, ch 18, § 2  
Section amended

**303.17 Terrace Hill commission.** Repealed by 93 Acts, ch 48, § 55. See § 18.8A.

**303.18 Loan for exhibits.**

Notwithstanding sections 257B.1 and 257B.1A, and after moneys appropriated under section 99E.32, subsection 5, for the fiscal year beginning July 1, 1987 and ending June 30, 1988 have been expended or obligated, the administrator of the historical division of the department of cultural affairs may obtain a loan of not exceeding three million fifty thousand dollars from moneys designated as the permanent school fund of the state in section 257B.1, to be used to pay for equipment, planning, and construction costs of educational exhibits for the state

historical museum. The exhibits will teach common school children of Iowa about Iowa’s history, culture, and heritage. The department of revenue and finance shall make the payment upon receipt of a written request from the administrator of the historical division. Moneys received under this section as a loan that are not expended are available for expenditure during the fiscal year beginning July 1, 1988.

The historical division shall repay a portion of the amount of the loan together with annual interest payments due on the balance of the loan over a ten-year period commencing with the fiscal year beginning July 1, 1987. Payments shall be made from gross receipts and other moneys available to the historical division. The historical division shall solicit voluntary contributions on behalf of the historical division, at the entrance and other locations throughout the state historical building for purposes of raising funds for making payments under this section. Payments of both principal and interest made by the state historical division under this section shall be paid quarterly and shall be considered interest earned on the permanent school fund to the extent necessary for payment of interest to the first in the nation in education foundation under section 257B.1A.

The treasurer of state shall determine the rate of interest that the historical division shall pay on the loan.

93 Acts, ch 179, §29  
Unnumbered paragraph 2 amended

SUBCHAPTER V

PUBLIC BROADCASTING DIVISION

**303.75 through 303.85** Repealed by 93 Acts, ch 48, § 55. See § 256.80 et seq.

SUBCHAPTER VII

LIBRARY DIVISION

**303.91 through 303.94** Repealed by 93 Acts, ch 48, § 55. See § 256.50 et seq.

CHAPTER 303A

LIBRARY COMPACT

Repealed by 93 Acts, ch 48, §56, see §256.70 et seq

## CHAPTER 303B

### REGIONAL LIBRARY SYSTEM

Repealed by 93 Acts, ch 48, §56, see §256.60 et seq

## CHAPTER 307

### DEPARTMENT OF TRANSPORTATION (DOT)

#### 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.

(5) Comply with the requirements for the purchase of lubricating oils and industrial oils as established pursuant to section 18.22.

*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. However, the sticker is not required to be affixed to an unmarked vehicle used for purposes of providing law enforcement or security.

5. The administrator shall, whenever technically feasible, purchase and use degradable loose foam packing material manufactured from grain starches or other renewable resources, unless the cost of the packing material is more than ten percent greater than the cost of packing material made from non-renewable resources. For the purposes of this subsection, "*packing material*" means material, other than an exterior packing shell, that is used to stabilize, protect, cushion, or brace the contents of a package.

6. Assist the director in employing the professional, technical, clerical and secretarial staff for the department and maintain employee records, in co-operation with the department of personnel and provide personnel services, including but not limited to training, safety education and employee counseling.

7. Assist the director in co-ordinating the re-

sponsibilities and duties of the various divisions within the department.

8. Carry out all other general administrative duties for the department.

9. 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.

93 Acts, ch 26, §6, 93 Acts, ch 176, §40  
Subsection 4, paragraph d amended  
NEW subsection 5 and former subsections 5-8 renumbered as 6-9

#### **307.44 Use of federal moneys — cooperation.**

If funds are allotted or appropriated by the government of the United States for the improvement of transportation facilities and services in this state, the department may cooperate with the government of the United States, and any agency or department thereof, in the planning, acquisition, contract letting, construction, improvement, maintenance, and operation of transportation facilities and services in this state; may comply with the federal statutes and rules; and may cooperate with the federal government in the expenditure of the federal funds.

In order to avoid delays, payment for the street and highway projects or improvements constructed in cooperation with the federal government may be advanced from the primary road fund.

93 Acts, ch 87, §2  
Unnumbered paragraph 1 amended

## CHAPTER 307A

### TRANSPORTATION COMMISSION

#### **307A.2 Duties.**

Said commission shall:

1. Devise and adopt standard plans of highway construction and furnish the same to the counties and provide information to the counties on the maintenance practices and policies of the department.

2. Furnish information and instruction to, answer inquiries of, and advise with, highway officers on matters of highway construction and maintenance and the reasonable cost thereof.

3. Reserved.

4. Make surveys, plans, and estimates of cost, for the elimination of danger at railroad crossings on highways, and confer with local and railroad officials with reference to elimination of the danger.

5. Assist the board of supervisors and the department general counsel in the defense of suits wherein infringement of patents, relative to highway construction, is alleged.

6. Make surveys for the improvement of highways upon or adjacent to state property when requested by the board or department in control of said lands.

7. Record all important operations of said commission and, at the time provided by law, report the same to the governor.

8. Incur no expense to the state by sending out road lecturers.

9. Order the removal or alteration of any lights or light-reflecting devices, whether on public or private property, other than railroad signals or crossing lights, located adjacent to a primary road and within three hundred feet of a railroad crossing at grade,

which in any way interfere with the vision of or may be confusing to a person operating a motor vehicle on such highway in observing the approach of trains or in observing signs erected for the purpose of giving warning of such railroad crossing.

10. Order the removal or alteration of any lights or light-reflecting devices, whether on public or private property, located adjacent to a primary road and within three hundred feet of an intersection with another primary road, which in any way interfere with the vision of or may be confusing to a person operating a motor vehicle on such highway in observing the approach of other vehicles or signs erected for the purpose of giving warning of such intersection.

11. Construct, reconstruct, improve and maintain state institutional roads and state park roads as defined in section 306.3 and bridges on such roads, roads located on state fairgrounds as defined in chapter 173 and the roads and bridges located on community college property as defined in chapter 260C upon the request of the state board, department or commission which has jurisdiction over such roads. This shall be done in such manner as may be agreed upon by the commission and the state board, department or commission which has jurisdiction. The commission may contract with any county or municipality for the construction, reconstruction, improvement or maintenance of such roads and bridges. Any state park road which is an extension of either a primary or secondary highway which both enters and exits from a state park at separate points shall be constructed, reconstructed, improved and maintained as provided in section 306.4.

Funds allocated from the road use tax fund for the purposes of this subsection shall be apportioned in the ratio that the needs of the state institution roads and bridges, park roads and bridges or community college roads and bridges bear to the total needs of these facilities based upon the most recent quadrennial park and institution need study. The commission shall conduct a study of the road and bridge facilities in state parks, state institutions, state fairgrounds and on community college property. The study shall evaluate the construction and maintenance needs and projected needs based upon estimated growth for each type of facility to provide a quadrennially updated standard upon which to allocate funds appropriated for the purposes of this subsection.

12. Prepare, adopt and cause to be published a long-range program for the primary road system, in conjunction with the state transportation plan adopted by the commission. Such program shall be prepared for a period of at least five years and shall be revised, brought up to date and republished at least once every year in order to have a continuing five-year program. The program shall include, insofar as such estimates can be made, an estimate of the money expected to become available during the period covered by the program and a statement of the construction, maintenance, and other work planned to be performed during such period. The commission shall conduct periodic reinspections of the primary roads in order to revise, from time to time, its estimates of future needs to conform to the physical and service conditions of the primary roads. The commission shall annually cause to be published a sufficiency rating report showing the relative conditions of the primary roads. Before the last day of December of each year, the commission shall adopt and cause to be published from its long-range program, a plan of improvements to be accomplished during the next calendar year. This annual program shall list definite projects in order of urgency and shall include a reasonable year's work with the funds estimated to be available. The annual program shall be final and followed by the commission in the next year except that deviations may be made in case of disaster or other unforeseen emergencies or difficulties. The relative urgency of the proposed improve-

ments shall be determined by a consideration of the physical condition, safety, and service characteristics of the various primary roads.

13. The commission shall adopt such rules and regulations in accordance with the provisions of chapter 17A as it may deem necessary to transact its business and for the administration and exercise of its powers and duties.

14. For the four-year period beginning July 1, 1979, and for each subsequent four-year period, prepare, adopt and cause to be published the results of a study of all roads and streets in the state. The study shall be so designed to investigate present deficiencies and future twenty-year maintenance and construction needs of the roads and the ability of each applicable authority to meet the needs for the planning, construction, repair and maintenance of roads within their jurisdiction. The commission may gather information necessary to complete this study and shall be furnished assistance from any state agency as necessary to prepare, update and publish a report to be referred to as the "*quadrennial need study*" for the purposes of this chapter and chapter 312. The commission shall report the results of the study to the general assembly by January 1 of the last year in each four-year period and the study shall take effect the following July 1. This subsection does not preclude the commission from updating the quadrennial need study when necessary to reflect changes in road and street needs in the state.

14A. Annually recalculate the construction and maintenance needs of roads under the jurisdiction of each county to take into account the needs of a road whose jurisdiction has been transferred from the department to a county or from a county to the department during the previous year. The recalculation shall be reported by January 1 of the year following the transfer and shall take effect the following July 1 for the purposes of allocating moneys under sections 312.3 and 312.5.

15. Identify, within the primary road system, a network of commercial and industrial highways in accordance with section 313.2A. The improvement of this network shall be considered in the development of the long-range program and plan of improvements under this section.

Section not amended

Subsection 11, reference to transferred chapter corrected editorially

## 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, except those funds credited to the highway grade crossing safety fund, shall at the end of each year revert to the road use tax fund. Funds in the highway grade crossing safety fund shall not revert to the road use tax fund except to the extent they exceed five hundred thousand dollars at the end of any biennium. The cost of each highway railroad grade crossing repair project shall be allocated in the following manner:

a. Twenty percent of the project cost shall be paid by the railroad company.

b. Twenty percent of the project cost shall be paid by the highway authority having jurisdiction of the road crossing the railroad.

c. Sixty percent of the project cost shall be paid from the highway railroad grade crossing surface repair fund.

6. The treasurer of state shall before making the allotments provided for in this section credit monthly to the state department of transportation funds sufficient in amount to pay the costs of purchasing certificate of title and registration forms, and sup-

plies 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 "d", 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, beginning on July 1, 1991, 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 452A.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 452A.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 324A.6, from revenue credited to the road use tax fund under section 423.24, subsection 1, paragraph

"d", an amount equal to one-twentieth of eighty percent of the revenue from the operation of section 423.7.

Notwithstanding the provisions of this subsection directing that one-twentieth of eighty percent of the revenue derived from the operation of section 423.7, be deposited into the public transit assistance fund, beginning on July 1, 1991, 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 324A.

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 "d", 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, reconstruction, replacement, or realignment 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 hun-

dred 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.

93 Acts, ch 131, §10, 11, 93 Acts, ch 180, §75  
Restrictions on use of moneys deposited in state general fund, see § 8 60  
Subsection 13, unnumbered paragraph 2 amended  
Subsection 14A, paragraph a, reference to transferred section corrected editorially  
Subsection 15, unnumbered paragraph 2 amended  
Subsection 18, internal reference corrected editorially  
Subsection 19, paragraph a amended

**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 apportion 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.

2. Apportion 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 certifica-

tion 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.

92 Acts, ch 1238, §27, 46  
See Code editor's note  
Subsection 1 stricken and rewritten effective July 1, 1993

**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.

"*Latest quadrennial need study report*" includes the annual recalculation of construction and maintenance needs of roads whose jurisdiction has been transferred from the department to a county or from a county to the department during the prior year as recalculated pursuant to section 307A.2, subsection 14A.

92 Acts, ch 1238, §28, 46  
Subsection 5 stricken effective July 1, 1993

## CHAPTER 314

## 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, 1995, 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".

93 Acts, ch 169, §16  
Subsection 3, paragraph b, subparagraph (1) amended

**314.26 Schwengel Bridge.**

The interstate 80 bridge crossing the Mississippi river between the states of Iowa and Illinois shall be known as the "Schwengel Bridge" in honor of Fred Schwengel, who served for five terms as a member of the general assembly of the state of Iowa and was elected to the congress of the United States in 1954, 1956, 1958, 1960, 1962, 1966, 1968, and 1970.

93 Acts, ch 133, §1  
NEW section

**CHAPTER 321**

**MOTOR VEHICLES AND LAW OF THE ROAD**

Pilot project for issuance of motor vehicle licenses by county treasurers, 93 Acts, ch 169, §14, 21

**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. "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.

2. "Alcoholic beverage" includes alcohol, wine, spirits, beer, or any other beverage which contains ethyl alcohol and is fit for human consumption.

3. "Alley" means a thoroughfare laid out, established and platted as such, by constituted authority.

4. "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.

5. "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.

6. "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.

7. "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.

8. "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 services 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.

A person is not a chauffeur when the operation is by a home care aide in the course of the home care aide's duties.

9. "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.

10. *a.* “*Combined gross weight*” means the gross weight of a combination of vehicles.

*b.* “*Gross combination weight rating*” means the combined gross vehicle weight ratings for 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 is its gross weight.

11. 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.

12. “*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.

13. “*Component part*” means any part of a vehicle, other than a tire, having a component part number.

14. “*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.

15. “*Conviction*” means a final conviction or an unvacated forfeiture of bail or collateral deposited to secure a person’s appearance in court.

16. “*Crosswalk*” means that portion of a roadway ordinarily included within the prolongation or connection of the lateral lines of sidewalks at intersections, or, any portion of a roadway distinctly indicated for pedestrian crossing by lines or other markings on the surface.

17. “*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.

18. “*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.

19. “*Department*” means the state department of transportation. “*Commission*” means the state transportation commission.

20. “*Director*” means the director of the state department of transportation or the director’s designee.

21. “*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.

22. “*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.

23. “*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.

24. “*Farm tractor*” means every motor vehicle

designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry.

25. "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.

26. "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.

27. 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.

28. "Garage" means every place of business where motor vehicles are received for housing, storage, or repair for compensation.

29. 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.

30. "Guaranteed arrest bond certificate" means any printed, unexpired certificate issued by an automobile club or association to any of its members, or any printed, unexpired certificate issued by an insurance company authorized to write automobile liability insurance within this state, which said certificate is signed by such member or insured and contains a printed statement that such automobile club, association or insurance company and a surety company which is doing business in this state under the provisions of section 515.48, subsection 2, guarantee the appearance of the person whose signature appears on the certificate and that they will, in the event of failure of such person to appear in court at the time of trial, pay any fine or forfeiture imposed on such person in an amount not to exceed two hundred dollars. If such insurance company is itself qualified under the provisions of section 515.48, subsection 2, then it may be its own surety. Bail in this form shall be subject to the forfeiture and enforcement provisions with respect to bail bonds in criminal cases as provided by law.

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. "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. Self-propelled machinery operated at speeds of less than thirty miles per hour. The machinery must be specifically designed for, or especially adapted to be capable of, incidental over-the-road and primary off-road usage. In addition, the machinery must be used exclusively for the mixing and dispensing of nutrients to bovine animals fed at a feedlot, or the application of plant food materials, agricultural limestone, or agricultural chemicals. However, the machinery shall not be specifically designed or intended for the transportation of such nutrients, plant food materials, agricultural limestone, or agricultural chemicals. The 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.

33. *"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.

34. *"Laned highway"* means a highway the roadway of which is divided into three or more clearly marked lanes for vehicular traffic.

35. *"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.

36. *"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.

37. *"Manufacturer"* means every person engaged in the business of fabricating or assembling vehicles of a type required to be registered. It does not include a person who converts, modifies or alters a completed motor vehicle manufactured by another person. It includes a person who uses a completed motor vehicle manufactured by another person to construct a class "B" motor home as defined in section 321.124.

*"Completed motor vehicle"* means a motor vehicle

which does not require any additional manufacturing operations to perform its intended function except the addition of readily attachable equipment, components or minor finishing operations.

*"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.

38. *"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.

39. 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.

40. 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.

41. *“Motor truck”* means every motor vehicle designed primarily for carrying livestock, merchandise, freight of any kind, or over nine persons as passengers.

42. 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.

43. *“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.

For purposes of license suspension, revocation, bar, disqualification, cancellation, or denial under

chapters 321, 321A, 321C, and 321J, *“motor vehicle license”* includes any privilege to operate a motor vehicle.

44. *“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.

45. *“Nonresident”* means every person who is not a resident of this state.

46. *“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.

47. *“Official traffic-control signal”* means any device, whether manually, electrically or mechanically operated, by which traffic is alternately directed to stop and to proceed.

48. *“Operator”* or *“driver”* means every person who is in actual physical control of a motor vehicle upon a highway.

49. *“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.

50. *“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.

51. *“Pedestrian”* means any person afoot.

52. *“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.

53. *“Pneumatic tire”* means every tire in which compressed air is designed to support the load.

54. *“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.

55. *“Railroad”* means a carrier of persons or property upon cars operated upon stationary rails.

56. *“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.

57. *“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.

58. *“Railroad train”* means an engine or locomotive with or without cars coupled thereto, operated upon rails.



59. “*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.

60. “*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.

61. “*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.

62. “*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.

63. “*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.

64. “*Right of way*” means the privilege of the immediate use of the highway.

64A. “*Road construction zone*” means the portion of a highway which is identified by posted or moving signs as being under construction. The zone starts upon meeting the first sign identifying the zone and continues until a posted or moving sign indicates that the construction zone has ended.

65. “*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.

66. “*Roadway*” means that portion of a highway improved, designed, or ordinarily used for vehicular travel.

67. “*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.

68. “*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.

68A. “*Salvage pool*” means the business of selling at auction wrecked or salvage vehicles, as defined in section 321.52.

69. “*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.

70. “*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.

71. “*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.

72. “*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.

73. “*Solid tire*” means every tire of rubber or other resilient material which does not depend upon compressed air for the support of the load.

74. "*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.

75. "*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.

76. 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.

77. "*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.

78. "*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.

79. "*Suburban district*" means all other parts of a city not included in the business, school or residence districts.

80. "*Tandem axle*" means any two or more consecutive axles whose centers are more than forty inches but not more than ninety-six inches apart.

81. "*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.

82. "*Tourist attraction*" means a business, activity, service, or site where a major portion of the product or service provided is tourist oriented.

83. "*Tourist-oriented directional sign*" means a sign providing identification and directional information for a tourist attraction.

84. "*Traffic*" means pedestrians, ridden or herded animals, vehicles, streetcars, and other conveyances either singly or together while using any highway for purposes of travel.

85. "*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.

86. "*Trailer coach*" means either a trailer or semitrailer designed for carrying persons.

87. "*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.

88. "*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.

89. "*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.

90. "*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.

91. "*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.

92. "*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.

93. "*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.

94. "*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.

93 Acts, ch 114, §1, 93 Acts, ch 139, §7  
Subsection 8, NEW unnumbered paragraph 6  
NEW subsection 64A

### 321.25 Application for registration and title — cards attached.

A vehicle may be operated upon the highways of this state without registration plates for a period of thirty days after the date of delivery of the vehicle to the purchaser from a dealer if a card bearing the words "registration applied for" is attached on the rear of the vehicle. The card shall have plainly stamped or stenciled the registration number of the dealer from whom the vehicle was purchased and the date of delivery of the vehicle. In addition, a dealer licensed to sell new motor vehicles may attach the card to a new motor vehicle delivered by the dealer to the purchaser even if the vehicle was purchased from an out-of-state dealer and the card shall bear the registration number of the dealer that delivered the vehicle. A dealer shall not issue a card to a person known to the dealer to be in possession of registration plates which may be attached to the vehicle. A dealer shall not issue a card unless an application for registration and certificate of title has been made by the purchaser and a receipt issued to the purchaser of the vehicle showing the fee paid by the person making the application. Dealers' records shall indicate the agency to which the fee is sent and the date the fee is sent. The dealer shall forward the application by the purchaser to the county treasurer or state office within fifteen calendar days from the date of delivery of the vehicle. However, if the vehicle is subject to a security interest and has been offered for sale pursuant to section 321.48, subsection 1, the dealer shall forward the application by the purchaser to the county treasurer or state office within twenty-two calendar days from the date of the delivery of the vehicle to the purchaser.

The department shall, upon request by any dealer, furnish "registration applied for" cards free of charge. Only cards furnished by the department shall be used.

93 Acts, ch 47, §1  
Unnumbered paragraph 1 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 revenues being credited to the road use tax fund under section 423.24, subsection 1, paragraph "d", the treasurer of state shall credit monthly from those revenues 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 registration 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 crediting of revenues to the road use tax fund under section 423.24, subsection 1, paragraph "d", the treasurer of state shall credit monthly from those revenues 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.

15. *Leased vehicles.* Registration plates under this section may be issued to the lessee of a motor vehicle if the lessee provides evidence of a lease for a period of more than sixty days and if the lessee complies with the requirements, under this section, for issuance of the specific registration plates.

16. *Fire fighter plates.* The owner of a motor vehicle subject to registration pursuant to section 321.109, subsection 1, light delivery truck, panel delivery truck, pickup, motor home, multipurpose vehicle, or travel trailer who is a current or former member of a paid or volunteer fire department, may upon written application to the department, order special registration plates, designed by the department in cooperation with representatives designated by the Iowa fire fighters' associations, which plates signify that the applicant is a current or former member of a paid or volunteer fire department. The application shall be approved by the department, in consultation with representatives designated by the Iowa fire fighters' associations, 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

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 at the regular annual registration fee.

93 Acts, ch 2, §1  
 Subsection 16 effective January 1, 1994, 93 Acts, ch 2, §2  
 NEW subsection 16

**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 435, 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 registration 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 ve-

hicle. 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.

7. If a motor vehicle is leased and the lessee purchases the vehicle upon termination of the lease, the lessor shall, upon claim by the lessee with the lessor within fifteen days of the purchase, assign the registration fee credit and registration plates for the leased motor vehicle to the lessee. Credit shall be applied as provided in subsection 3.

93 Acts, ch 87, §3  
NEW subsection 7

### 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 or transferred to satisfy an artisan's lien as provided in chapter 577, a landlord's lien as provided in chapter 570, a storage lien as provided in chapter 579, a judgment in an action for abandonment of a mobile home as provided in chapter 555B, 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 affidavit 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 the 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.

93 Acts, ch 154, §2  
Unnumbered paragraph 1 amended

### 321.49 Time limit — penalty — power of attorney.

1. Except as provided in section 321.52, if an application for transfer of registration and certificate of title is not submitted to the county treasurer of the residence of the transferee within fifteen days of the date of assignment or transfer of title, or within twenty-two days of the date of delivery to the purchaser if the vehicle is subject to a security interest and was offered for sale pursuant to section 321.48, subsection 1, a penalty of ten dollars shall accrue against the applicant, and no registration card or certificate of title shall be issued to the applicant for the vehicle until the penalty is paid.

2. Certificates of title to vehicles may be assigned by an attorney in fact of the owner under a power of attorney appointed and so empowered on forms provided by the department. Such power of attorney shall be filed by the transferee with the application for title.

3. A mobile home dealer who acquires a used mobile home, titled in Iowa, and who does not apply for and obtain a certificate of title from the county treasurer of the dealer's county of residence within fifteen days of the date of acquisition, as required under section 321.45, subsection 4, is subject to a penalty of ten dollars. A certificate of title shall not be issued to the mobile home dealer until the penalty is paid.

93 Acts, ch 47, §2  
Subsection 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 person engaged in the business of buying, selling, or exchanging vehicles of a type required to be registered in this state, 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 fifteen 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 assigned to an educational institution, a new motor vehicle dealer licensed under chapter 322, a person engaged in the business of purchasing bodies, parts of bodies, frames or component parts of vehicles for sale as scrap metal, a salvage pool, or an authorized vehicle recycler licensed under chapter 321H. An authorized vehicle recycler licensed under chapter 321H or a new motor vehicle dealer licensed under chapter 322 may assign a salvage certificate of title 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 fifteen days after the date of assignment of the certificate of title of the vehicle.

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 shall bear a designation stamped or printed on the face of the title and registration receipt indicating that the vehicle was previously titled on a salvage certificate of title in a form approved by the department. This designation shall be included

on every Iowa certificate of title and registration receipt 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 insurance company has received one or more written estimates which states that the retail cost of repairs including labor, parts, and other materials of all damage to the vehicle is less than three thousand dollars, the county treasurer shall issue to the insurance company the regular certificate of title and registration receipt without this designation.

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. The 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, beginning on July 1, 1991, 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 motor 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.

93 Acts, ch 131, §12

Restrictions on use of moneys deposited in state general fund, see § 8 60  
Subsection 4, paragraph c, unnumbered paragraph 3 amended

### 321.109 Motor vehicle fee — transit fee.

1. The annual fee for all motor vehicles including vehicles designated by manufacturers as station wagons, and 1993 and subsequent model years for multipurpose vehicles, except motor trucks, motor homes, ambulances, hearses, motorcycles, motor bicycles, and 1992 and older model years for multipurpose vehicles, shall be equal to one percent of the value as fixed by the department plus forty cents for each one hundred pounds or fraction thereof of weight of vehicle, as fixed by the department. The weight of a motor vehicle, fixed by the department for registration purposes, shall include the weight of a battery, heater, bumpers, spare tire, and wheel. Provided, however, that for any new vehicle purchased in this state by a nonresident for removal to the nonresident's state of residence the purchaser may make application to the county treasurer in the county of purchase for a transit plate for which a fee of ten dollars shall be paid. And provided, however, that for any used vehicle held by a registered dealer and not currently registered in this state, or for any vehicle held by an individual and currently registered in this state, when purchased in this state by a nonresident for removal to the nonresident's state of residence, the purchaser may make application to the county treasurer in the county of purchase for a transit plate for which a fee of three dollars shall be paid. The county treasurer shall issue a nontransferable certificate of registration for which no refund shall be allowed; and the transit plates shall be void thirty days after issuance. Such purchaser may apply for a certificate of title by surrendering the manufacturer's or importer's certificate or certificate of title,

duly assigned as provided in this chapter. In this event, the treasurer in the county of purchase shall, when satisfied with the genuineness and regularity of the application, and upon payment of a fee of ten dollars, issue a certificate of title in the name and address of the nonresident purchaser delivering the same to the person entitled to the title as provided in this chapter. The provisions of this subsection relating to multipurpose vehicles are effective January 1, 1993, for all 1993 and subsequent model years. The annual registration fee for multipurpose vehicles that are 1992 model years and older shall be in accordance with section 321.124.

The annual registration fee for a multipurpose vehicle with permanently installed equipment manufactured for and necessary to assist a disabled person who is either the owner or a member of the owner's household in entry and exit of the vehicle or for a multipurpose vehicle if the vehicle's owner or a member of the vehicle owner's household uses a wheelchair as the only means of mobility shall be sixty dollars. For purposes of this unnumbered paragraph, "uses a wheelchair" does not include use of a wheelchair due to a temporary injury or medical condition.

2. Dealers may, in addition to other provisions of this section, purchase from the department in-transit stickers, for which a fee of two dollars per sticker shall be paid at time of purchase. One such sticker shall be displayed on each vehicle purchased from a dealer by a nonresident for removal to the state of the nonresident's residence, and one such sticker shall also be displayed on each vehicle not currently registered in Iowa and purchased by an Iowa dealer for removal to the dealer's place of business in this state. The stickers shall be void fifteen days after issuance by the selling dealer. Each sticker shall contain the following information:

- a. The words "**in-transit**" in bold type.
- b. The dealer's license number.
- c. The date issued.
- d. The purchaser's name and address.
- e. The word "**Iowa**" in bold type.
- f. The words "good for fifteen days after the date of issuance".
- g. Other information the director requires.

This information shall be on the gummed side of the sticker and the sticker shall be made of a type of material which is self-destructive when the sticker is removed. The sales invoice verifying the sale shall be in the possession of the driver of the vehicle in transit and shall be signed by the owner or an authorized individual of the issuing dealership.

Motor vehicles brought into the state on a transit sticker for the purpose of installation of special equipment may also be subject to the provisions of this subsection.

93 Acts, ch 165, §1  
Subsection 1, unnumbered paragraph 2 amended

### 321.124 Motor homes and multipurpose vehicles — fees.

1. Motor homes are classified as follows:

a. Class A motor home means a truck chassis or special chassis upon which is built a driver's compartment and an entire body which provides temporary living quarters. A class A motor home shall also mean a passenger carrying bus which has been registered at least five times as a motor truck and which has been converted, modified or altered to provide temporary living quarters.

b. Class B motor home means a completed van-type vehicle which has been converted, modified, constructed, or altered to provide temporary living quarters.

c. Class C motor home means an incomplete vehicle upon which is permanently attached a body designed to provide temporary living quarters.

2. Class A motor homes and class C motor homes are exempt from the provisions of section 322.5, subsection 2 except that a motor vehicle dealer showing class A motor homes and class C motor homes shall apply for a temporary permit upon forms and for such time as provided in section 322.5, subsection 2, and the department may issue the temporary permit upon payment of the fee provided therein.

3. The annual registration fee for motor homes and 1992 and older model years for multipurpose vehicles is as follows:

a. For class A motor homes with a list price of eighty thousand dollars or more as certified to the department by the manufacturer, four hundred dollars for registration each year through five model years and three hundred dollars for each succeeding registration.

b. For class A motor homes with a list price of forty thousand dollars or more but less than eighty thousand dollars as certified to the department by the manufacturer, two hundred dollars for registration each year through five model years and one hundred fifty dollars for each succeeding registration.

c. For class A motor homes with a list price of twenty thousand dollars or more but less than forty thousand dollars as certified to the department by the manufacturer, one hundred forty dollars for the first five registrations and one hundred five dollars for each succeeding registration.

d. For class A motor homes with a list price of less than twenty thousand dollars as certified to the department by the manufacturer, one hundred twenty dollars for registration each year through five model years and eighty-five dollars for each succeeding registration.

e. For a class A motor home which is a passenger-carrying bus which has been registered at least five times as a motor truck and which has been converted, modified, or altered to provide temporary living quarters, ninety dollars for registration each year through ten model years and sixty-five dollars for each succeeding registration. In computing the number of registrations, the registrations shall be cumulative beginning with the registration of the class A motor home as a motor truck prior to its conversion, modification, or alteration to provide temporary living quarters.

f. For class B motor homes, ninety dollars for registration each year through five model years and sixty-five dollars for each succeeding registration.

g. For class C motor homes, one hundred ten dollars for registration each year through five model years and eighty dollars for each succeeding registration.

h. For multipurpose vehicles in accordance with the following:

(1) Two hundred dollars for registration for the first and second model years.

(2) One hundred seventy-five dollars for registration for the third and fourth model years.

(3) One hundred fifty dollars for registration for the fifth model year.

(4) Seventy-five dollars for registration for the sixth model year.

(5) Fifty-five dollars for registration for each succeeding model year.

(6) The annual registration fee for a multipurpose vehicle with permanently installed equipment manufactured for and necessary to assist a disabled person who is either the owner or a member of the owner's household in entry and exit of the vehicle or for a multipurpose vehicle if the vehicle's owner or a member of the vehicle owner's household uses a wheelchair as the only means of mobility shall be sixty dollars. For purposes of this subparagraph, "uses a wheelchair" does not include use of a wheelchair due to a temporary injury or medical condition.

The registration fees required by this lettered paragraph are applicable to all 1992 and older model years for multipurpose vehicles beginning January 1, 1993. The registration fees for multipurpose vehicles that are 1993 and subsequent model years shall be in accordance with section 321.109.

For purposes of determining that portion of the annual registration fee which is based upon the value of the multipurpose vehicle, sixty percent of the annual fee is attributable to the value of the vehicle.

93 Acts, ch 165, §2

Subsection 3, paragraph h, subparagraph (6) amended

### 321.176A Persons exempt from commercial driver's license requirements.

The following operators are exempt from the commercial driver's license requirements:

1. A farmer or a person working for a farmer while operating a commercial motor vehicle owned by the farmer within one hundred fifty air miles of the farmer's farm to transport the farmer's own agricultural products, farm machinery, or farm supplies to or from the farm. The exemption provided in this subsection shall apply to farmers who assist each other through an exchange of services and shall include operation of a commercial motor vehicle between the farms of the farmers who are exchanging services.

2. A firefighter while operating a fire vehicle for a volunteer or paid fire organization under conditions necessary to preserve life or property or to execute related governmental functions.

3. Military personnel while on active duty and

operating equipment owned or operated by the United States department of defense.

4. A person while operating a motor home solely for personal or family use.

5. A person operating a motor vehicle with a gross vehicle weight rating of less than twenty-six thousand one pounds towing a travel trailer or fifth-wheel travel trailer solely for personal or family use.

6. A person exempted by rules adopted by the department pursuant to section 321.176B.

7. A home care aide operating a motor vehicle in the course of the home care aide's duties.

93 Acts, ch 139, §8

NEW subsection 7

### 321.189 Driver's license — content — motorcycle rider education fund.

1. *Classification and issuance.* Upon payment of the required fee, the department shall issue to every qualified applicant a driver's license. Driver's licenses shall be classified as follows:

a. Class A — Valid for the operation of vehicles with a gross combination weight rating of twenty-six thousand one or more pounds if the towed vehicle or vehicles have a gross vehicle weight rating or gross combination weight rating of ten thousand one or more pounds, and also valid for the operation of vehicles with lower gross combination weight ratings and other vehicles except motorcycles.

b. Class B — Valid for the operation of a vehicle with a gross vehicle weight rating of twenty-six thousand one or more pounds or a combination of vehicles with a gross combination weight rating of twenty-six thousand one or more pounds if the towing vehicle has a gross vehicle weight rating of twenty-six thousand one or more pounds and the towed vehicle or vehicles have a gross vehicle weight rating or gross combination weight rating of less than ten thousand one pounds, and also valid for the operation of vehicles with lower gross vehicle weight ratings or gross combination weight ratings except motorcycles.

c. Class C — Valid for the operation of a vehicle, other than a motorcycle, or a combination of vehicles with a gross combination weight rating of twenty-six thousand one or more pounds provided the towing vehicle has a gross vehicle weight rating of less than twenty-six thousand one pounds and each towed vehicle has a gross vehicle weight rating of less than ten thousand one pounds, or a combination of vehicles with a gross vehicle weight rating or gross combination weight rating of less than twenty-six thousand one pounds and also valid for the operation of any vehicle, other than a motorcycle, for which the operator is exempt from commercial driver's license requirements under section 321.176A.

d. Class D — Valid for the operation of a motor vehicle as a chauffeur.

e. Class M — Valid for the operation of a motorcycle.

A driver's license may be issued for more than one class. Class A and B driver's licenses shall only be issued as commercial driver's licenses. Class C and M

driver's licenses may be issued as commercial driver's licenses. A driver's license is not valid for the operation of a vehicle requiring an endorsement unless the driver's license is endorsed for the vehicle. A class D driver's license is also valid as a noncommercial class C driver's license. The holder of a commercial driver's license is not required to obtain a class D driver's license to operate a motor vehicle as a chauffeur. When necessary, the department shall by rule create additional classes or modify existing classes of driver's licenses, however, the rule shall be temporary and if within sixty days after the next regular session of the general assembly convenes the general assembly has not made corresponding changes in this chapter, the temporary classification or modification shall be nullified.

2. *Content of license.*

a. Appearing on the driver's license shall be a distinguishing number assigned to the licensee; the licensee's full name, date of birth, sex, and residence address; a colored photograph; a physical description of the licensee; the name of the state; the dates of issuance and expiration; and the usual signature of the licensee. The license shall identify the class of vehicle the licensee may operate and the applicable endorsements and restrictions which the department shall require by rule.

b. A commercial driver's license shall include the licensee's address as required under federal regulations and the licensee's social security number, and the words "commercial driver's license" or "CDL" shall appear prominently on the face of the license. If the applicant is a nonresident, the license must conspicuously display the word "nonresident".

c. The department shall advise an applicant that the applicant for a motor vehicle license other than a commercial driver's license may request a number other than a social security number as the motor vehicle license number.

d. The license may contain other information as required under the department's rules.

3. *Replacement.* If prior to the renewal date, a person desires to obtain a motor vehicle license in the form authorized by this section, a license may be issued as a voluntary replacement upon payment of the required fee as set by the department by rule. A person shall return a motor vehicle license and be issued a new license when the first license contains inaccurate information upon payment of the required fee as set by the department by rule.

4. *Symbols.* Upon the request of a licensee, the department shall indicate on the license the presence of a medical condition or that the licensee is a donor under the uniform anatomical gift law. The license may contain such other information as the department may require by rule.

5. *Tamperproofing.* The department shall issue a motor vehicle license by a method or process which prevents as nearly as possible the alteration, reproduction, or superimposition of a photograph on the license without ready detection.

6. *Licenses issued to minors.* A motor vehicle

license issued to a person under twenty-one years of age shall be identical in form to any other motor vehicle license except that the words "under twenty-one" shall appear prominently on the face of the license. Upon attaining the age of twenty-one, and upon payment of a one dollar fee, the person shall be entitled to a new motor vehicle license or non-operator's identification card for the unexpired months of the motor vehicle license or card.

7. *Class M license education requirements.* A person under the age of eighteen applying for a driver's license valid for the operation of a motorcycle shall be required to successfully complete a motorcycle education course either approved and established by the department of education or from a private or commercial driver education school licensed by the department. A public school district shall charge a student a fee which shall not exceed the actual cost of instruction minus moneys received by the school district under subsection 9.

8. *Motorized bicycle.*

a. The department may issue a driver's license valid only for operation of a motorized bicycle to a person fourteen years of age or older who has passed a vision test or who files a vision report as provided in section 321.186A which shows that the applicant's visual acuity level meets or exceeds those required by the department and who passes a written examination on the rules of the road. A person under the age of sixteen applying for a driver's license valid only for operation of a motorized bicycle shall also be required to successfully complete a motorized bicycle education course approved and established by the department of education or successfully complete an approved motorized bicycle education course at a private or commercial driver education school licensed by the department. A public school district shall charge a student a fee which shall not exceed the actual cost of instruction. A driver's license valid only for operation of a motorized bicycle entitles the licensee to operate a motorized bicycle upon the highway while having the license in the licensee's immediate possession. The license is valid for a period not to exceed two years from the licensee's birthday anniversary in the year of issuance, subject to termination or cancellation as provided in this section.

b. A driver's license valid only for operation of a motorized bicycle shall be canceled upon a conviction for a moving traffic violation and reapplication may be made thirty days after the date of cancellation. The cancellation of the license upon conviction for a moving traffic violation shall not result in requiring the applicant to maintain proof of financial responsibility under section 321A.17, unless the conviction would otherwise result in a suspension or revocation of a person's driver's license.

c. As used in this section, "moving traffic violation" does not include a parking violation as defined in section 321.210 or a violation of a section of the Code or municipal ordinance pertaining to standards to be maintained for motor vehicle equipment except sections 321.430 and 321.431, or except a municipal

ordinance pertaining to motor vehicle brake requirements as applicable to motorized bicycles.

d. The holder of any class of driver's license may operate a motorized bicycle.

9. *Motorcycle rider education fund.* The motorcycle rider education fund is established in the office of the treasurer of state. The moneys credited to the fund are appropriated to the department of education to be used to establish new motorcycle rider education courses and reimburse sponsors of motorcycle rider education courses for the costs of providing motorcycle rider education courses approved and established by the department of education. The department of education shall adopt rules under chapter 17A providing for the distribution of moneys to sponsors of motorcycle rider education courses based upon the costs of providing the education courses.

93 Acts, ch 164, §1  
Subsection 6 amended

### 321.196 Expiration of license — renewal.

Except as otherwise provided, a motor vehicle license, other than an instruction permit, chauffeur's instruction permit, or commercial driver's instruction permit issued under section 321.180, expires, at the option of the applicant, two or four years from the licensee's birthday anniversary occurring in the year of issuance if the licensee is between the ages of seventeen years eleven months and seventy years on the date of issuance of the license. If the licensee is under the age of seventeen years eleven months or age seventy or over the license is effective for a period of two years from the licensee's birthday anniversary occurring in the year of issuance. Except as required in section 321.188, a motor vehicle license is renewable without written examination or penalty within a period of sixty days after its expiration date. A person shall not be considered to be driving with an invalid license during a period of sixty days following the license expiration date. However, for a license renewed within the sixty-day period, the date of issuance shall be considered to be the previous birthday anniversary on which it expired. Applicants whose licenses are restricted due to vision or other physical deficiencies may be required to renew their licenses every two years. For the purposes of this section the birthday anniversary of a person born on February 29 shall be deemed to occur on March 1. The department in its discretion may authorize the renewal of a valid motor vehicle license other than a commercial driver's license upon application without an examination provided that the applicant satisfactorily passes a vision test as prescribed by the department, files a vision report in accordance with section 321.186A which shows that the applicant's visual acuity level meets or exceeds those required by the department, or is eligible for renewal by mail pursuant to rules adopted by the department. The department may assess an applicant a fee of no more than two dollars for administration and mailing expenses for providing for renewal of the applicant's driver's license by mail.

Any resident of Iowa holding a valid motor vehicle license who is temporarily absent from the state, or incapacitated, may, at the time for renewal for such license, apply to the department for a temporary extension of the license. The department upon receipt of the application shall, upon a showing of good cause, issue a temporary extension of the motor vehicle license for a period not to exceed six months.

93 Acts, ch 51, §1  
Section amended

### 321.205 Conviction or administrative decision in another jurisdiction.

The department is authorized to suspend or revoke the motor vehicle license of a resident of this state upon receiving notice of the conviction of the resident in another state for an offense which, if committed in this state, would be grounds for the suspension or revocation of the license or upon receiving notice of a final administrative decision in another state that the resident has acted in a manner which would be grounds for suspension or revocation of the license in this state.

The department shall suspend or revoke for one hundred eighty days the motor vehicle license of a resident of this state upon receiving notice of conviction in another state or under federal jurisdiction for a drug or drug-related offense.

93 Acts, ch 16, §3, 93 Acts, ch 87, §4  
Section amended

### 321.209 Mandatory revocation.

The department shall upon twenty days' notice and without preliminary hearing revoke the license or operating privilege of an operator upon receiving a record of the operator's conviction for any of the following offenses, when such conviction has become final:

1. Manslaughter resulting from the operation of a motor vehicle.
2. A felony if during the commission of the felony a motor vehicle is used.
3. Failure to stop and render aid as required under the laws of this state in the event of a motor vehicle accident resulting in the death or personal injury of another.
4. Perjury or the making of a false affidavit or statement under oath to the department under this chapter or under any other law relating to the ownership or operation of motor vehicles.
5. Conviction, or forfeiture of bail not vacated, upon two charges of reckless driving.
6. Conviction of drag racing.
7. Eluding or attempting to elude a law enforcement vehicle as provided in section 321.279.
8. A controlled substance offense under section 124.401, 124.401A, 124.402, or 124.403; a controlled substance tax offense under chapter 453B; a drug or drug-related offense under section 126.3; or an offense under 21 U.S.C. ch. 13.

93 Acts, ch 16, §4  
NEW subsection 8

### **321.212 Period of suspension or revocation — surrender of license.**

1. *a.* Except as provided in section 321.210A or 321.513 the department shall not suspend a license for a period of more than one year, except that a license suspended because of incompetency to drive a motor vehicle shall be suspended until the department receives satisfactory evidence that the former holder is competent to operate a motor vehicle and a refusal to reinstate constitutes a denial of license within section 321.215; upon revoking a license the department shall not grant an application for a new license until the expiration of one year after the revocation, unless another period is specified by law.

A suspension under section 321.210, subsection 1, paragraph “d”, for a violation of section 321.216B shall not exceed six months. As soon as practicable after the period of suspension has expired, but not later than six months after the date of expiration, the department shall expunge information regarding the suspension from the person’s driving record.

*b.* The department shall not revoke a license under the provisions of subsection 5 of section 321.209 for more than thirty days nor less than five days as recommended by the trial court.

*c.* The department shall revoke a license for six months for a first offense under the provisions of section 321.209, subsection 6, where the violation charged did not result in a personal injury or damage to property.

*d.* The department shall revoke a motor vehicle license under section 321.209, subsection 8, for one hundred eighty days. If the person has not been issued a motor vehicle license, the issuance of a motor vehicle license shall be delayed for one hundred eighty days after the person is first eligible. If the person’s operating privileges have been suspended or revoked at the time the person is convicted, the one-hundred-eighty-day revocation period shall not begin until all other suspensions or revocations have terminated.

2. The department upon suspending or revoking a motor vehicle license shall require that the license be surrendered to and be retained by the department. At the end of the period of suspension the license surrendered shall be reissued to the licensee upon payment of the reinstatement fee under section 321.191. At the end of a period of revocation the licensee must apply for a new motor vehicle license.

93 Acts, ch 16, §5, 93 Acts, ch 164, §2

Subsection 1, paragraph a, NEW unnumbered paragraph 2

Subsection 1, NEW paragraph d

### **321.213 License suspensions or revocations due to violations by juvenile drivers.**

Upon the entering of an order at the conclusion of an adjudicatory hearing under section 232.47 that the child violated a provision of this chapter or chapter 124, 126, 321A, 321J, or 453B for which the penalty is greater than a simple misdemeanor, the clerk of the juvenile court in the adjudicatory hearing shall

forward a copy of the adjudication to the department. Notwithstanding section 232.55, a final adjudication in a juvenile court that the child violated a provision of this chapter or section 124.401, 124.402, 124.403, a drug offense under section 126.3, or chapter 321A, 321J, or 453B constitutes a final conviction of a violation of a provision of this chapter or section 124.401, 124.402, 124.403, a drug offense under section 126.3, or chapter 321A, 321J, or 453B for purposes of section 321.189, subsection 8, paragraph “b”, and sections 321.193, 321.194, 321.200, 321.209, 321.210, 321.215, 321.555, 321A.17, 321J.2, 321J.3, and 321J.4.

93 Acts, ch 16, §6, 93 Acts, ch 87, §6

See Code editor’s note to §6A.10

Section amended

### **321.215 Temporary restricted license — temporary restricted permit.**

1. The department, on application, may issue a temporary restricted license to a person whose motor vehicle license is suspended or revoked under this chapter, allowing the person to drive to and from the person’s home and specified places at specified times which can be verified by the department and which are required by any of the following:

*a.* The person’s full-time or part-time employment.

*b.* The person’s continuing health care or the continuing health care of another who is dependent upon the person.

*c.* The person’s continuing education while enrolled in an educational institution on a part-time or full-time basis and while pursuing a course of study leading to a diploma, degree, or other certification of successful educational completion.

*d.* The person’s substance abuse treatment.

*e.* The person’s court-ordered community service responsibilities.

However, a temporary restricted license shall not be issued to a person whose license is revoked under section 321.209, subsections 1 through 5 or subsection 7 or 8. A temporary restricted license may be issued to a person whose license is revoked under section 321.209, subsection 6, only if the person has no previous drag racing convictions. A person holding a temporary restricted license issued by the department under this section shall not operate a motor vehicle for pleasure.

2. Upon conviction and the suspension or revocation of a person’s motor vehicle license under section 321.209, subsection 5, 6, or 8; 321.210; 321.210A; 321.513; or 321.555, subsection 2, and upon the denial by the director of an application for a temporary restricted license, a person may apply to the district court having jurisdiction for the residence of the person for a temporary restricted permit to operate a motor vehicle for the limited purpose or purposes specified in subsection 1. The application may be granted only if all of the following criteria are satisfied:

a. The temporary restricted permit is requested only for a case of extreme hardship or compelling circumstances where alternative means of transportation do not exist.

b. The permit applicant has not made an application for a temporary restricted permit in any district court in the state which was denied.

c. The temporary restricted permit is restricted to the limited purpose or purposes specified in subsection 1 at times specified in the permit.

d. Proof of financial responsibility is established as defined in chapter 321A. However, such proof is not required if the motor vehicle license was suspended under section 321.210A or 321.513 or revoked under section 321.209, subsection 8.

The district court shall forward a record of each application for such temporary restricted permit to the department, together with the results of the disposition of the request by the court. A temporary restricted permit is valid only if the department is in receipt of records required by this section.

3. The temporary restricted license or permit shall be canceled upon conviction of a moving traffic violation or upon a violation of a term of the license or permit. A "moving traffic violation" does not include a parking violation as defined in section 321.210.

4. The temporary restricted license or permit is not valid to operate a commercial motor vehicle if a commercial driver's license is required for the person's operation of the commercial motor vehicle and the person is disqualified to operate a commercial motor vehicle under section 321.208, subsections 1, 2, 3, or 4.

93 Acts, ch 16, §7-9  
See Code editor's note  
Subsection 1, unnumbered paragraph 2 amended  
Subsection 2, unnumbered paragraph 1 and paragraphs a and d amended

**321.216B Use of motor vehicle license by underage person to obtain alcohol.**

A person who is under the age of twenty-one, who alters or displays or has in the person's possession a fictitious or fraudulently altered motor vehicle license and who uses the license to violate or attempt to violate section 123.47 or 123.47A, commits a simple misdemeanor. The court shall forward a copy of the conviction or order of adjudication under section 232.47 to the department.

93 Acts, ch 164, §3  
Legislative intent regarding effect on insurance rates, 93 Acts, ch 164, §6  
NEW section

**321.218 Operating without valid motor vehicle license or when disqualified — penalties.**

1. A person whose motor vehicle license or operating privilege has been denied, canceled, suspended, or revoked as provided in this chapter, and who operates a motor vehicle upon the highways of this state while the license or privilege is denied, canceled, suspended, or revoked, commits a simple misdemeanor.

2. However, a person whose license or operating privilege has been revoked under section 321.209,

and who operates a motor vehicle upon the highways of this state while the license or privilege is revoked, commits a serious misdemeanor.

3. The sentence imposed under this section shall not be suspended by the court, notwithstanding section 907.3 or any other statute.

4. The department, upon receiving the record of the conviction of a person under this section upon a charge of operating a motor vehicle while the license of the person is suspended or revoked, shall, except for licenses suspended under section 321.210, subsection 1, paragraph "c", 321.210A, or 321.513, extend the period of suspension or revocation for an additional like period, and the department shall not issue a new motor vehicle license to the person during the additional period.

If the department receives a record of a conviction of a person under this section but the person's driving record does not indicate what the original grounds of suspension were, the period of suspension under this subsection shall be for a period not to exceed six months.

5. A person who operates a commercial motor vehicle upon the highways of this state when disqualified from operating the commercial motor vehicle under section 321.208 commits a simple misdemeanor if a commercial driver's license is required for the person to operate the commercial motor vehicle.

6. The department, upon receiving the record of a conviction of a person under this section upon a charge of operating a commercial motor vehicle while the person is disqualified shall extend the period of disqualification for an additional like period.

93 Acts, ch 164, §4  
Subsection 4, NEW unnumbered paragraph 2

**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.

3. The titleholder of real property under subsection 2 may elect to waive the right 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 recording a waiver with the county recorder of each county in which the property is located. The waiver shall include the legal description of the real property and shall bind the titleholder of the real property and any successors in interest. The waiver may only be rescinded if each law enforcement jurisdiction, in which the titleholder of real property wishes to obtain the benefit of this section, consents to the rescission of the waiver through adoption of a resolution.

93 Acts, ch 109, §2  
Subsection 3 amended

### 321.253 Department to erect signs.

The department shall place and maintain such traffic-control devices, conforming to its manual and specifications, upon all primary highways as it shall deem necessary to indicate and to carry out the provisions of this chapter or to regulate, warn, or guide traffic. Whenever practical, said devices or signs shall be purchased from the director of the Iowa department of corrections.

The department shall post signs informing motorists that the scheduled fine for committing a moving traffic violation in a road construction zone is doubled or is one hundred dollars, whichever is less.

93 Acts, ch 114, §2  
NEW unnumbered paragraph 2

### 321.285 Speed restrictions.

Any person driving a motor vehicle on a highway shall drive the same at a careful and prudent speed not greater than nor less than is reasonable and proper, having due regard to the traffic, surface and

width of the highway and of any other conditions then existing, and no person shall drive any vehicle upon a highway at a speed greater than will permit the person to bring it to a stop within the assured clear distance ahead, such driver having the right to assume, however, that all persons using said highway will observe the law.

The following shall be the lawful speed except as provided by this section, or except as posted pursuant to sections 262.68; 321.236, subsection 5; 321.288, subsection 6; 321.289; 321.290; 321.293; 321.295; and 461A.36, and any speed in excess thereof shall be unlawful:

1. Twenty miles per hour in any business district.

2. Twenty-five miles per hour in any residence or school district.

3. Forty-five miles per hour in any suburban district. Each school district as defined in subsection 70 of section 321.1 shall be marked by distinctive signs as provided by the current manual of uniform traffic control devices adopted by the department and placed on the highway at the limits of such school district.

4. Notwithstanding any other speed restrictions, the speed limit for all vehicular traffic shall be fifty-five miles per hour.

5. Reasonable and proper, but not greater than fifty-five miles per hour at any time between sunrise and sunset, and not greater than fifty miles per hour at any time between sunset and sunrise, on secondary roads unless such roads are surfaced with concrete or asphalt or a combination of both, in which case the speed limits shall be the same as provided in subsection 4 of this section. Whenever the board of supervisors of any county shall determine upon the basis of an engineering and traffic investigation conducted by the department when so requested by said board that the speed limit on any secondary road is greater than is reasonable and proper under the conditions found to exist at any intersection or other place or upon any part of a secondary road, said board shall determine and declare a reasonable and proper speed limit thereat. Such speed limits as determined by the board of supervisors shall be effective when appropriate signs giving notice thereof are erected by the board of supervisors at such intersection or other place or part of the highway.

6. Notwithstanding any other speed restrictions, the speed limit for all vehicular traffic on fully controlled-access, divided, multilaned highways including the national system of interstate highways designated by the federal highway administration and this state (23 U.S.C. sec. 103 (e)) is sixty-five miles per hour. However, the department or cities with the approval of the department may establish a lower speed limit upon such highways located within the corporate limits of a city. For the purposes of this subsection a fully controlled-access highway is a highway that gives preference to through traffic by providing access connections with selected public roads only and by prohibiting crossings at grade or

direct private driveway connections. A minimum speed of forty miles per hour, road conditions permitting, is established on the highways referred to in this subsection.

It is further provided that any kind of vehicle, implement, or conveyance incapable of attaining and maintaining a speed of forty miles per hour shall be prohibited from using the interstate system.

93 Acts, ch 47, §3-7  
 Unnumbered paragraph 2 amended  
 Former subsection 3 stricken and former subsections 4 and 5 renumbered as 3 and 4  
 Subsection 4 amended  
 Former subsection 6 stricken and former subsections 7 and 8 renumbered as 5 and 6  
 Subsection 6, unnumbered paragraph 1 amended

**321.286 Truck speed limits.** Repealed by 93 Acts, ch 47, § 14. See § 321.285.

**321.287 Bus speed limits.** Repealed by 93 Acts, ch 47, § 14. See § 321.285.

**321.291 Information or notice.**

In every charge of violation of section 321.285 the information, also the notice to appear, shall specify the speed at which the defendant is alleged to have driven, also the speed limit applicable within the district or at the location.

93 Acts, ch 47, §8  
 Section amended

**321.292 Civil action unaffected.**

The foregoing provisions of section 321.285 shall not be construed to relieve the plaintiff in any civil action from the burden of proving negligence upon the part of the defendant as the proximate cause of an accident.

93 Acts, ch 47, §9  
 Section amended

**321.375 School bus drivers — qualifications — grounds for suspension.**

1. A driver of a school bus must meet all of the following requirements:

- a. Be at least eighteen years of age.
- b. Be physically and mentally competent.
- c. Not possess personal or moral habits which would be detrimental to the best interests of the safety and welfare of the children transported.
- d. Have an annual physical examination and meet all established requirements for physical fitness.

2. Any of the following shall constitute grounds for a school bus driver's immediate suspension from duties, pending a termination hearing by the board of directors of a public school district or the authorities in charge in a nonpublic school:

- a. Use of nonprescription controlled substances or alcoholic beverages during working hours.
- b. Operating a school bus while under the influence of nonprescription controlled substances or alcoholic beverages.
- c. Fraud in the procurement or renewal of a school bus driver's permit.

d. The commission of or conviction for a public offense as defined by the Iowa criminal code, if the offense is relevant to and affects driving ability, or if the offense includes sexual involvement with a minor student with the intent to commit acts and practices proscribed under sections 709.2 through 709.4, section 709.8, and sections 725.1 through 725.3, or is a violation of the rules of the department of education adopted to implement section 280.17.

93 Acts, ch 127, §8  
 Subsection 2, paragraph d amended

**321.376 License — permit — instruction requirement.**

1. The driver of a school bus shall hold a driver's license issued by the department of transportation valid for the operation of the school bus and shall hold a school bus driver's permit issued by the department of education when transporting student or adult passengers to or from school activities. 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 of education 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.

93 Acts, ch 127, §9  
Subsection 1 amended

**321.377 Speed of school bus.** Repealed by 93 Acts, ch 47, § 14. See § 321.285.

**321.449 Motor carrier safety regulations.**

A person shall not operate a commercial vehicle on the highways of this state except in compliance with rules adopted by the department under chapter 17A. The rules shall be consistent with the federal motor carrier safety regulations promulgated under United States Code, Title 49, and found in 49 C.F.R. §§ 390-399 and adopted under chapter 17A which rules shall be to a date certain.

Rules adopted under this section concerning driver qualifications, hours of service, and recordkeeping requirements do not apply to the operators of public utility trucks, trucks hauling gravel, construction trucks and equipment, trucks moving implements of husbandry, and special trucks, other than a truck tractor, operating intrastate. Trucks for hire on construction projects are not exempt from this section.

Rules adopted under this section concerning driver age qualifications do not apply to drivers for private and for-hire motor carriers which operate solely intrastate except when the vehicle being driven is transporting a hazardous material in a quantity which requires placarding. The minimum age for the exempted intrastate operations is eighteen years of age.

Notwithstanding other provisions of this section, rules adopted under this section for a driver of a commercial vehicle shall not apply to a driver for a private carrier, who is not for hire and who is engaged exclusively in intrastate commerce, when the driver's commercial vehicle is not operated more than one hundred miles from the driver's work reporting location.

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, rules adopted under this section concerning physical and medical qualifications for a driver shall not apply to a farmer or a farmer's hired help when operating a vehicle owned by the farmer while it is being used in connection with the intrastate transportation of fertilizers and chemicals used in the farmer's crop production.

Notwithstanding other provisions of this section, rules adopted under this section concerning physical and medical qualifications for a driver shall not apply to a farmer or a farmer's hired help when operating a vehicle owned by the farmer while it is being used in connection with the intrastate transportation of agricultural commodities or feed.

Notwithstanding other provisions of this section, rules adopted under this section shall not impose any requirements which impose any restrictions upon a person operating an implement of husbandry or pickup to transport fertilizers and pesticides in that person's agricultural operations.

Rules adopted under this section concerning periodic inspections shall not apply to special trucks as defined in section 321.1, subsection 76, and registered under section 321.121.

Rules adopted under this section shall not apply to vehicles used in combination provided the gross vehicle weight rating of the towing unit is ten thousand pounds or less and the gross combination weight rating is twenty-six thousand pounds or less.

93 Acts, ch 47, §15  
Unnumbered paragraph 9 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 shall not have an overall length, inclusive of front and rear bumpers, in excess of forty-five 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 rearmost 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.

93 Acts, ch 87, §7  
Subsection 2, paragraph b amended

**321.491 Convictions and recommendations for suspension to be reported.**

Every district judge, district associate judge, and judicial magistrate shall keep a full record of every case in which a person is charged with any violation of this chapter or of any other law regulating the operation of vehicles on highways.

Within ten days after the conviction or forfeiture of bail of a person upon a charge of violating any provision of this chapter or other law regulating the operation of vehicles on highways every magistrate of the court or clerk of the court of record in which the conviction occurred or bail was forfeited shall pre-

pare and immediately forward to the department an abstract of the record of the case. The abstract must be certified by the person preparing it to be true and correct.

The abstract must be made upon a form furnished by the department and shall include the name and address of the party charged, the registration number of the vehicle involved, the nature of the offense, the date of hearing, the plea, the judgment, or whether the bail was forfeited, the amount of the fine or forfeiture, and any court recommendation, if any, that the person's motor vehicle license be suspended. The department shall consider and act upon the recommendation.

Every clerk of a court of record shall also forward a like report to the department upon the conviction of any person of manslaughter or other felony in the commission of which a vehicle was used.

The failure, refusal, or neglect of an officer to comply with the requirements of this section shall constitute misconduct in office and shall be ground for removal from office.

All abstracts received by the department under this section shall be open to public inspection during reasonable business hours.

All federal courts located in the state are requested to forward to the department a record of conviction of a person for a violation of a federal drug or controlled substance law.

93 Acts, ch 16, §10  
NEW unnumbered paragraph 7

**321.555 Habitual offender defined.**

As used in this division, "habitual offender" means any person who has accumulated convictions for separate and distinct offenses described in subsection 1, 2, or 3, committed after July 1, 1974, for which final convictions have been rendered, as follows:

1. Three or more of the following offenses, either singularly or in combination, within a six-year period:

a. Manslaughter resulting from the operation of a motor vehicle.

b. Operating a motor vehicle in violation of section 321J.2 or its predecessor statute.

c. Driving a motor vehicle while the person's motor vehicle license is suspended, revoked, or barred.

d. Perjury or the making of a false affidavit or statement under oath to the department of public safety.

e. An offense punishable as a felony under the motor vehicle laws of Iowa or any felony in the commission of which a motor vehicle is used.

f. Failure to stop and leave information or to render aid as required by sections 321.261 and 321.263.

2. Six or more of any separate and distinct offenses within a two-year period in the operation of a motor vehicle, which are required to be reported to the department by section 321.491 or chapter 321C, except equipment violations, parking violations as defined in section 321.210, violations of registration laws, violations of sections 321.445 and 321.446, operating a vehicle with an expired license or permit, failure to appear, weights and measures violations and speeding violations of less than fifteen miles per hour over the legal speed limit.

3. The offenses included in subsections 1 and 2 shall be deemed to include offenses under any valid town, city or county ordinance paralleling and substantially conforming to the provisions of the Code concerning such offenses.

93 Acts, ch 87, §8  
Subsection 1, paragraph c amended

**CHAPTER 321A**

**MOTOR VEHICLE FINANCIAL RESPONSIBILITY**

**321A.3 Abstract of operating record — fees to be charged and disposition of fees.**

1. The department shall upon request furnish any person a certified abstract of the operating record of a person subject to chapter 321, 321J, or this chapter. The abstract shall also fully designate the motor vehicles, if any, registered in the name of the person. If there is no record of a conviction of the person having violated any law relating to the operation of a motor vehicle or of any injury or damage caused by the person, the department shall so certify. A fee of five dollars shall be paid for each abstract except for state, county, or city officials, court offi-

cial, public transit officials, or other officials of a political subdivision of the state. The department shall transfer the moneys collected under this section to the treasurer of state who shall credit to the general fund all moneys collected.

2. A sheriff may provide an abstract of the operating record of a person to the person or an individual authorized by the person. The sheriff shall charge a fee of five dollars for each abstract which the sheriff shall transfer to the department quarterly. The sheriff may charge an additional fee sufficient to cover costs incurred by the sheriff in producing the abstract.

3. The abstracts are not admissible as evidence in an action for damages or criminal proceedings arising out of a motor vehicle accident.

4. The abstract of operating record provided under this section shall designate which speeding violations occurring on or after July 1, 1986, but before May 12, 1987, are for violations of ten miles per hour or less over the legal speed limit in speed zones that have a legal speed limit greater than thirty-five miles per hour. For speeding violations occurring on or after May 12, 1987, the abstract provided under this section shall designate which speeding violations are for ten miles per hour or less over the legal speed limit in speed zones that have a legal speed limit equal to or greater than thirty-five miles per hour but not greater than fifty-five miles per hour.

5. The department may permit any person to view the operating record of a person subject to chapter 321 or this chapter through one of the department's computer terminals or through a computer printout generated by the department. The department shall not require a fee for a person to view their own operating record, but the department shall impose a fee of one dollar for each of the first five operating records viewed within a calendar day and two dollars for each additional operating record viewed within the calendar day.

6. Fees under subsections 1 and 5 may be paid by credit cards, as defined in section 537.1301, subsection 16, approved for that purpose by the department of transportation. The department shall enter into agreements with financial institutions extending credit through the use of credit cards to ensure payment of the fees. The department shall adopt rules pursuant to chapter 17A to implement the provisions of this subsection.

7. Notwithstanding chapter 22 or any other law of this state, except as provided in subsection 5, the department shall not make available an operating record in a manner which would result in a fee of less than that provided under subsection 1. Should the department make available copies of abstracts of operating records on magnetic tape or on disk or through electronic data transfer, the five dollar fee under subsection 1 applies to each abstract supplied.

93 Acts, ch 169, §19  
Subsection 1 amended

### **321A.17 Proof required upon certain convictions.**

1. Whenever the department, under any law of this state, suspends or revokes the license of any per-

son upon receiving record of a conviction or a forfeiture of bail or revokes the license of any person pursuant to chapter 321J, the department shall also suspend the registration for all motor vehicles registered in the name of the person, except that the department shall not suspend the registration, unless otherwise required by law, if the person has previously given or immediately gives and thereafter maintains proof of financial responsibility with respect to all motor vehicles registered by the person.

2. Such license and registration shall remain suspended or revoked and shall not at any time thereafter be renewed nor shall any license be thereafter issued to such person, nor shall any motor vehicle be thereafter registered in the name of such person until permitted under the motor vehicle laws of this state and not then unless and until the person shall give and thereafter maintain proof of financial responsibility.

3. If a person is not licensed, but by final order or judgment is convicted of or forfeits any bail or collateral deposited to secure an appearance for trial for any offense requiring the suspension or revocation of license, or for operating an unregistered motor vehicle upon the highways, no license shall be thereafter issued to such person and no motor vehicle shall continue to be registered or thereafter be registered in the name of such person until the person shall give and thereafter maintain proof of financial responsibility.

4. Whenever the department suspends or revokes a nonresident's operating privilege by reason of a conviction or forfeiture of bail, such privilege shall remain so suspended or revoked unless such person shall have previously given or shall immediately give and thereafter maintain proof of financial responsibility.

5. An individual applying for a motor vehicle license following a period of suspension or revocation under section 321.209, subsection 8, section 321.210, subsection 1, paragraph "d", or section 321.210A, 321.216B, or 321.513, or following a period of suspension under section 321.194, is not required to maintain proof of financial responsibility under this section.

6. This section does not apply to a commercial driver's licensee who is merely disqualified from operating a commercial motor vehicle under section 321.208 if the licensee's driver's license is not suspended or revoked.

93 Acts, ch 16, §11, 93 Acts, ch 164, §5  
See Code editor's note to §6A.10  
Subsection 5 amended

## CHAPTER 321J

## OPERATING WHILE INTOXICATED

**321J.2 Operating while under the influence of alcohol or a drug or while having an alcohol concentration of .10 or more (OWI).**

1. A person commits the offense of operating while intoxicated if the person operates a motor vehicle in this state in either of the following conditions:

a. While under the influence of an alcoholic beverage or other drug or a combination of such substances.

b. While having an alcohol concentration as defined in section 321J.1 of .10 or more.

2. A person who violates this section commits:

a. A serious misdemeanor for the first offense and shall be imprisoned in the county jail for not less than forty-eight hours to be served as ordered by the court, less credit for any time the person was confined in a jail or detention facility following arrest, and assessed a fine of not less than five hundred dollars nor more than one thousand dollars. As an alternative to a portion or all of the fine, the court may order the person to perform not more than two hundred hours of unpaid community service. The court may accommodate the sentence to the work schedule of the defendant.

b. An aggravated misdemeanor for a second offense and shall be imprisoned in the county jail or community-based correctional facility not less than seven days, which minimum term cannot be suspended notwithstanding section 901.5, subsection 3 and section 907.3, subsection 3, and assessed a fine of not less than seven hundred fifty dollars.

c. A class "D" felony for a third offense and each subsequent offense and shall be imprisoned in the county jail for a determinate sentence of not more than one year but not less than thirty days, or committed to the custody of the director of the department of corrections, and assessed a fine of not less than seven hundred fifty dollars. The minimum jail term of thirty days cannot be suspended notwithstanding section 901.5, subsection 3, and section 907.3, subsection 3, however, the person sentenced shall receive credit for any time the person was confined in a jail or detention facility following arrest. If a person is committed to the custody of the director of the department of corrections pursuant to this paragraph and the sentence is suspended, the sentencing court shall order that the offender serve the thirty-day minimum term in the county jail. If the sentence which commits the person to the custody of the director of the department of corrections is later imposed by the court, all time served in a county jail toward the thirty-day minimum term shall count as time served toward the sentence which committed the person to the custody of the director

of the department of corrections. A person convicted of a second or subsequent offense shall be ordered to undergo a substance abuse evaluation prior to sentencing. If a person is convicted of a third or subsequent offense or if the evaluation recommends treatment, the offender may be committed to the custody of the director of the department of corrections, who, if the sentence is not suspended, shall assign the person to a facility pursuant to section 904.513 or the offender may be committed to treatment in the community under the provisions of section 907.6.

A minimum term of imprisonment in a county jail or community-based correctional facility imposed on a person convicted of a second or subsequent offense under paragraph "b" or "c" shall be served on consecutive days. However, if the sentencing court finds that service of the full minimum term on consecutive days would work an undue hardship on the person, or finds that sufficient jail space is not available and is not reasonably expected to become available within four months after sentencing to incarcerate the person serving the minimum sentence on consecutive days, the court may order the person to serve not less than forty-eight consecutive hours of the minimum term and to perform a specified number of hours of unpaid community service as deemed appropriate by the sentencing court.

3. No conviction for, deferred judgment for, or plea of guilty to, a violation of this section which occurred more than six years prior to the date of the violation charged shall be considered in determining that the violation charged is a second, third, or subsequent offense. For the purpose of determining if a violation charged is a second, third, or subsequent offense, deferred judgments pursuant to section 907.3 for violations of this section 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 one 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 violation charged shall be considered and counted as a separate previous offense.

4. A person shall not be convicted and sentenced for more than one violation of this section if the violation is shown to have been committed by either or both of the means described in subsection 1 in the same occurrence.

5. The clerk of court shall immediately certify to the department a true copy of each order entered with respect to deferral of judgment, deferral of sen-

tence or pronouncement of judgment and sentence for a defendant under this section.

6. This section does not apply to a person operating a motor vehicle while under the influence of a drug if the substance was prescribed for the person and was taken under the prescription and in accordance with the directions of a medical practitioner as defined in chapter 155A, if there is no evidence of the consumption of alcohol and the medical practitioner had not directed the person to refrain from operating a motor vehicle.

7. In any prosecution under this section, evidence of the results of analysis of a specimen of the defendant's blood, breath, or urine is admissible upon proof of a proper foundation. The alcohol concentration established by the results of an analysis of a specimen of the defendant's blood, breath, or urine withdrawn within two hours after the defendant was driving or in physical control of a motor vehicle is presumed to be the alcohol concentration at the time of driving or being in physical control of the motor vehicle.

8. The court shall order a defendant convicted of or receiving a deferred judgment for a violation of this section to make restitution, in an amount not to exceed two thousand dollars, for damages resulting directly from the violation. An amount paid pursuant to this restitution order shall be credited toward any adverse judgment in a subsequent civil proceeding arising from the same occurrence. However, other than establishing a credit, a restitution pro-

ceeding pursuant to this section shall not be given evidentiary or preclusive effect in a subsequent civil proceeding arising from the same occurrence.

9. In any prosecution under this section, the results of a chemical test may not be used to prove a violation of paragraph "b" of subsection 1 if the alcohol concentration indicated by the chemical test minus the established margin of error inherent in the device or method used to conduct the chemical test does not equal an alcohol concentration of .10 or more.

Section not amended  
Subsection 2, paragraph c, reference to transferred section corrected editorially

### **321J.17 Civil penalty — disposition — 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 two hundred dollars. The money collected by the department under this section shall be transmitted to the treasurer of state who shall deposit one-half of the money in the separate fund established in section 912.14 and one-half of the money shall be deposited in the general fund of the state. 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.

93 Acts, ch 110, §1  
Section amended

## CHAPTER 321L

### HANDICAPPED PARKING

Pilot project for issuance of handicapped identification devices by county treasurers, 93 Acts, ch 169, §14, 21

#### **321L.6 Handicapped parking sign.**

A handicapped parking sign shall be displayed designating the handicapped parking space.

1. The handicapped parking sign shall have a blue background and bear the international symbol of accessibility in white. If an entity who owns or leases real property in a city is required to provide handicapped parking spaces, the city shall provide, upon request, the signs for the entity at cost. If an entity who owns or leases real property outside the corporate limits of a city is required to provide handicapped parking spaces, the county in which the property is located shall provide the signs for the entity at cost upon request.

2. The handicapped parking sign shall be affixed vertically on another object so that it is readily visible to a driver of a motor vehicle approaching the handicapped parking space. A handicapped parking space designated only by the international symbol of accessibility being painted or otherwise placed horizontally on the parking space does not meet the requirements of this subsection.

3. The handicapped parking sign shall include a sign stating that the fine for improperly using the handicapped parking space is fifty dollars.

93 Acts, ch 169, §20  
Subsection 3 amended



## CHAPTER 322

### MOTOR VEHICLE MANUFACTURERS, DISTRIBUTORS AND DEALERS

#### 322.5 License fees — temporary permits.

1. The license fee for a motor vehicle dealer is the sum of seventy dollars for a two-year license, one hundred forty dollars for a four-year license, or two hundred ten dollars for a six-year license for the licensee's principal place of business in each city or township and an additional twenty dollars for two years, forty dollars for four years, or sixty dollars for six years for each car lot which is in the city or township in which the principal place of business is located and which is not adjacent to that place, to be paid to the department at the time a license is applied for. In case the application is denied, the department shall refund the amount of the fee to the applicant. For the purposes of this section "*adjacent*" means that the principal place of business and each additional lot are adjoining parcels of property.

For the purposes of this subsection, parcels of property shall be deemed to be adjacent if the parcels are only separated by an alley, street, or highway that is not a controlled-access facility.

2. A motor vehicle dealer may display new motor vehicles at fairs, vehicle shows and vehicle exhibitions. Motor vehicle dealers, in addition to selling vehicles at their principal place of business and car lots, may, upon receipt of a temporary permit approved by the department, display and offer new motor vehicles for sale and negotiate sales of new motor vehicles only at county fairs, as defined in chapter 174, vehicle shows and vehicle exhibitions which fairs, shows and exhibitions are approved by the department and are held in the county of the

motor vehicle dealer's principal place of business. Application for temporary permits shall be made upon forms provided by the department and shall be accompanied by a ten dollar permit fee. Permits shall be issued for periods of not to exceed fourteen days. No sale of a motor vehicle by a motor vehicle dealer shall be completed nor any sales agreement signed at any such fair, show or exhibition. All such sales shall be consummated at the motor vehicle dealer's principal place of business.

3. A motor vehicle dealer may also, upon receipt of a temporary permit approved by the department, display and sell classic cars only at county fairs, as defined in chapter 174, vehicle shows, and vehicle exhibitions which have been approved by the department for purposes of classic car display and sale and the provisions of section 322.3, subsection 9, shall not be applicable. Application for a temporary permit shall be made on forms provided by the department and shall be accompanied by a ten dollar permit fee. A permit shall be issued for a single period of not to exceed five days. Not more than three permits may be issued to a motor vehicle dealer in any one calendar year. For purposes of this subsection, "*classic car*" means a motor vehicle fifteen years old or older but less than twenty years old which is primarily of value as a collector's item and not as transportation.

93 Acts, ch 45, §1, 2, 93 Acts, ch 174, §3, 4  
Controlled access facility, §306A 2  
Subsection 1, NEW unnumbered paragraph 2  
NEW subsection 3

## CHAPTER 323

### MOTOR FUEL AND SPECIAL FUEL

#### 323.1 Definitions.

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

1. "*Dealer*" means a person, other than an employee of a distributor or franchiser, who operates, maintains or conducts a place of business from which motor fuel or special fuel is sold or offered for sale at retail to the ultimate consumer, and who holds a license, issued as provided in chapter 214, for each pump and meter operated upon the retail premises.

2. "*Dealer franchise*" means an agreement or contract, either written or oral, between a franchiser and a dealer or between a distributor and a dealer when all of the following conditions are included:

a. A commercial relationship of definite duration or continuing indefinite duration is involved.

b. The dealer is granted the right to offer and sell motor fuel or special fuel that is imported, refined or distributed by the franchiser or by the distributor.

c. The dealer's business is substantially reliant

on the franchiser or distributor for the continued supply of motor fuel or special fuel.

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

4. "*Distributor*" means a person who holds a motor fuel distributor's license or a special fuel distributor's license issued as provided in chapter 452A.

5. "*Distributor franchise*" means a written agreement or contract, either written or oral, between a franchiser and a distributor when all of the following conditions are included:

a. A commercial relationship of definite duration or continuing indefinite duration is involved.

b. The distributor is granted the right to offer and sell motor fuel or special fuel that is imported, refined or distributed by the franchiser.

c. The distributor, as an independent business, constitutes a component of the franchiser's distribution system.

d. The distributor's business, or a portion of it which is related to motor fuel or special fuel purchased from the franchiser is substantially reliant on the franchiser for the continued supply of motor fuel or special fuel.

e. The distributor's business or a portion of it

which is related to motor fuel or special fuel purchased from the franchiser is substantially associated with the franchiser's trademark, service mark, trade name, advertising or other commercial symbol designating the franchiser.

6. "*Franchiser*" means a person who is engaged in the importation, refining or distribution of motor fuel or special fuel and who has entered into a distributor franchise or a dealer franchise.

7. "*Motor fuel*" means motor fuel as defined in chapter 452A.

8. "*Retail premises*" means real estate either owned or leased by the dealer and used primarily for the sale at retail to the ultimate consumer of motor fuel or special fuel.

9. "*Retaliatory action*" means action contrary to the purpose or intent of this chapter and may include a refusal to continue to sell or lease, a reduction in the quality or quantity of services or products customarily available for sale or lease, a violation of privacy, or an inducement of others to retaliate.

10. "*Special fuel*" means special fuel as defined in chapter 452A.

Section not amended

Subsection 4, reference to transferred chapter corrected editorially

## CHAPTER 324A

### TRANSPORTATION PROGRAMS

#### **324A.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, beginning on July 1, 1991, all such moneys under these sections shall be deposited into the general fund of the state. There is appropriated 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 general 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.

93 Acts, ch 131, §13

Restrictions on use of moneys deposited in state general fund, see § 8 60  
Subsection 1, unnumbered paragraph 2 amended

## CHAPTER 327B

### REGISTRATION OF CARRIER AUTHORITY

#### **327B.1 Authority secured and registered.**

It is unlawful for a carrier to perform an interstate transportation service for compensation upon the highways of this state without first registering the authority obtained from the interstate commerce commission or evidence that such authority is not required with the state department of transportation.

Registration shall be granted without hearing upon application and payment of a twenty-five-dollar filing fee. Each amendment of supplemental authority shall require a ten-dollar filing fee.

The department shall participate in the single

state insurance registration system for motor carriers as provided in 49 U.S.C. § 11506.

The state department of transportation may execute reciprocity agreements with authorized representatives of any state exempting nonresidents from payment of fees as set forth in this chapter. The state department of transportation shall adopt rules pursuant to chapter 17A for the identification of vehicles operated under reciprocity agreements.

Fees may be subject to reduction or proration pursuant to sections 326.5 and 326.32.

93 Acts, ch 174, §2

Unnumbered paragraph 3 stricken and rewritten

## CHAPTER 327C

### SUPERVISION OF CARRIERS

#### **327C.4 Inspection — notice to repair.**

The department shall inspect the condition of each railroad's rail track, and may inspect the condition of each railroad's rail facilities, equipment, rolling stock, operations and pertinent records at reasonable times and in a reasonable manner to insure proper operations. Employees of the department shall have proper identification which shall be displayed upon request. If found unsafe, the department shall immediately notify the railroad corporation whose duty it is to put the same in repair, which shall be done by it within such time as the department shall fix. If any corporation fails to perform this duty the department may forbid and prevent it from running trains over the defective portion while

unsafe or may regulate the speed and operation of trains moving over the defective portion of the railroad. If the railroad corporation violates any requirement provided by the department, the railroad corporation shall be subject to a schedule "two" penalty for each day the repairs have not been made from the date the department set for repairs to be completed. The court may consider the willingness and ability of the railroad corporation to co-operate in removing the safety hazard. Notwithstanding the provisions of chapter 669, the state shall not be held liable for damages for any act or failure to act under the provisions of this section.

93 Acts, ch 87, §9

Section amended

### CHAPTER 327F

#### CONSTRUCTION AND OPERATION OF RAILWAYS

**327F.37 Sanitation and shelter.** Repealed by 93 Acts, ch 180, § 59. See § 88.5(12).

**327F.38 Provision of potable water.** Repealed by 93 Acts, ch 180, § 59. See § 88.5(12).

### CHAPTER 327G

#### FENCES, CROSSINGS, SWITCHES, PRIVATE BUILDINGS, SPUR TRACKS, AND REVERSION

**327G.78 Sale of railroad property.**

Subject to sections 327G.77 and 6A.16, when a railroad corporation, its trustee, or its successor in interest has interests in real property adjacent to a railroad right-of-way that are abandoned by order of the interstate commerce commission, reorganization court, bankruptcy court, or the department, or when a railroad corporation, its trustee, or its successor in interest seeks to sell its interests in that property under any other circumstance, the railroad corporation, its trustee, or its successor in interest shall extend a written offer to sell at a fair market value price to the persons holding leases, licenses, or permits upon those properties, allowing sixty days from the time of receipt for a written response. If a disagreement arises between the parties concerning the price or other terms of the sale transaction, either or both parties may make written application to the department to resolve the disagreement. The application shall be made within sixty days from the time an initial written response is served upon the railroad corporation, trustee, or successor in interest by the per-

son wishing to purchase the property. The department shall notify the department of inspections and appeals which shall hear the controversy and make a final determination of the fair market value of the property and the other terms of the transaction which were in dispute, within ninety days after the application is filed. The determination is subject to review by the department and the department's decision is the final agency action. All correspondence shall be by certified mail.

The decision of the department is binding on the parties, except that a person who seeks to purchase the real property may withdraw the offer to purchase within thirty days of the decision of the department. If a withdrawal is made, the railroad corporation, trustee, or successor in interest may sell or dispose of the real property without further order of the department.

This section does not apply when a rail line is being sold for continued railroad use.

93 Acts, ch 47, §16  
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 327I.7, subsection 14, and 327H.20 directing that moneys received or reimbursements made be deposited into the railroad assistance fund, beginning on July 1, 1991, such moneys shall be de-

posited into the general fund of the state and 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.

93 Acts, ch 131, §14

Restrictions on use of moneys deposited in state general fund, see § 8 60  
Unnumbered paragraph 2 amended

## CHAPTER 327I

### RAILWAY FINANCE AUTHORITY

#### 327I.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 ob-

ligations, judgments, or debts for which the authority becomes liable in its capacity as a general partner, or for any other use authorized under this chapter. The fund may also be used to purchase or upgrade railroad right-of-way and trackage facilities for the development of railroad passenger tourism.

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 327I.7, subsection 14, and section 327I.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, beginning on July 1, 1991, all moneys directed to be deposited in the fund shall be deposited into the general fund of the state and all 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.

93 Acts, ch 131, §15

Restrictions on use of moneys deposited in state general fund, see § 8 60  
Subsection 3 amended

## CHAPTER 328

### AERONAUTICS

**328.13 Co-operation with federal government.** Repealed by 93 Acts, ch 87, § 5. See §307.44.

**328.35 Exceptions to registration requirements.**

1. The provisions of sections 328.19 and 328.20 shall not apply to:

a. An aircraft which has been registered by a foreign country with which the United States has a reciprocal agreement covering the operations of registered aircraft.

b. An aircraft which is owned by a resident of this state but which is continuously located and operated beyond the boundaries of the state.

c. Any airport, landing area, or other air navigation facility owned or operated by the federal government within this state.

d. A lighter than air aircraft that is not engine driven.

2. No registration is required for an airport maintained for private use.

93 Acts, ch 87, §10, 11  
1993 amendments striking former subsection 2 and amending former subsection 3 are effective January 1, 1994, 93 Acts, ch 87, §15  
Subsection 2 stricken and former subsection 3 renumbered as 2  
Subsection 2 amended

**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 12C.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 452A.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, beginning on July 1, 1991, such moneys shall be deposited into the general fund of the state and refunds under section 328.24 shall be paid from the general fund of the state.

93 Acts, ch 131, §16  
Restrictions on use of moneys deposited in state general fund, see § 8 60  
Unnumbered paragraph 4 amended

## CHAPTER 329

### AIRPORT ZONING

**329.12 Board of adjustment — creation — powers — duties.**

The governing body of any municipality seeking to exercise powers under this chapter shall by ordinance provide for the appointment of a board of adjustment, as provided in section 414.7 for a city, or as provided in section 335.10 for a county. The board of adjustment has the same powers and duties, and its procedure and appeals are subject to the same provisions as established in sections 414.9 to 414.19 for a city, or sections 335.12 to 335.21 for a county.

The concurring vote of a majority of the board shall be necessary to reverse any order, requirement, decision or determination of any administrative official or to decide in favor of the applicant on any matter upon which it is required to pass under any regulations adopted pursuant to this chapter or to effect any variance therefrom.

The board of adjustment shall consist of two members from each municipality, selected by the governing body thereof, and one additional member to act as chairperson and to be selected by a majority vote of the members selected by the municipality. Members shall be removable for cause by the appointing authority upon written charges and after public hearing. Vacancies shall be filled for the unexpired term of any member whose office becomes vacant in the same manner in which said member was selected. The terms of the members of the board of adjustment shall be for five years, excepting that when the board shall first be created, one of the members appointed by each municipality shall be appointed for a term of two years and one for a term of four years.

Section not amended  
Unnumbered paragraph 1, reference to transferred section corrected editorially

## CHAPTER 330

### AIRPORTS

#### 330.13 Federal aid.

Any subdivision of government is authorized to accept, receive, and receipt for federal moneys, and other moneys, either public or private, for the acquisition, construction, enlargement, improvement, maintenance, equipment, or operation of airports, and other air navigation facilities, and sites for airports and other navigation facilities, and to comply with the laws of the United States and any regulations for the expenditure of federal moneys upon airports and other air navigation facilities.

All preapplications for funds authorized to be received pursuant to this section by any governmental

subdivision, commission, or authority, whether acting alone or jointly with another governmental or private entity, shall be approved by the state transportation commission prior to being submitted to any federal agency or department. Approval shall be based on criteria consistent with the Iowa aviation system plan. However, this paragraph does not apply to preapplications from airports which receive federal primary commercial service entitlement funds if the airport making the preapplication files a copy of the preapplication with the state department of transportation.

93 Acts, ch 87, §12  
Section amended

## CHAPTER 330A

### AVIATION AUTHORITIES

#### 330A.9 Purposes and powers — bonds and notes.

1. The bonds issued by an authority pursuant to this chapter shall be authorized by resolution of the board and shall be either term or serial bonds, shall bear such date or dates, mature at such time or times, not exceeding forty years from their respective dates, bear interest at such rate or rates, not exceeding that permitted by chapter 74A payable semi-annually, be in such denominations, be in such form, either coupon or fully registered, shall carry such registration, exchangeability and interchangeability privileges, be payable in such medium of payment and at such place or places, within or without the state, be subject to such terms of redemption and be entitled to such priorities on the revenues, rates, fees, rentals, or other charges or receipts of the authority as the resolution or any subsequent resolution may provide. The bonds shall be executed either by manual or facsimile signature by the officers as an authority shall determine, provided that the bonds shall bear at least one signature which is manually executed thereon, and the coupons attached to the bonds shall bear the facsimile signature or signatures of the officer or officers as shall be designated by an authority and the bonds shall have the seal of the authority, affixed, imprinted, reproduced, or lithographed thereon, all as may be prescribed in the resolution or resolutions. The bonds may be sold at public or private sale at the price or prices as the authority shall determine to be in the best interests of

the authority. However, the net interest cost shall not exceed that permitted by chapter 74A. Pending the preparation of definitive bonds, interim certificates or temporary bonds may be issued to the purchaser or purchasers of the bonds, and may contain terms and conditions as the authority may determine.

2. An authority shall have the power, at any time and from time to time after the issuance of bonds shall have been authorized, to borrow money 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 borrowed under this section, and the notes may be renewed from time to time, but all 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 such denomination or denominations, shall bear interest at such rate or rates not exceeding the maximum rate permitted by the resolution authorizing the issuance of the bonds, shall be in such form and shall be executed in such manner, all as the authority shall prescribe. The notes may be sold at public or private sale or, if the notes shall be renewal notes, they may be exchanged for notes then outstanding on such terms as the board shall determine. The board may, in its discretion, retire the notes from the revenues

derived from its aviation facilities or from other moneys of the authority which are lawfully available or from a combination of each, 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 it shall amend or repeal the resolution authorizing the issuance of the bonds, in anticipation of the proceeds of the sale of which the notes were issued, so as to reduce the authorized amount of the bond issue by the amount of the notes retired. The amendatory or repealing resolution takes effect upon its passage.

3. Any such resolution or resolutions authorizing any bonds hereunder may contain provisions which shall be part of the contract with the holders of such bonds, as to:

a. The pledging of all or any part of the revenues, rates, fees, rentals, or other charges or receipts of an authority derived by an authority from all or any of its aviation facilities.

b. The construction, improvement, operation, extensions, enlargement, maintenance, repair, or lease of such aviation facilities and the duties of an authority with reference thereto.

c. Limitations on the purposes to which the proceeds of the bonds, then or thereafter to be issued, or of any loan or grant by the federal government or the state government or the county or any municipality therein, 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 aviation facilities of an authority, or any part thereof.

e. The setting aside of reserves or sinking funds or repair and replacement funds or other funds and the regulation and disposition thereof.

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 same 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 an authority will make said bonds more marketable.

4. An 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 such bonds, and may assign and pledge all or any of the revenues, rates, fees, rentals, or other charges or receipts of an authority thereunder. Such deeds of trust, mortgages, indentures, or other agreements, may contain such provisions as may be customary in such instruments, or, as an authority may authorize, including, but without limitation, provisions as to:

a. The construction, improvement, operation, leasing, maintenance, and repair of the aviation facilities and duties of an authority with reference thereto.

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 thereof by the holders of the bonds.

d. The rights and remedies of said trustee and the holders of the bonds.

e. The terms and provisions of the bonds or the resolution authorizing the issuance of the same.

Any of the bonds issued pursuant to this chapter are, and are hereby declared to be, negotiable instruments, and shall have all the qualities and incidents of negotiable instruments.

93 Acts, ch 118, §1  
Subsections 1 and 2 amended

## CHAPTER 331

### COUNTY HOME RULE IMPLEMENTATION

#### 331.206 Supervisor districts.

1. One of the following supervisor district representation plans shall be used for the election of supervisors:

a. Plan "one." Election at large without district residence requirements for the members.

b. Plan "two." Election at large but with equal-population district residence requirements for the members.

c. Plan "three." Election from single-member equal-population districts, in which the electors of each district shall elect one member who must reside in that district.

2. The plan used under subsection 1 shall be selected by the board or by a special election as provided in section 331.207. A plan selected by the board shall remain in effect for at least six years unless it is changed by a special election as provided in section 331.207.

A plan selected by the board shall become effective on the first day in January which is not a Sunday or holiday following the next general election, at which time the terms of the members expire and the terms of the members elected under the requirements of the new supervisor representation plan at the gener-



al election as specified in section 331.208, 331.209, or 331.210 shall commence.

93 Acts, ch 143, §46  
Subsection 2, NEW unnumbered paragraph 2

### **331.321 Appointments — removal.**

1. The board shall appoint:

a. An emergency management coordinator in accordance with section 29C.10.

b. A veterans memorial commission in accordance with sections 37.9 to 37.15, when a proposition to erect a memorial building or monument has been approved by the voters.

c. A county conservation board in accordance with section 350.2, when a proposition to establish the board has been approved by the voters.

d. The members of the county board of health in accordance with section 137.4.

e. One member of the convention to elect the state fair board as provided in section 173.2, subsection 3.

f. A temporary board of community mental health center trustees in accordance with section 230A.4 when the board decides to establish a community mental health center, and members to fill vacancies in accordance with section 230A.6.

g. The members of the county cluster board in accordance with section 217.43.

h. A county commission of veteran affairs in accordance with sections 35B.3 and 35B.4.

i. A general assistance director in accordance with section 252.26.

j. A member of the functional classification board in accordance with section 306.6.

k. One or more county engineers in accordance with sections 309.17 to 309.19.

l. A weed commissioner in accordance with section 317.3.

m. A county medical examiner in accordance with section 331.801, and the board may provide facilities, deputy examiners, and other employees in accordance with that section.

n. Two members of the county compensation board in accordance with section 331.905.

o. Members of an airport zoning commission as provided in section 329.9, if the board adopts airport zoning under chapter 329.

p. Members of an airport commission in accordance with section 330.20 if a proposition to establish the commission has been approved by the voters.

q. One member of the civil service commission for deputy sheriffs in accordance with section 341A.2 or 341A.3, and the board may remove the member in accordance with those sections.

r. A temporary board of hospital trustees in accordance with sections 347.9 and 347.10 if a proposition to establish a county hospital has been approved by the voters.

s. An initial board of hospital trustees in accordance with section 347A.1 if a hospital is established under chapter 347A.

t. A county zoning commission, an administra-

tive officer, and a board of adjustment in accordance with sections 335.8 to 335.11, if the board adopts county zoning under chapter 335.

u. A board of library trustees in accordance with sections 336.4 and 336.5, if a proposition to establish a library district has been approved by the voters, or section 336.18 if a proposition to provide library service by contract has been approved by the voters.

v. A weather modification board, if requested by petition, in accordance with section 361.2.

w. Local representatives to serve with the city development board as provided in section 368.14.

x. Members of a city planning and zoning commission and board of adjustment when a city extends its zoning powers outside the city limits, in accordance with section 414.23.

y. A list of residents eligible to serve as a compensation commission in accordance with section 6B.4, in condemnation proceedings under chapter 6B.

z. Members of the county judicial magistrate appointing commission in accordance with section 602.6503.

aa. A member of the judicial district department of corrections as provided in section 905.3, subsection 1, paragraph "a".

ab. Members of a county enterprise commission or joint county enterprise commission if the commission is approved by the voters as provided in section 331.471.

ac. Other officers and agencies as required by state law.

2. If the board proposes to appoint a county surveyor, it shall appoint a person qualified in accordance with chapter 542B and provide the surveyor with a suitable book in which to record field notes and plats.

3. Except as otherwise provided by state law, a person appointed to a county office may be removed by the officer or body making the appointment, but the removal shall be by written order. The order shall give the reasons and be filed in the office of the auditor, and a copy shall be sent by certified mail to the person removed who, upon request filed with the auditor within thirty days of the date of mailing the copy, shall be granted a public hearing before the board on all issues connected with the removal. The hearing shall be held within thirty days of the date the request is filed, unless the person removed requests a later date.

4. A board or commission appointed by the board of supervisors shall notify the county auditor of the name and address of its clerk or secretary.

5. A supervisor serving on another county board or commission shall be paid only as a supervisor for a day which includes official service on both boards.

93 Acts, ch 54, §10  
Subsection 1, paragraph g amended

### **331.323 Powers relating to county officers — combining duties.**

1. A county may combine the duties of two or more of the following county officers and employees as provided in this subsection:

- a. Sheriff
- b. Treasurer
- c. Recorder
- d. Auditor
- e. Medical examiner
- f. General assistance director
- g. County care facility administrator
- h. Commission on veteran affairs
- i. Director of social welfare
- j. County assessor
- k. County weed commissioner.

If a petition of electors equal in number to twenty-five percent of the votes cast for the county office receiving the greatest number of votes at the preceding general election is filed with the auditor no later than five working days before the filing deadline for candidates for county offices as specified in section 44.4 for the next general election, the board shall direct the commissioner of elections to call an election for the purpose of voting on the proposal. If the petition contains more than one proposal for combining duties, each proposal shall be listed on the ballot as a separate issue. If the majority of the votes cast is in favor of a proposal, the board shall take all steps necessary to combine the duties as specified in the petition.

The petition shall state the offices and positions to be combined and the offices or positions to be abolished. Offices and positions that have been combined may be subsequently separated by a petition and election in the same manner.

If an appointive officer or position is abolished, the term of office of the incumbent shall terminate one month from the day the proposal is approved. If an elective office is abolished, the incumbent shall hold office until the completion of the term for which elected, except that if a proposal is approved at a general election which fills the abolished office, the person elected shall not take office.

When the duties of an officer or employee are assigned to one or more elected officers, the board shall set the initial salary for each elected officer. Thereafter, the salary shall be determined as provided in section 331.907.

2. The board may:

- a. Require additional security on an officer's bond, in accordance with sections 65.2 and 65.3, or hear a petition of the surety for release and require a new bond, in accordance with sections 65.4 to 65.8.
- b. Require any county officer to make a report to it under oath on any subject connected with the duties of the office, and remove from office by majority vote an officer who refuses or neglects to make a report or give a bond required by the board within twenty days after the requirement is made known to the officer.
- c. Compromise an unsatisfied judgment rendered in favor of the county against a county officer and the sureties on the officer's bond, if the county is satisfied that the full amount cannot be collected. The county may compromise with one or more of the sureties and release those sureties if the officer and

each of the sureties on the officer's bond execute a written consent to the compromise and to the release of each of the sureties who agree to the compromise, and in the writing agree that the compromise and release do not release any of the sureties who do not agree to the compromise. The written consent shall be filed with the auditor. If the judgment is based upon a default in county funds, the money received under the compromise shall be paid pro rata to the funds in proportion to the amount each fund was in default at the time the judgment was rendered.

d. Authorize a county officer to destroy records in the officer's possession which have been on file for more than ten years, and are not required to be kept as permanent records.

e. Enter into an agreement with one or more other counties to share the services of a county attorney, in accordance with section 331.753.

f. Provide that the county attorney be a full-time or part-time officer in accordance with section 331.752.

g. Establish the number of deputies, assistants, and clerks for the offices of auditor, treasurer, recorder, sheriff, and county attorney.

h. Exercise other powers authorized by state law.

93 Acts, ch 143, §47

Subsection 1, unnumbered paragraph 2 amended

### 331.381 Duties relating to services.

The board shall:

1. Proceed in response to a petition to establish a unified law enforcement district in accordance with sections 28E.21 to 28E.28A, or the board may proceed under those sections on its own motion.
2. Provide for emergency management planning in accordance with sections 29C.9 through 29C.13.
3. Proceed in response to a petition to establish a county conservation board in accordance with section 350.2.
4. Comply with chapter 222, including but not limited to sections 222.13, 222.14, and 222.59 to 222.82, in regard to the care of mentally retarded persons.
5. Comply with chapters 227, 229 and 230, including but not limited to sections 227.11, 227.14, 229.42, 230.25, 230.27 and 230.35, in regard to the care of mentally ill persons.
6. Audit and pay the burial expense for indigent veterans, as provided in section 35B.15.
7. Make determinations regarding emergency relief services in accordance with sections 251.5 and 251.6.
8. Administer general assistance for the poor in accordance with chapter 252.
9. Handle complaints seeking medical care for indigent persons and pay for the care in accordance with chapter 255.
10. Comply with chapters 269 and 270 in regard to the payment of costs for pupils at the Iowa braille and sight saving school and the school for the deaf.
11. Enforce the interstate library compact in accordance with sections 256.70 through 256.73.
12. Proceed in response to a petition to establish

or end an airport commission in accordance with sections 330.17 to 330.20.

13. Proceed in response to a petition for a city hospital to become a county hospital in accordance with section 347.23.

14. Provide for the licensure, seizure, impoundment, and disposition of dogs in accordance with chapter 351.

15. Proceed in response to a petition to establish a county library district in accordance with sections 336.2 to 336.5, or a petition to provide library service by contract or to terminate the service under section 336.18.

16. Establish a sanitary disposal project in accordance with sections 455B.302, 455B.305 and 455B.306.

17. *a.* Furnish a place for the confinement of prisoners as required in section 903.4, and in accordance with chapter 356 or 356A.

*b.* Notwithstanding paragraph “*a*”, after consulting with and obtaining the approval of the chief judge of the judicial district, the board of a county with a population of less than fifteen thousand according to the 1990 census may enter into an agreement with a contiguous county to share costs and to provide space for the county’s prisoners and space for the district court.

18. Perform other duties required by state law.

93 Acts, ch 48, §52  
Subsection 11 amended

### 331.441 Definitions.

1. As used in this part, the use of the conjunctive “*and*” includes the disjunctive “*or*” and the use of the disjunctive “*or*” includes the conjunctive “*and*,” unless the context clearly indicates otherwise.

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

*a.* “*General obligation bond*” means a negotiable bond issued by a county and payable from the levy of ad valorem taxes on all taxable property within the county through its debt service fund which is required to be established by section 331.430.

*b.* “*Essential county purpose*” means any of the following:

(1) Voting machines or an electronic voting system.

(2) Bridges on highways or parts of highways which are located along the corporate limits of cities and are partly within and partly without the limits and are in whole or in part secondary roads.

(3) Sanitary disposal projects as defined in section 455B.301.

(4) Works and facilities useful for the collection, treatment, and disposal of sewage and industrial waste in a sanitary manner, for the collection and disposal of solid waste, and for the collection and disposal of surface waters and streams, including the planning, acquisition, leasing, construction, reconstruction, extension, remodeling, improvement, repair, equipping, maintenance, and operation of the works and facilities.

(5) Public buildings, including the site or

grounds of, and the erection, equipment, remodeling, or reconstruction of, and additions or extensions to the buildings, and including the provision and maintenance of juvenile detention or shelter care facilities, when the cost does not exceed the following limits:

(a) Four hundred thousand dollars in a county having a population of twenty-five thousand or less.

(b) Five hundred thousand dollars in a county having a population of more than twenty-five thousand but not more than fifty thousand.

(c) Six hundred thousand dollars in a county having a population of more than fifty thousand but not more than one hundred thousand.

(d) Eight hundred thousand dollars in a county having a population of more than one hundred thousand but not more than two hundred thousand.

(e) One million dollars in a county having a population of more than two hundred thousand.

(6) Funding or refunding outstanding indebtedness if the outstanding indebtedness exceeds five thousand dollars on the first day of January, April, June or September in any year. However, a county shall not levy taxes to repay refunding bonds for bridges on property within cities.

(7) Enlargement and improvement of a county hospital acquired and operated under chapter 347A, subject to a maximum of two percent of the assessed value of the taxable property in the county. However, notice of the proposed bond issue shall be published once each week for two consecutive weeks and if, within twenty days following the date of the first publication, a petition requesting an election on the proposal and signed by qualified voters of the county equal to at least twenty percent of the votes cast at the preceding election for governor is filed with the county auditor, the proposal is subject to the election requirements in section 331.442, subsections 2, 3 and 4 for general county purpose bonds.

(8) The provision of insurance, or funding a self-insurance program or local government risk pool, including but not limited to the investigation and defense of claims, the payment of claims, and the administration and management of such self-insurance program or local government risk pool.

(9) The acquisition, restoration, or demolition of abandoned, dilapidated, or dangerous buildings, structures or properties or the abatement of a nuisance.

(10) The establishment or funding of programs to provide for or assist in providing for the acquisition, restoration, or demolition of housing, or for other purposes as may be authorized under chapter 403A.

(11) The acquiring, developing, and improving of a geographic computer data base system suitable for automated mapping and facilities management.

(12) Funding the acquisition, construction, reconstruction, improvement, repair, or equipping of waterworks, water mains and extensions, ponds, reservoirs, capacity, wells, dams, pumping installations, real and personal property, or other facilities avail-

able or used for the storage, transportation, or utilization of water.

(a) The county board of supervisors may on its own motion or upon written petition of a water supplier, established under chapter 357A or 504A, designate the territory to be served as a special taxing district. The county's debt service tax levy for county general obligation bonds issued for the purposes set out in this subparagraph shall be levied only against real property within the county which is included within the boundaries of the special taxing district. A property not presently included within the boundaries of the special taxing district may petition to be included in the district subsequent to its establishment.

(b) General obligation bonds for the purposes outlined in this subparagraph are subject to the right of petition for an election as provided in section 331.442, subsection 5, paragraphs "a", "b", and "c", without limitation on the amount of the bond issue or the size of the county, and the board shall include notice of the right of petition in the notice required.

(c) A county and a city entering into a water supplier agreement shall provide in the agreement for a different rate of the county's debt service tax levy against benefited and nonbenefited property.

(13) The acquisition, pursuant to a chapter 28E agreement, of a city convention center or veterans memorial auditorium, including the renovation, remodeling, reconstruction, expansion, improvement, or equipping of such a center or auditorium, provided that debt service funds shall not be derived from the division of taxes under section 403.19.

c. "General county purpose" means any of the following:

(1) A memorial building or monument to commemorate the service rendered by soldiers, sailors, and marines of the United States, including the acquisition of ground and the purchase, erection, construction, reconstruction, and equipment of the building or monument, to be managed by a commission as provided in chapter 37.

(2) Acquisition and development of land for a public museum, park, parkway, preserve, playground, or other recreation or conservation purpose to be managed by the county conservation board. The board may submit a proposition under this subparagraph only upon receipt of a petition from the county conservation board asking that bonds be issued for a specified amount.

(3) The building and maintenance of a bridge over state boundary line streams. The board shall submit a proposition under this subparagraph to an election upon receipt of a petition which is valid under section 331.306.

(4) Contributions of money to the state department of transportation to help finance the construction of toll bridges across navigable rivers constituting boundaries between the county and an adjoining state.

(5) An airport, including establishment, acquisition, equipment, improvement, or enlargement of the airport.

(6) A joint city-county building, established by contract between the county and its county seat city, including purchase, acquisition, ownership, and equipment of the county portion of the building.

(7) A county health center as defined in section 346A.1, including additions and facilities for the center and including the acquisition, reconstruction, completion, equipment, improvement, repair, and remodeling of the center, additions, or facilities. Bonds for the purpose specified in this subparagraph are exempt from taxation by the state and the interest on the bonds is exempt from state income taxes.

(8) A county public hospital, including procuring a site and the erection, equipment, and maintenance of the hospital, and additions to the hospital, subject to the levy limits in section 347.7.

(9) Public buildings, including the site or grounds of, the erection, equipment, remodeling, or reconstruction of, and additions or extensions to the buildings, and including the provision and maintenance of juvenile detention or shelter care facilities, when the cost exceeds the limits stated in subsection 2, paragraph "b", subparagraph (5).

(10) The undertaking of any project jointly or in co-operation with any other governmental body which, if undertaken by the county alone, would be for a general county purpose, including the joint purchase, acquisition, construction, ownership, or control of any real or personal property.

(11) Any other purpose which is necessary for the operation of the county or the health and welfare of its citizens.

3. The "cost" of a project for an essential county purpose or general county purpose includes construction contracts and the cost 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, interest during the period or estimated period of construction and for twelve months thereafter or for twelve months after the acquisition date, and provisions for contingencies.

93 Acts, ch 180, §76  
Subsection 2, paragraph b, NEW subparagraph (13)

**331.465 Rates for proprietary functions.**

1. The board may establish, impose, adjust, and provide for the collection of rates to produce gross revenues at least sufficient to pay the expenses of operation and maintenance of the county enterprise or combined county enterprise and, if revenue bonds or pledge orders are issued and outstanding under this part, shall establish, impose, adjust, and provide for the collection of rates to produce gross revenues at least sufficient to pay the expenses of operation and maintenance of the county enterprise or combined county enterprise, and to leave a balance of net revenues sufficient at all times to pay the principal of and interest on the revenue bonds and pledge orders as they become due and to maintain a reasonable re-

serve for the payment of the principal and interest, and a sufficient portion of net revenues shall be pledged for that purpose. Rates shall be established by ordinance. Rates or charges for the services of a county enterprise defined in section 331.461, subsection 2, paragraph "b", if not paid as provided by ordinance, constitute a lien upon the premises served and may be certified to the county treasurer and collected in the same manner as taxes. The treasurer may charge five dollars for each lien certified as an administrative expense, which amount shall be added to the amount of the lien to be collected at the time of payment of the assessment from the payor and credited to the county general fund.

2. The board may:

a. By ordinance establish, impose, adjust and provide for the collection of charges for connection to a county enterprise or combined county enterprise.

b. Contract for the use of or services provided by a county enterprise or combined county enterprise with persons whose type or quantity of use or service is unusual.

c. Lease for a period not to exceed fifteen years all or part of a county enterprise or combined county enterprise, if the lease will not reduce the net revenues to be produced by the county enterprise or combined county enterprise.

d. Contract for a period not to exceed forty years with other governmental bodies for the use of or the services provided by the county enterprise or combined county enterprise on a wholesale basis.

e. Contract for a period not to exceed forty years with persons including but not limited to other governmental bodies for the purchase or sale of water.

93 Acts, ch 73, §1  
Subsection 1 amended

### 331.489 Rates and charges relating to public improvements.

A county which has created a district for a public improvement and, to the extent provided in the agreement creating a joint special assessment district, each county or city which is a party to the agreement, may establish, impose, adjust, and provide for the collection of rates and charges to produce gross revenues at least sufficient to pay the expenses of operation and maintenance of a public improvement, against property within the district and, where appropriate, establish, impose, adjust, and provide for the collection of charges for connection to a public improvement. The rates and charges must be established by ordinance of the governing body of the county or the city imposing the rates or charges. The rates and charges established as provided in this section, if not paid as provided by the ordinance of the governing body, are a lien upon the premises served or benefited by the public improvement and may be certified to the county treasurer and collected in the same manner as property taxes.

93 Acts, ch 73, §2  
Section amended

### 331.502 General duties.

The auditor shall:

1. Have general custody and control of the courthouse, subject to the direction of the board.

2. Provide, upon request and payment of the legal fee, a certified copy of any record or account kept in the auditor's office.

3. Pay costs and expenses of legal counsel appointed to represent a member of the Sac and Fox Indian settlement as provided in section 1.15.

4. Keep the complete journals of the general assembly and the official register available for public inspection as provided in section 18.90.

5. Carry out duties relating to the administration of local governmental budgets as provided in chapter 24 and section 384.19.

6. Report the approval of the bond of a public officer approved by the auditor on behalf of the board as provided in section 64.21.

7. Have custody of the official bonds of county and township officers as provided in section 64.23.

8. Take temporary possession of the office and all official books and papers in the office of treasurer when a vacancy occurs and hold the office, books, and records until a successor qualifies as provided in section 69.3. The auditor shall also serve temporarily as the recorder if a vacancy occurs in that office and, if there is no chief deputy assessor, act temporarily as the assessor as provided in section 441.8.

9. Serve as a member of an appointment board to fill a vacancy in the membership of the board as provided in section 69.8, subsection 5.

10. Reserved.

11. Submit annually to the Iowa department of public health the names and addresses of the clerk, or if there is no clerk, the secretary of the local boards of health in the county as provided in section 135.32.

12. Reserved.

13. Notify the chairperson of the county agricultural extension education council when the bond of the council treasurer has been approved and filed as provided in section 176A.14.

14. Carry out duties relating to stray animals as provided in sections 169B.30 to 169B.32 and 169B.41 to 169B.44.

15. Attest to anticipatory warrants issued by the board for the operation of a county limestone quarry as provided in section 353.7.

16. Carry out duties relating to the determination of legal settlement, collection of funds due the county, and support of mentally retarded persons as provided in sections 222.13, 222.50, 222.61 to 222.66, 222.69 and 222.74.

17. Collect the costs relating to the treatment and care of private patients at the state psychiatric hospital as provided in sections 225.23, 225.24 and 225.35.

18. Carry out duties relating to the hospitalization and support of mentally ill persons as provided in sections 229.42, 230.3, 230.11, 230.15, 230.21, 230.22, 230.25, and 230.26.

19. With acceptable sureties, approve the bonds of the members of a county commission of veteran affairs as provided in section 35B.6.

20. Issue warrants and maintain a book containing a record of persons receiving veteran assistance as provided in section 35B.10.

21. If the legal settlement of a poor person receiving financial assistance is in another county, notify the auditor of that county of the financial assistance as provided in section 252.22.

22. Notify the treasurer of funds due the state for the treatment of indigent persons at the university hospital as provided in section 255.26.

23. Make available to schools, voting machines or sample ballots for instructional purposes as provided in section 256.11, subsection 5.

24. Carry out duties relating to the collection and payment of funds for educating and supporting deaf students as provided in sections 270.6 and 270.7.

25. Order the treasurer to transfer tuition payments from the account of the debtor school corporation to the creditor school corporation as provided in section 282.21.

26. Order the treasurer to transfer transportation service fees from the account of the debtor school corporation to the creditor school corporation as provided in section 285.1, subsection 13.

27. Apportion school taxes, rents, and other money dedicated for public school purposes as provided in section 298.11.

28. Carry out duties relating to school lands and funds as provided in chapter 257B.

29. Carry out duties relating to the establishment, alteration, and vacation of public highways as provided in sections 306.21, 306.25, 306.29 to 306.31, 306.37 and 306.40.

30. Carry out duties relating to the establishment and maintenance of secondary roads as provided in chapter 309.

31. Collect costs incurred by the county weed commissioner as provided in section 317.21.

32. Reserved.

33. Maintain a file of certificates of appointment issued by county officers as provided in section 331.903.

34. Furnish information and statistics requested by the governor or the general assembly as provided in section 331.901, subsection 1.

35. Carry out duties relating to the organization, expansion, reduction, or dissolution of a rural water district as provided in chapter 357A.

36. Acknowledge the receipt of funds refunded by the state as provided in section 12B.18.

37. Be responsible for all public money collected or received by the auditor's office. The money shall be deposited in a bank approved by the board as provided in chapter 12C.

38. Carry out duties relating to the establishment and management of levee and drainage districts as provided in chapter 468, subchapter I, parts 1 to 5, subchapter II, parts 1, 3, and 6, subchapter III, and subchapter V.

39. Serve as a trustee for funds of a cemetery association as provided in sections 566.12 and 566.13.

40. Notify the state department of transportation of claims filed for improvements on public roads payable from the primary road fund as provided in section 573.24.

41. Certify to the clerk of the district court the names, addresses, and expiration date of the terms of office of persons appointed to the county judicial magistrate appointing commission as provided in section 602.6503.

42. Serve as an ex officio member of the jury commission as provided in section 607A.9.

43. Destroy outdated records as ordered by the board.

44. Carry out duties relating to the selection of jurors as provided in chapter 607A.

45. Designate newspapers in which official notices of the auditor's office shall be published as provided in section 618.7.

46. Carry out duties relating to lost property as provided in sections 644.2, 644.4, 644.7, 644.10 and 644.16.

47. For payment of a permanent school fund mortgage, acknowledge satisfaction of the mortgage by execution of a written instrument referring to the mortgage as provided in section 655.1.

48. Receive and record in a book kept for that purpose, moneys recovered from a person willfully committing waste or trespass on real estate as provided in section 658.10.

49. Carry out other duties required by law and duties assigned pursuant to section 331.323 or 331.610.

93 Acts, ch 148, §1  
Subsection 49 amended

### **331.605A Document management fee.**

The recorder shall also collect a fee of one dollar for each recorded instrument for which a fee is paid pursuant to section 331.604 to be used exclusively for the purpose of preserving and maintaining public records. The recorder shall establish and maintain an interest-bearing account into which all moneys collected pursuant to this paragraph shall be deposited. The recorder shall use the moneys deposited in the account to produce and maintain public records that meet archival standards, and to enhance the technological storage, retrieval, and transmission capabilities related to archival quality records. The recorder may cooperate with other entities, boards, and agencies to establish methods of records management, and participate in other joint ventures which further the purposes of this paragraph.

The fee collected pursuant to this section shall be used to accomplish the following purposes:

1. Preserve and maintain public records.
2. Assist counties in reducing record preservation costs.
3. Encourage and foster maximum access to public records maintained by county recorders at locations throughout the state.
4. Establish plans for anticipated and possible

future needs, including the handling and preservation of vital statistics.

93 Acts, ch 151, §1  
Legislative intent, working group to develop policies and procedures, 93 Acts, ch 151, § 3  
NEW section

### **331.605B Fees collected — audit.**

The recorder shall make available any information required by the county or state auditor concerning the fees collected under section 331.605A for the purposes of determining the amount of fees collected and the uses for which such fees are expended.

93 Acts, ch 151, §2  
NEW section

### **331.610 Abolition of office — transfer of duties.**

If the office of county recorder is abolished in a county, the duties prescribed by law to the office of recorder relating to the filing or recording of instruments affecting real estate shall be performed by the county auditor.

93 Acts, ch 148, §2  
NEW section

### **331.611 through 331.650 Reserved.**

### **331.756 Duties of the county attorney.**

The county attorney shall:

1. Diligently enforce or cause to be enforced in the county, state laws and county ordinances, violations of which may be commenced or prosecuted in the name of the state, county, or as county attorney, except as otherwise provided.
2. Appear for the state and the county in all cases and proceedings in the courts of the county to which the state or the county is a party, except actions or proceedings resulting from a change of venue from another county, and appear in the appellate courts in all cases in which the county is a party, and appear in all actions or proceedings which are transferred on a change of venue to another county or which require the impaneling of a jury from another county and in which the county or the state is a party.
3. Prosecute all preliminary hearings for charges triable upon indictment.
4. Prosecute misdemeanors when not otherwise engaged in the performance of other official duties.
5. Enforce all forfeited bonds and recognizances and prosecute all proceedings necessary for the recovery of debts, revenues, moneys, fines, penalties, restitution of court-appointed attorney fees or expense of a public defender, and forfeitures accruing to the state or the county or to a school district or road district in the county, and all suits in the county against public service corporations which are brought in the name of the state. To assist in this duty, the county attorney may procure professional collection services provided by persons or organizations, including private attorneys, which are generally considered to have knowledge and special abilities which are not generally available to state or local government or may designate another county official or agency to assist with collection efforts.

If professional collection services are procured, the county attorney shall file with the clerk of the district court an indication of the satisfaction of each obligation to the full extent of all moneys collected in satisfaction of that obligation, including all fees and compensation retained by the collection service incident to the collection and not paid into the office of the clerk.

Before a county attorney designates another county official or agency to assist with collection of debts, revenues, moneys, fines, penalties, restitution of court-appointed attorney fees or expense of a public defender, and forfeitures, the board of supervisors of the county must approve the designation.

All fines, penalties, court costs, fees, and restitution for court-appointed attorney fees or expenses of a public defender which are delinquent as defined in section 602.8107 may be collected by the county attorney or the person procured or designated by the county attorney. In order to receive a percentage of the amounts collected pursuant to section 602.8107, the county attorney must file with the clerk of the district court a notice of full commitment to collect delinquent obligations. The notice shall contain a list of procedures which will be initiated by the county attorney. Amounts collected by the county attorney or the person procured or designated by the county attorney shall be distributed in accordance with section 602.8107.

6. Commence, prosecute, and defend all actions and proceedings in which a county officer, in the officer's official capacity, or the county is interested or a party.

7. Give advice or a written opinion, without compensation, to the board and other county officers and to school and township officers, when requested by an officer, upon any matters in which the state, county, school, or township is interested, or relating to the duty of the officer in any matters in which the state, county, school, or township may have an interest, but the county attorney shall not appear before the board at a hearing in which the state or county is not interested.

8. Attend the grand jury when necessary for the purpose of examining witnesses before it or giving it legal advice. The county attorney shall procure subpoenas or other process for witnesses and prepare all informations and bills of indictment.

9. Give a receipt to all persons from whom the county attorney receives money in an official capacity and file a duplicate receipt with the county auditor.

10. Make reports relating to the duties and the administration of the county attorney's office to the governor when requested by the governor.

11. Co-operate with the auditor of state to secure correction of a financial irregularity as provided in section 11.15.

12. Submit reports as to the condition and operation of the county attorney's office when required by the attorney general as provided in section 13.2, subsection 7.

13. Institute legal proceedings at the request of a unit or organization commander to recover military property from a person who fails to return the property as provided in section 29A.34.

14. Hear and decide objections to a nomination filed with the county election commissioner as provided in section 44.7.

15. Review the report and recommendations of the independent ethics and campaign finance board and proceed to institute the recommended actions or advise the board that prosecution is not merited as provided in section 68B.32C.

16. Prosecute or assist in the prosecution of actions to remove public officers from office as provided in section 66.11.

17. Institute legal proceedings against persons who violate laws administered by the division of labor services of the department of employment services as provided in section 91.11.

18. Investigate complaints and prosecute violations of child labor laws as provided in section 92.22.

19. Prosecute violations of employment security laws and rules as provided in section 96.17, subsection 2.

20. Assist, at the request of the director of revenue and finance, in the enforcement of cigar and tobacco tax laws as provided in sections 453A.32 and 453A.49.

21. Prosecute nuisances as provided in section 99.24.

22. Attend the hearing, interrogate witnesses, and advise a license-issuing authority relating to the revocation of a license for violation of gambling laws as provided in section 99A.7. The county attorney shall also represent the license-issuing authority in appeal proceedings taken under section 99A.6.

23. Represent the state fire marshal in legal proceedings as provided in section 100.20.

24. Prosecute, at the request of the director of the department of natural resources or an officer appointed by the director, violations of the state fish and game laws as provided in section 481A.35.

25. Assist the division of beer and liquor law enforcement in the enforcement of beer and liquor laws as provided in section 123.14. The county attorney shall also prosecute nuisances, forfeitures of abatement bonds, and foreclosures of the bonds as provided in sections 123.62 and 123.86.

26. Reserved.

27. Serve as attorney for the county health care facility administrator in matters relating to the administrator's service as a conservator or guardian for a resident of the health care facility as provided in section 135C.24.

28. Reserved.

29. At the request of the director of public health, commence legal action to enjoin the unlawful use of radiation-emitting equipment as provided in section 136C.5.

30. Prosecute, at the request of the attorney general, violations of the law regulating practice professions as provided in section 147.92.

31. Prosecute violations of the Iowa veterinary practice Act as provided in section 169.19.

32. Assist the department of inspection and appeals in the enforcement of the food establishment laws, the Iowa food service sanitation code, and the Iowa hotel sanitation code as provided in sections 137A.26, 137B.21, and 137C.30.

33. Institute legal procedures on behalf of the state to prevent violations of the corporate or partnership farming laws as provided in section 9H.3.

34. Prosecute violations of the Iowa dairy industry laws as provided in section 179.11.

35. Prosecute persons who fail to file an annual or special report with the secretary of agriculture under the meat and poultry inspection Act as provided in section 189A.17.

36. Co-operate with the secretary of agriculture in the enforcement of label requirements for food packages as provided in section 191.7.

37. Prosecute violations of the Iowa commercial feed law as provided in section 198.13, subsection 3.

38. Co-operate with the secretary of agriculture in the enforcement of the agricultural seed laws as provided in section 199.14.

39. Prosecute violations of the Iowa fertilizer law as provided in section 200.18, subsection 4.

40. Prosecute violations of the Iowa drug, device, and cosmetic Act as requested by the board of pharmacy examiners as provided in section 126.7.

41. Provide the Iowa department of corrections with information relating to the background and criminal acts committed by each person sentenced to a state correctional institution from the county as provided in section 904.202.

42. Carry out duties relating to the commitment of a mentally retarded person as provided in section 222.18.

43. Proceed to collect, as requested by the county, the reasonable costs for the care, treatment, training, instruction, and support of a mentally retarded person from parents or other persons who are legally liable for the support of the mentally retarded person as provided in section 222.82.

44. At the direction of a district court judge, investigate the financial condition of a person under commitment proceedings to the state psychiatric hospital or those legally responsible for the person as provided in section 225.13.

45. Appear on behalf of the director of the division of mental health in support of an application to transfer a mentally ill person who becomes incorrigible and dangerous from a state hospital for the mentally ill to the Iowa medical and classification center as provided in section 226.30.

46. Carry out duties relating to the hospitalization of persons for mental illness as provided in section 229.12.

47. Carry out duties relating to the collection of the costs for the care, treatment, and support of mentally ill persons as provided in sections 230.25 and 230.27.

48. Carry out duties relating to the care, guid-



ance, and control of juveniles as provided in chapter 232.

49. Prosecute violations of law relating to the family investment program, medical assistance, and supplemental assistance as provided in sections 239.20, 249.13, and 249A.14.

50. Commence legal proceedings to enforce the rights of children placed under foster care arrangements as provided in section 233A.11.

51. Commence legal proceedings, at the request of the superintendent of the Iowa juvenile home, to recover possession of a child as provided in section 233B.12.

52. Furnish, upon request of the governor, a copy of the minutes of evidence and other pertinent facts relating to an application for a pardon, reprieve, commutation, or remission of a fine or forfeiture as provided in section 914.5.

53. Carry out duties relating to the provision of medical and surgical treatment for an indigent person as provided in sections 255.7 and 255.8.

54. Commence legal proceedings to recover school funds as provided in section 257B.33.

55. At the request of the state geologist, commence legal proceedings to obtain a copy of the map of a mine or mine extension as provided in section 460A.13.

56. Enforce, upon complaint, the performance of duties by officers charged with the responsibilities of controlling or eradicating noxious weeds as provided in section 317.23.

57. Commence legal proceedings to remove billboards and signs which constitute a public nuisance as provided in section 319.11.

58. At the request of the director of transportation, petition the district court to enforce the habitual offender law as provided in section 321.556.

59. Assist, upon request, the department of transportation's general counsel in the prosecution of violations of common carrier laws and regulations as provided in section 327C.30.

60. Enforce the control of vegetation on railroad property by the railroad corporations as provided in section 327F.29.

61. Appoint a member of the civil service commission for deputy sheriffs as provided in section 341A.2 or 341A.3.

62. Represent the civil service commission for deputy sheriffs in civil suits initiated by the commission for the proper enforcement of the civil service law as provided in section 341A.16.

63. Present to the grand jury at its next session a copy of the report filed by the division of corrections of the department of human services of its inspection of the jails in the county as provided in section 356.43.

64. Represent the township trustees in counties having a population of less than twenty-five thousand except when the interests of the trustees and the county are adverse as provided in section 359.18.

64A. Reserved.

64B. Make a written report to the department of

inspections and appeals within fifteen days of the end of each calendar quarter of the amount of funds which were owed to the state for indigent defense services and which were recouped pursuant to subsection 5 or 64A.\*

65. Represent the assessor and the board of review in legal proceedings relating to assessments as provided in section 441.41.

66. Represent the state in litigation relating to the inheritance tax if requested by the department of revenue and finance as provided in section 450.1.

67. Institute proceedings to enjoin persons from violating water treatment laws as provided in section 455B.224.

68. Conduct legal proceedings relating to the condemnation of private property as provided in section 6B.2.

69. Prosecute persons erecting or maintaining an electric transmission line across a railroad track except as authorized by the natural resource commission at the request of the commission as provided in section 478.29.

70. Institute legal proceedings against violations of insurance laws as provided in sections 511.7 and 515.93.

70A. Reserved.

71. Assist, as requested by the attorney general, with the enforcement of the Iowa competition law as provided in section 553.7.

72. Initiate proceedings to enforce provisions relating to the recordation of conveyances and leases of agricultural land as provided in section 558.44.

73. Reserved.

74. Bid on real estate on behalf of the county when necessary to secure the county from loss as provided by section 569.2.

75. Demand payment or security for a debt owed the state as provided in section 641.1.

76. Seek an attachment against the property of a person owing money to the state as provided in section 641.2.

77. Prosecute a complaint to establish paternity and compel support for a child as provided in section 600B.19.

78. Give to an accused person a copy of each report of the findings of the criminalistics laboratory in the investigation of an indictable criminal charge against the accused as provided in section 691.4.

79. Notify state and local governmental agencies issuing licenses or permits, of a person's conviction of obscenity laws relating to minors as provided in section 728.8.

80. In the case of appeal from the district court, furnish the attorney general with a copy of the notice of appeal and pertinent material from the district court proceedings as provided in section 814.8.

81. Certify fees and mileage payable to witnesses subpoenaed by the county attorney before the district court as provided in section 815.3.

82. Carry out duties relating to extradition of fugitive defendants as provided in chapter 818.

83. Advise the director of the judicial district de-

partment of correctional services of the facts and circumstances surrounding the crime committed and the record and history of the defendant granted probation as provided in section 907.8.

84. Bring an action in the nature of quo warranto as provided in rule of civil procedure 300.

85. Perform other duties required by law and duties assigned pursuant to section 331.323.

93 Acts, ch 97, §39, 93 Acts, ch 110, §2-4, 93 Acts, ch 142, §12, 93 Acts, ch 163, §32

\*Subsection 64A has been stricken, corrective legislation is pending

See Code editor's note

Subsection 5 amended

Subsection 5, NEW unnumbered paragraph 4

Subsections 15 and 49 amended

Subsection 64A stricken

### 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. However, the sticker is not required to be affixed to an unmarked vehicle used for purposes of providing law enforcement or security.

93 Acts, ch 26, §7

Section amended

## CHAPTER 335

### COUNTY ZONING

#### 335.25 Zoning for family homes.

1. It is the intent of this section to assist in improving the quality of life of developmentally disabled persons by integrating them into the mainstream of society by making available to them community residential opportunities in the residential areas of this state. In order to implement this intent, this section shall be liberally construed.

2. a. "Developmental disability" or "developmentally disabled" means a disability of a person which has continued or can be expected to continue indefinitely and which is one of the following:

(1) Attributable to mental retardation, cerebral palsy, epilepsy, or autism.

(2) Attributable to any other condition found to be closely related to mental retardation because the condition results in impairment of general intellectual functioning or adaptive behavior similar to that of mentally retarded persons or requires treatment and services similar to those required for the persons.

(3) Attributable to dyslexia resulting from a disability described in either subparagraph (1) or (2).

(4) Attributable to a mental or nervous disorder.

b. "Family home" means a community-based residential home which is licensed as a residential care facility under chapter 135C or as a child foster care facility under chapter 237 to provide room and board, personal care, habilitation services, and supervision in a family environment exclusively for not more than eight developmentally disabled persons and any necessary support personnel. However, family home does not mean an individual foster family home licensed under chapter 237.

c. "Permitted use" means a use by right which is authorized in all residential zoning districts.

d. "Residential" means regularly used by its occupants as a permanent place of abode, which is made one's home as opposed to one's place of business and which has housekeeping and cooking facilities for its occupants only.

3. Notwithstanding the optional provision in section 335.1 and any other provision of this chapter to the contrary, a county, county board of supervisors, or a county zoning commission shall consider a family home a residential use of property for the purposes of zoning and shall treat a family home as a permitted use in all residential zones or districts, including all single-family residential zones or districts, of the county. A county, county board of supervisors, or a county zoning commission shall not require that a family home, its owner, or operator obtain a conditional use permit, special use permit, special exception, or variance. However, new family homes owned or operated by public or private agencies shall be disbursed\* through the residential zones and districts and shall not be located within contiguous areas equivalent in size to city block areas. Section 135C.23, subsection 2, shall apply to all residents of a family home.

4. A restriction, reservation, condition, exception, or covenant in a subdivision plan, deed, or other instrument of or pertaining to the transfer, sale, lease, or use of property in a county which permits residential use of property but prohibits the use of property as a family home for developmentally disabled persons, to the extent of the prohibition, is void as against the public policy of this state and shall not be given legal or equitable effect.

93 Acts, ch 90, §2

\*Word "dispersed" probably intended, corrective legislation pending  
Subsection 3 amended

### 335.30 Manufactured home.

A county shall not adopt or enforce zoning regulations or other ordinances which disallow the plans and specifications of a proposed residential structure solely because the proposed structure is a manufactured home. However, a zoning ordinance or regulation shall require that a manufactured home be located and installed according to the same standards, including but not limited to, a foundation system, set-back, and minimum square footage which would apply to a site-built, single family dwelling on the same lot. A zoning ordinance or other regulation shall not require a foundation system for a manufactured home which is incompatible with the structural design of the manufactured home structure. When units are located outside a mobile home park, requirements may be imposed which ensure visual compatibility of the foundation system with surrounding residential structures. As used in this section, "*manufactured home*" means a factory-built structure, which is manufactured or constructed under the authority of 42 U.S.C. § 5403 and is to be used as a place for human habitation, but which is not constructed or equipped with a permanent hitch or other device allowing it to be moved other than for the purpose of moving to a permanent site, and which does not have permanently attached to its body or frame any wheels or axles. A mobile home

as defined in section 435.1 is not a manufactured home, unless it has been converted to real property as provided in section 435.26, and shall be taxed as a site-built dwelling. This section shall not be construed as abrogating a recorded restrictive covenant.

93 Acts, ch 154, §3  
Section amended

### 335.32 Homes for persons with physical disabilities.

A county board of supervisors or county zoning commission shall consider a home for persons with physical disabilities a family home, as defined in section 335.25, for the purposes of zoning, in accordance with chapter 135L.\*

93 Acts, ch 90, §3  
\*Reference to chapter 504C probably intended, corrective legislation pending  
NEW section

### 335.33 Elder group homes.

A county board of supervisors or county zoning commission shall consider an elder group home a family home, as defined in section 335.25, for purposes of zoning, in accordance with section 231B.2, and may establish limitations regarding the proximity of one proposed elder group home to another.

93 Acts, ch 72, §7  
NEW section

## CHAPTER 352

### COUNTY LAND PRESERVATION AND USE COMMISSIONS

#### 352.2 Definitions.

As used in this chapter unless the context otherwise requires:

1. "*Agricultural area*" means an area meeting the qualifications of section 352.6 and designated under section 352.7.
2. "*County board*" means the county board of supervisors.
3. "*County commission*" means the county land preservation and use commission.
4. "*Farm*" means the land, buildings, and machinery used in the commercial production of farm products.
5. "*Farmland*" means those parcels of land suitable for the production of farm products.
6. "*Farm operation*" means a condition or activity which occurs on a farm in connection with the production of farm products and includes but is not limited to the raising, harvesting, drying, or storage of crops; the care or feeding of livestock; the handling or transportation of crops or livestock; the treatment or disposal of wastes resulting from live-

stock; the marketing of products at roadside stands or farm markets; the creation of noise, odor, dust, or fumes; the operation of machinery and irrigation pumps; ground and aerial seeding and spraying; the application of chemical fertilizers, conditioners, insecticides, pesticides, and herbicides; and the employment and use of labor.

7. "*Farm products*" means those plants and animals and their products which are useful to people and includes but is not limited to forages and sod crops, grains and feed crops, dairy and dairy products, poultry and poultry products, livestock, fruits, vegetables, flowers, seeds, grasses, trees, fish, honey, and other similar products, or any other plant, animal, or plant or animal product which supplies people with food, feed, fiber, or fur.

8. "*Livestock*" means the same as defined in section 267.1.

9. "*Nuisance*" means a public or private nuisance as defined either by statute, administrative rule, ordinance, or the common law.

10. "*Nuisance action or proceeding*" means an

action, claim, or proceeding, whether brought at law, in equity, or as an administrative proceeding, which is based on nuisance.

93 Acts, ch 146, §1, 2  
Subsection 6 amended  
NEW subsection 8 and former subsections 8 and 9 renumbered as 9 and 10

### 352.6 Creation or expansion of agricultural areas.

An owner of farmland may submit a proposal to the county board for the creation or expansion of an agricultural area within the county. An agricultural area, at its creation, shall include at least three hundred acres of farmland, however, a smaller area may be created if the farmland is adjacent to farmland subject to an agricultural land preservation ordinance pursuant to section 335.27 or adjacent to land located within an existing agricultural area. The proposal shall include a description of the proposed area to be created or expanded, including its boundaries. The territory shall be as compact and as nearly adjacent as feasible. Land shall not be included in an agricultural area without the consent of the owner. Agricultural areas shall not exist within the corporate limits of a city. The county board may consult with the department of natural resources when creating or expanding an agricultural area contiguous to a location which is under the direct supervision of the department, including a state park, state preserve, state recreation area, or sovereign lake. Agricultural areas may be created in a county which has adopted zoning ordinances. Except as provided in this section, the use of the land in agricultural areas is limited to farm operations.

1. The following shall be permitted in an agricultural area:

a. Residences constructed for occupation by a person engaged in farming or in a family farm operation. Nonconforming preexisting residences may be continued in residential use.

b. Property of a telephone company, city utility as defined in section 390.1, public utility as defined in section 476.1, or pipeline company as defined in section 479.2.

2. The county board of supervisors may permit any use not listed in subsection 1 in an agricultural area only if it finds all of the following:

a. The use is not inconsistent with the purposes set forth in section 352.1.

b. The use does not interfere seriously with farm operations within the area.

c. The use does not materially alter the stability of the overall land use pattern in the area.

93 Acts, ch 146, §3  
Unnumbered paragraph 1 amended

### 352.7 Duties of county board.

1. Within thirty days of receipt of a proposal to create or expand an agricultural area which meets the statutory requirements, the county board shall provide notice of the proposal by publishing notice in a newspaper of general circulation in the county. Within forty-five days after receipt of the proposal,

the county board shall hold a public hearing on the proposal.

2. Within sixty days after receipt, the county board shall adopt the proposal or any modification of the proposal it deems appropriate, unless to do so would be inconsistent with the purposes of this chapter.

93 Acts, ch 146, §4  
Subsection 1 amended

### 352.8 Requirement that description of agricultural areas be filed with the county.

Upon the creation or expansion of an agricultural area, its description shall be filed by the county board with the county auditor and placed on record with the recording officer in the county.

93 Acts, ch 146, §5  
Section amended

### 352.9 Withdrawal.

At any time after three years from the date of creation of an agricultural area, an owner may withdraw from an agricultural area by filing with the county board a request for withdrawal containing a legal description of the land to be withdrawn and a statement of the reasons for the withdrawal. The county board shall, within sixty days of receipt of the request, approve or deny the request for withdrawal. At any time after six years from the date of creation of an agricultural area, an owner may withdraw from an agricultural area by filing with the county board a notice of withdrawal containing a legal description of the land to be withdrawn.

The board shall cause the description of that agricultural area filed with the county auditor and recording officer in the county to be modified to reflect any withdrawal. Withdrawal shall be effective on the date of recording. The agricultural area from which the land is withdrawn shall continue in existence even if smaller than three hundred acres after withdrawal.

93 Acts, ch 146, §6  
Unnumbered paragraph 2 amended

### 352.11 Incentives for agricultural land preservation — payment of costs and fees in nuisance actions.

1. *Nuisance restriction.*

a. A farm or farm operation located in an agricultural area shall not be found to be a nuisance regardless of the established date of operation or expansion of the agricultural activities of the farm or farm operation. This paragraph shall apply to a farm operation conducted within an agricultural area for six years following the exclusion of land within an agricultural area other than by withdrawal as provided in section 352.9.

b. Paragraph "a" does not apply to a nuisance which is the result of a farm operation determined to be in violation of a federal statute or regulation or state statute or rule. Paragraph "a" does not apply if the nuisance results from the negligent operation of the farm or farm operation. Paragraph "a" does not

apply to actions or proceedings arising from injury or damage to a person or property caused by the farm or a farm operation before the creation of the agricultural area. Paragraph "a" does not affect or defeat the right of a person to recover damages for an injury or damage sustained by the person because of the pollution or change in condition of the waters of a stream, the overflowing of the person's land, or excessive soil erosion onto another person's land, unless the injury or damage is caused by an act of God.

c. A person shall not bring an action or proceeding based on a claim of nuisance arising from a farm operation unless the person proceeds with mediation as provided in chapter 654B.

d. If a defendant is a prevailing party in an action or proceeding based on a claim of nuisance and

arising from a farm operation conducted on farmland within an agricultural area, the plaintiff shall pay court costs and reasonable attorney fees incurred by the defendant, if the court determines that the claim is frivolous.

2. *Water priority.* In the application for a permit to divert, store, or withdraw water and in the allocation of available water resources under a water permit system, the department of natural resources shall give priority to the use of water resources by a farm or farm operations, exclusive of irrigation, located in an agricultural area over all other uses except the competing uses of water for ordinary household purposes.

93 Acts, ch 146, §7  
Subsection 1 amended

## CHAPTER 355

### STANDARDS FOR LAND SURVEYING

#### 355.15 Reserved.

#### IOWA PLANE COORDINATE SYSTEM

#### 355.16 Iowa plane coordinate system defined.

As used in this section, and sections 355.17 through 355.19, unless the context otherwise requires, "Iowa plane coordinate system" or "coordinate system" means the system of plane coordinates established by the United States national ocean survey, or the United States national geodetic survey, or a successor agency, for defining and stating the geographic positions or locations of points on the surface of the earth within the state of Iowa.

93 Acts, ch 50, §1  
NEW section

#### 355.17 Designation of coordinate zones.

The Iowa plane coordinate system is divided into two zones designated as follows:

1. *a.* The area now included in the following counties constitutes the north zone: Allamakee, Benton, Black Hawk, Boone, Bremer, Buchanan, Buena Vista, Butler, Calhoun, Carroll, Cerro Gordo, Cherokee, Chickasaw, Clay, Clayton, Crawford, Delaware, Dickinson, Dubuque, Emmet, Fayette, Floyd, Franklin, Greene, Grundy, Hamilton, Hancock, Hardin, Howard, Humboldt, Ida, Jackson, Jones, Kossuth, Linn, Lyon, Marshall, Mitchell, Monona, O'Brien, Osceola, Palo Alto, Plymouth, Pocahontas, Sac, Sioux, Story, Tama, Webster, Winnebago, Winnesiek, Woodbury, Worth, and Wright.

*b.* The coordinate system north zone is a Lambert conformal conic projection of the North American datum of 1983, having standard parallels at north latitudes forty-two degrees, four minutes, and forty-three degrees, sixteen minutes, along which parallels the scale shall be exact. The origin of coordinates is at the intersection of the meridian ninety-three degrees, thirty minutes west of Greenwich, and the parallel forty-one degrees, thirty minutes north latitude. This origin is given the coordinates: *x* equals one million five hundred thousand meters exact and *y* equals one million meters exact.

2. *a.* The area now included in the following counties constitutes the south zone: Adair, Adams, Appanoose, Audubon, Cass, Cedar, Clarke, Clinton, Dallas, Davis, Decatur, Des Moines, Fremont, Guthrie, Harrison, Henry, Iowa, Jasper, Jefferson, Johnson, Keokuk, Lee, Louisa, Lucas, Madison, Mahaska, Marion, Mills, Monroe, Montgomery, Muscatine, Page, Polk, Pottawattamie, Poweshiek, Ringgold, Scott, Shelby, Taylor, Union, Van Buren, Wapello, Warren, Washington, and Wayne.

*b.* The coordinate system south zone is a Lambert conformal conic projection of the North American datum of 1983, having standard parallels at north latitudes forty degrees, thirty-seven minutes, and forty-one degrees, forty-seven minutes, along which parallels the scale shall be exact. The origin of coordinates is at the intersection of the meridian ninety-three degrees, thirty minutes west of Greenwich, and the parallel forty degrees, zero minutes north latitude. This origin is given the coordinates: *x* equals five hundred thousand meters exact and *y* equals zero meters exact.

93 Acts, ch 50, §2, 93 Acts, ch 180, §78  
NEW section  
Subsection 2, paragraph b amended

### 355.18 Identification of geographic locations.

The plane coordinate values for a point on the earth's surface used to express the geographic position or location of the point in the appropriate zone of the coordinate system shall consist of two distances expressed in meters and decimals of a meter. One of these distances, to be known as the "x-coordinate", shall give the position in an east-and-west direction; the other, to be known as the "y-coordinate", shall give the position in a north-and-south direction. These coordinates shall be made to depend upon and conform to plane rectangular coordinate values for the monumented points of the North American horizontal geodetic control network

as published by the United States national ocean survey, or the United States national geodetic survey, or a successor agency. Any monumented point may be used for establishing a survey connection to the coordinate system.

93 Acts, ch 50, §3  
NEW section

### 355.19 Application of terms.

The use of the term "*Iowa plane coordinate system north zone*" or "*Iowa plane coordinate system south zone*" on a map, report of survey, or other document shall be limited to coordinates based on the Iowa plane coordinate system as defined in this chapter.

93 Acts, ch 50, §4  
NEW section

## CHAPTER 357A

### RURAL WATER DISTRICTS

#### 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. Have authority to execute an agreement with a governmental entity, including a county, city, or another district, for purposes of managing or administering the governmental entity's works, facilities, or waterways which are useful for the collection, disposal, or treatment of wastewater or sewage.

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.

93 Acts, ch 84, §1

NEW subsection 11 and former subsection 11 editorially changed to unnumbered paragraph 2

#### **357A.14 Attaching to district — inclusion of city — merger.**

1. An owner of real property outside a district which can be economically served by the facilities of the district may petition to be attached to the district. The petition submitted by the district shall be filed with the auditor, and the auditor and supervisors shall notify the district that a petition has been received and proceed in a manner set forth in sections 357A.3 through 357A.6.

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.

93 Acts, ch 84, §2

Subsection 1 amended

## CHAPTER 358

### SANITARY DISTRICTS

#### **358.9 Selection of trustees — term of office.**

At the election provided for in section 358.7, the names of candidates for trustee of the district shall be written by the voters on blank ballots without formal nomination, and the board of supervisors which had jurisdiction of the proceedings for establishment of the sanitary district, together with the board of supervisors of any other county in which any part of

the district is located, shall appoint three trustees from among the five persons receiving the greatest number of votes as trustees of the district. One of the trustees shall be designated to serve a term expiring on the first day of January which is not a Sunday or legal holiday following the next general election, one to serve a term expiring on the first day of January which is not a Sunday or legal holiday two years

later, and one to serve a term expiring on the first day of January which is not a Sunday or legal holiday four years later. Thereafter, each term shall be for a term of years established by the board of supervisors, not less than three years or more than six years. Successors to trustees shall be elected by special election or at a special meeting of the board of trustees called for that purpose. For each special election called after the initial election, a candidate for office of trustee shall be nominated by a personal affidavit of the candidate or by petition of at least ten eligible electors of the district and the candidate's personal affidavit, which shall be filed with the county commissioner of elections at least twenty-five days before the date of the election. The form of the candidate's affidavit shall be substantially the same as provided in section 45.3.

Vacancies in the office of trustee of a sanitary district shall be filled by the remaining members of the board for the period until a successor is chosen in the manner prescribed by this section or by section 69.12, whichever is applicable.

In lieu of a special election, successors to trustees shall be elected at a special meeting of the board of trustees called for that purpose. Upon its own motion, the board of trustees may, or upon petition of landowners owning more than fifty percent of the total land in the district, shall, call a special meeting of the residents of the district to elect successors to trustees of the board. Notice of the meeting shall be given at least ten days before the date of the meeting by publication of the notice in a newspaper of general circulation in the district. The notice shall state the date, times, and location of the meeting and that the meeting is called for the purpose of electing one or more trustees to the board.

93 Acts, ch 24, §1

1993 amendments to unnumbered paragraphs 1 and 3 are retroactive to January 1, 1993; applicability, 93 Acts, ch 24, §2

Unnumbered paragraphs 1 and 3 amended

### 358.18 Taxes — power to levy — tax sales.

The board of trustees of any sanitary district organized under this chapter shall have the power by ordinance to levy annually for the purpose of paying the administrative costs of such district, or for the payment of deficiencies in special assessments, or for both, a tax upon property within the territorial limits of such sanitary district not exceeding fifty-four cents per thousand dollars of the adjusted taxable valuation of the property within such district for the preceding fiscal year.

All taxes thus levied by the board shall be certified by the clerk on or before March 1 to the county auditor of each county wherein any of the property included within the territorial limits of the sanitary district is located, and shall be placed upon the tax list for the current fiscal year by the auditor or auditors. The county treasurer, or treasurers, of more than one county, shall collect all taxes so levied in the same manner as other taxes, and when delinquent the taxes shall draw the same interest. All

taxes levied and collected shall be paid over by the officer collecting the taxes to the treasurer of the sanitary district.

Sales for delinquent taxes owing to such sanitary district shall be made at the same time and in the same manner as such sales are made for other taxes, and all provisions of the law of this state relating to the sale of property for delinquent taxes shall be applicable, so far as may be, to such sales.

93 Acts, ch 73, §3

Unnumbered paragraph 2 amended

### 358.22 Special assessments.

The board of trustees of a sanitary district may provide for payment of all or any portion of the costs of acquiring, locating, laying out, constructing, reconstructing, repairing, changing, enlarging, or extending conduits, ditches, channels, outlets, drains, sewers, laterals, treatment plants, pumping plants, and other necessary adjuncts thereto, by assessing all, or any portion of the costs, on adjacent property according to the benefits derived. For the purposes of this chapter, the board of trustees may define "adjacent property" as all that included within a designated benefited district or districts to be fixed by the board, which may be all of the property located within the sanitary district or any lesser portion of that property. It is not a valid objection to a special assessment that the improvement for which the assessment is levied is outside the limits of the sanitary district, but a special assessment shall not be made upon property situated outside of the sanitary district. Special assessments pursuant to this section shall be in proportion to the special benefits conferred upon the property, and not in excess of the benefits, and an assessment shall not exceed twenty-five percent of the value of the property at the time of levy. The value of a property is the present fair market value of the property with the proposed public improvements completed. Payment of installments of a special assessment against property used and assessed as agricultural property shall be deferred upon the filing of a request by the owner in the same manner and under the same procedures as provided in chapter 384 for special assessments by cities.

The assessments may be made to extend over a period not to exceed fifteen years, payable in as nearly equal annual installments as practicable. A majority vote of the board of trustees is requisite and sufficient for any action required by the board of trustees under this section.

Subject to the limitations otherwise stated in this section, a sanitary district organized under this chapter has all of the powers to specially assess the costs of improvements described in this section, including the power to issue special assessment bonds, warrants, project notes, or other forms of interim financing obligations, which cities have under the laws of this state.

93 Acts, ch 57, §1

Unnumbered paragraphs 1 and 2 amended



**358.26 through 358.29** Reserved.

**358.30 Annexation of land by a city — compensation.**

A sanitary district shall be fairly compensated for losses resulting from annexation. The governing body of a city or city utility and the board of trustees of the sanitary district may agree to terms which provide that the facilities owned by the sanitary district and located within the city shall be retained by the sanitary district for the purpose of sanitary service to customers outside the city. If an agreement

is not reached within ninety days, the issues may be submitted to arbitration. If submitted, an arbitrator shall be selected by a committee which includes one member of the governing body of the city or its designee, one member of the sanitary district's board of trustees or its designee, and a disinterested party selected by the other two members of the committee. A list of qualified arbitrators may be obtained from the American arbitration association or another recognized arbitration organization or association.

93 Acts, ch 57, §2  
NEW section

## CHAPTER 362

### DEFINITIONS AND MISCELLANEOUS PROVISIONS

**362.2 Definitions.**

As used in the city code of Iowa, unless the context otherwise requires:

1. *“Administrative agency”* means an agency established by a city for any city purpose or for the administration of any city facility, as provided in chapter 392, except a board established to administer a municipal utility, a zoning commission and zoning board of adjustment, or any other agency which is controlled by state law. An administrative agency may be designated as a board, board of trustees, commission, or by another title. If an agency is advisory only, such a designation must be included in its title.
2. *“Amendment”* means a revision or repeal of an existing ordinance or code of ordinances.
3. *“Charter”* means the form of government selected by a city as provided in chapter 372.
4. *“City”* means a municipal corporation, but not including a county, township, school district, or any special-purpose district or authority. When used in relation to land area, *“city”* includes only the area within the city limits.
5. *“City code”* means the city code of Iowa.
6. *“City utility”* means all or part of a waterworks, gasworks, sanitary sewage system, storm water drainage system, electric light and power plant and system, heating plant, cable communication or television system, any of which are owned by a city, including all land, easements, rights of way, fixtures, equipment, accessories, improvements, appurtenances, and other property necessary or useful for the operation of the utility.
7. *“Clerk”* means the recording and record-keeping officer of a city regardless of title.
8. *“Council”* means the governing body of a city.
9. *“Council member”* means a member of a council, including an alderman.

10. *“Eligible elector”* means the same as it is defined in section 39.3, subsection 6.
11. *“Governmental body”* means the United States of America or an agency thereof, a state, a political subdivision of a state, a school corporation, a public authority, a public district, or any other public body.
12. *“May”* confers a power.
13. *“Measure”* means an ordinance, amendment, resolution, or motion.
14. *“Must”* states a requirement.
15. *“Officer”* means a natural person elected or appointed to a fixed term and exercising some portion of the power of a city.
16. *“Ordinance”* means a city law of a general and permanent nature.
17. *“Person”* means an individual, firm, partnership, domestic or foreign corporation, company, association or joint stock association, trust, or other legal entity, and includes a trustee, receiver, assignee, or similar representative thereof, but does not include a governmental body.
18. *“Property,” “real property,”* and *“personal property”* have the same meaning as provided in section 4.1.
19. *“Qualified elector”* means the same as it is defined in section 39.3, subsection 10.
20. *“Recorded vote”* means a record, roll call vote.
21. *“Resolution”* or *“motion”* means a council statement of policy or a council order for action to be taken, but *“motion”* does not require a recorded vote.
22. *“Secretary”* of a utility board means the recording and record-keeping officer of the utility board regardless of title.
23. *“Shall”* imposes a duty.

93 Acts, ch 153, §1  
Subsection 6 amended

**362.3 Publication of notices.**

Unless otherwise provided by state law:

1. If notice of an election, hearing, or other official action is required by the city code, the notice must be published at least once, not less than four nor more than twenty days before the date of the election, hearing, or other action.
2. A publication required by the city code must be in a newspaper published at least once weekly and

having general circulation in the city. However, if the city has a population of two hundred or less, or in the case of notices of elections, ordinances, and amendments to be published in a city in which no newspaper is published, a publication may be made by posting in three public places in the city which have been permanently designated by ordinance.

93 Acts, ch 143, §48  
Subsection 2 amended

**CHAPTER 364****POWERS AND DUTIES OF CITIES****364.2 Vesting of power — franchises.**

1. A power of a city is vested in the city council except as otherwise provided by a state law.
2. The enumeration of a specific power of a city does not limit or restrict the general grant of home rule power conferred by the Constitution. A city may exercise its general powers subject only to limitations expressly imposed by a state or city law.
3. An exercise of a city power is not inconsistent with a state law unless it is irreconcilable with the state law.
4. *a.* A city may grant to any person a franchise to erect, maintain, and operate plants and systems for electric light and power, heating, telephone, telegraph, cable television, district telegraph and alarm, motor bus, trolley bus, street railway or other public transit, waterworks, or gasworks, within the city for a term of not more than twenty-five years. The franchise may be granted, amended, extended, or renewed only by an ordinance, but no exclusive franchise shall be granted, amended, extended, or renewed.

*b.* No such ordinance shall become effective unless approved at an election. The proposal may be submitted by the council on its own motion to the voters at any city election. Upon receipt of a valid petition as defined in section 362.4 requesting that a proposal be submitted to the voters, the council shall submit the proposal at the next regular city election or at a special election called for that purpose before the next regular city election. If a majority of those voting approves the proposal the city may proceed as proposed. The complete text of the ordinance shall be included on the ballot, if paper ballots are used. If an electronic voting system or voting machine is used, the proposal shall be stated on the ballot and the full text of the ordinance posted for the

voters pursuant to section 52.25. All absentee voters shall receive the full text of the ordinance.

*c.* Notice of the election shall be given by publication as prescribed in section 49.53 in a newspaper of general circulation in the city.

*d.* The person asking for the granting, amending, extension, or renewal of a franchise shall pay the costs incurred in holding the election, including the costs of the notice. A franchise shall not be finally effective until an acceptance in writing has been filed with the council and payment of the costs has been made.

*e.* The franchise ordinance may regulate the conditions required and the manner of use of the streets and public grounds of the city, and it may, for the purpose of providing electrical, gas, heating, or water service, confer the power to appropriate and condemn private property upon the person franchised.

*f.* If a city franchise fee is assessed to customers of a franchise, the fee shall not be assessed to the city as a customer.

93 Acts, ch 143, §49  
Subsection 4, paragraph b amended

**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. However, the sticker is not required to be affixed to an unmarked vehicle used for purposes of providing law enforcement or security.

93 Acts, ch 26, §8  
Section amended

## CHAPTER 368

### CITY DEVELOPMENT

#### 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 sections 368.14 and 368.14A, 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, a river, or similar natural barrier which prevents service access from an adjoining area of land outside the boundaries of a city.

11. *“Public utility”* means a public utility subject to regulation pursuant to chapter 476.

12. *“Qualified elector”* means a person who is registered to vote pursuant to chapter 48.

13. *“Severance”* means the deletion of territory from a city.

14. *“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.

15. *“Urbanized area”* means any area of land within two miles of the boundaries of a city.

93 Acts, ch 152, §1-3

Subsection 10 stricken and rewritten

NEW subsection 11 and former subsections 11 14 renumbered as 12-15

Subsection 15 stricken and rewritten

ing a city may apply in writing to the council of the adjoining city requesting annexation of the territory. Territory comprising railway right-of-way or territory comprising not more than twenty percent of the land area may be included in the application without the consent of the owner to avoid creating an island or to create more uniform boundaries if a copy of the application is mailed by certified mail to the owner and each affected public utility, at least ten days prior to any action taken by the city council on the application. The application must contain a legal description and a map of the territory showing its location in relationship to the city. An annexation including territory comprising not more than twenty percent of the land area without consent of the property owners is not complete without approval by four-fifths of the members of the board after a hearing for all affected property owners and the county.

2. An application for annexation of territory not within an 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 secretary of state, county board of supervisors, each affected public utility, and the state department of transportation. The city clerk shall also record a copy of the legal description, map, and resolution with the county recorder. The secretary of state shall not accept and acknowledge a copy of a legal description, 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 legal description, map, and resolution.

3. An application for annexation of territory within an 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. Notice of the application shall be mailed by certified mail, by the city to which the annexation is directed, at least ten days prior to any action by the city council on the application 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, each affected public utility, and to the regional planning authority of the territory. Notice of the application shall be published in an official coun-

#### 368.7 Voluntary annexation of territory.

1. All of the owners of land in a territory adjoining

ty newspaper in each county which contains a portion of the territory at least ten days prior to any action by the city council on 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. The annexation is completed when the board has filed and recorded copies of applicable portions of the proceedings as required by section 368.20, subsection 2.

4. If one or more applications for a voluntary annexation and one or more petitions for an involuntary annexation or incorporation for a common territory are submitted to the board within thirty days of the date the first application or petition was submitted to the board, the board shall approve the application for voluntary annexation, if 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 section 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 subsection 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.

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 subsection may be requested by an aggrieved party.

93 Acts, ch 152, §4  
Section amended

#### **368.7A Secondary road annexation.**

1. The board of supervisors of each affected county shall notify the city development board of the existence of that portion of any secondary road which extends to the center line but has not become part of the city by annexation and has a common boundary with a city. The notification shall include a legal description and a map identifying the location of the secondary road. The city development board shall provide notice and an opportunity to be heard to each city in or next to which the secondary road is located. The city development board shall certify

that the notification is correct and declare the road, or portion of the road extending to the center line, annexed to the city as of the date of certification. This section is not intended to interfere with or modify existing chapter 28E agreements on jurisdictional transfer of roads, or continuing negotiations between jurisdictions.

2. The remaining title and interest of a county in any secondary road or portion of the road which has been annexed by a city is transferred to the annexing city on July 1, 1993. The title and interest of a county in any secondary road which is annexed by a city after July 1, 1993, is transferred to the city upon the effective date of the annexation.

93 Acts, ch 152, §5  
NEW section

#### **368.8 Voluntary severing of territory.**

Any territory may be severed upon the unanimous consent of all owners of the territory and approval by resolution of the council of the city in which the territory is located. The council shall provide in the resolution for the equitable distribution of assets and equitable distribution and assumption of liabilities of the territory as between the city and the severed territory. The city clerk shall file a copy of the resolution, map, and a legal description of the territory involved with the county board of supervisors, secretary of state, and state department of transportation. The city clerk shall also record a copy of the map and resolution with the county recorder. The secretary of state shall not accept and acknowledge a copy of a map and resolution of severance which would create an island. The severance is completed upon acknowledgment by the secretary of state that the secretary of state has received the map and resolution.

93 Acts, ch 152, §6  
Section amended

#### **368.10 Rules — establishment of filing fees.**

The board may establish rules for the performance of its duties and the conduct of proceedings before it. The rules may include establishing filing fees for applications and petitions submitted to the board. The board's rules are subject to chapter 17A, as applicable.

93 Acts, ch 152, §7, 8  
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,

the council of a city if an incorporation includes territory within the city's urbanized area, 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 or which provide for a boundary adjustment or incorporation affecting common territory. The combined petitions may be submitted for consideration by a special local committee pursuant to section 368.14A.

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 by sending a letter of intent by certified mail to the council of each city whose urbanized area contains a portion of the territory, the board of supervisors of each county which contains a portion of the territory, the regional planning authority of the territory involved, each affected public utility, 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 county which contains a part of the territory at least five days before the date of the public meeting. The mayor of the city proposing to annex the territory, or that person's designee, shall serve as chairperson of the public meeting. The city clerk of the same city or the city clerk'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.

93 Acts, ch 152, §9  
Unnumbered paragraphs 1, 2, 4 and 5 amended

**368.13 Board may initiate proceedings.**

Based on the results of its studies, the board may initiate proceedings for the incorporation, discontinuance, or boundary adjustment of a city. The board may request a city to submit a plan for city development or may formulate its own plan for city development. A plan submitted at the board's initiation must include the same information as a petition and be filed and acted upon in the same manner as a petition. A petition or plan may include any information relevant to the proposal, including but not limited to results of studies and surveys, and arguments.

93 Acts, ch 152, §10  
Section amended

**368.14A Special local committees.**

When two or more petitions for city development action or applications for voluntary annexation 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 as provided in section 368.14. 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.

93 Acts, ch 152, §11  
Section amended

**368.20 Procedure after approval.**

After the county commissioner of elections has certified the results to the board, the board shall:

1. Serve and publish notice of the result as provided in section 362.3.

2. File with the secretary of state, the clerk of each city incorporated or involved in a boundary adjustment, and record with the recorder of each county which contains a portion of any city or territory involved, copies of the proceedings including the original petition or plan and any amendments, the order of the board approving the petition or plan, proofs of service and publication of required notices, certification of the election result, and any other material deemed by the board to be of primary importance to the proceedings. Upon proper filing and expiration of time for appeal, the incorporation, discontinuance, or boundary adjustment is complete. However, if an appeal to any of the proceedings is pending, completion does not occur until the

appeal is decided, unless a subsequent date is provided in the proposal. The board shall also file with the state department of transportation a copy of the map and legal land description of each completed incorporation or corporate boundary adjustment completed under sections 368.11 through 368.22 or approved annexation within an urbanized area.

93 Acts, ch 152, §12  
Subsection 2 amended

### 368.23 Fees and taxes of public utilities.

Additional or increased fees or taxes, other than ad valorem taxes, imposed on a public utility as a result of an annexation of territory to a city shall become effective sixty days after the effective date of the annexation.

93 Acts, ch 152, §13  
NEW section

## CHAPTER 372

### ORGANIZATION OF CITY GOVERNMENT

#### 372.13 The council.

1. A majority of all council members is a quorum.

2. A vacancy in an elective city office during a term of office shall be filled, at the council's option, by one of the two following procedures:

*a.* By appointment by the remaining members of the council, except that if the remaining members do not constitute a quorum of the full membership, paragraph "b" shall be followed. The appointment shall be for the period until the next pending election as defined in section 69.12, and shall be made within forty days after the vacancy occurs. If the council chooses to proceed under this paragraph, it shall publish notice in the manner prescribed by section 362.3, stating that the council intends to fill the vacancy by appointment but that the electors of the city or ward, as the case may be, have the right to file a petition requiring that the vacancy be filled by a special election. The council may publish notice in advance if an elected official submits a resignation to take effect at a future date. The council may make an appointment to fill the vacancy after the notice is published or after the vacancy occurs, whichever is later. However, if within fourteen days after publication of the notice or within fourteen days after the appointment is made, whichever is later, there is filed with the city clerk a petition which requests a special election to fill the vacancy, 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 except that:

a. Ordinances, resolutions, council proceedings, records and documents, or accurate reproductions, relating to the issuance of public bonds or obligations shall be kept for at least eleven years following the final maturity of the bonds or obligations. Thereafter, such records, documents, and reproductions may be destroyed, preserving confidentiality as necessary. Records and documents pertaining to the transfer of ownership of bonds shall be kept as provided in section 76.10.

b. Ordinances, resolutions, council proceedings, records and documents, or accurate reproductions, relating to real property transactions 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 des-

ignated 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 holding 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.

93 Acts, ch 89, §2  
Subsection 5 amended

## CHAPTER 384

### CITY FINANCE

#### 384.84 Rates — contracts.

1. The governing body of a city utility, combined utility system, city enterprise, or combined city enterprise may establish, impose, adjust, and provide for the collection of rates to produce gross revenues at least sufficient to pay the expenses of operation and maintenance of the city utility, combined utility system, city enterprise, or combined city enterprise and, when revenue bonds or pledge orders are issued and outstanding pursuant to this division, shall establish, impose, adjust, and provide for the collection of rates to produce gross revenues at least sufficient to pay the expenses of operation and maintenance of the city utility, combined utility system, city enterprise, or combined city enterprise, and to leave a balance of net revenues sufficient at all times to pay the principal of and interest on the revenue bonds and pledge orders as they become due and to maintain a reasonable reserve for the payment of principal and interest, and a sufficient portion of net revenues must be pledged for that purpose. Rates must be established by ordinance of the council or by resolution of the trustees, published in the same manner as an ordinance. All rates or charges for the services of sewer systems, storm water drainage systems, sewage treatment, solid waste collection, water, solid waste disposal, or any of these, if not paid as provided by ordinance of the council, or resolution of the trustees, are a lien upon the premises served by any of these services upon certification to the county treasurer that the rates or charges are due. However, for residential rental properties where the charges for water services are separately metered and paid directly by the tenant, the rental property is exempt from a lien for those delinquent charges incurred after the landlord gives written notice to the utility or enterprise that the tenant is liable for the charges and a deposit not exceeding the usual cost of ninety days of water service is paid to the utility or enterprise. Upon receipt, the utility or enterprise shall ac-

knowledge the notice and deposit. A written notice shall contain the name of the tenant responsible for charges, address that the tenant is to occupy, and date that the occupancy begins. A change in tenant shall require a new written notice and deposit. When the tenant moves from the rental property, the utility or enterprise shall return the deposit if the water service charges are paid in full and the lien exemption shall be lifted from the rental property. The lien exemption for rental property does not apply to charges for repairs to a water service if the repair charges become delinquent. When one or more of the utility or enterprise services become delinquent, the utility or enterprise shall give delinquency notice to the landlord who has filed a request containing the name and address of the person to be notified when the tenant is notified of the delinquency. A lien imposed pursuant to this subsection shall not be less than five dollars. The utility or enterprise shall give ten days' written notice by first class mail to the property owner of record who has filed a request containing the name and address of the person to be notified before placing a lien on the owner's property. The county treasurer may charge five dollars for each lien certified as an administrative expense, which amount shall be added to the amount of the lien to be collected at the time of payment of the assessment from the payor and credited to the county general fund. The lien has equal precedence with ordinary taxes, may be certified to the county treasurer and collected in the same manner as taxes, and is not divested by a judicial sale.

A governing body may declare all or a certain portion of a city as a storm water drainage system district for the purpose of establishing, imposing, adjusting, and providing for the collection of rates as provided herein. The ordinance provisions for collection of rates of a storm water drainage system may prescribe a formula for determination of the rates which may include criteria and standards by



which benefits have been previously determined for special assessments for storm water public improvement projects under this chapter.

2. The governing body of a city utility, combined utility system, city enterprise or combined city enterprise may:

a. By ordinance of the council or by resolution of the trustees published in the same manner as an ordinance, establish, impose, adjust, and provide for the collection of charges for connection to a city utility or combined utility system.

b. Contract for the use of or services provided by a city utility, combined utility system, city enterprise, or combined city enterprise with persons whose type or quantity of use or service is unusual.

c. Lease for a period not to exceed fifteen years all or part of a city enterprise or combined city enter-

prise, if the lease will not reduce the net revenues to be produced by the city enterprise or combined city enterprise.

d. Contract for a period not to exceed forty years with other governmental bodies for the use of or the services provided by the city utility, combined utility system, city enterprise, or combined city enterprise on a wholesale basis.

e. Contract for a period not to exceed forty years with persons and other governmental bodies for the purchase or sale of water, gas, or electric power and energy on a wholesale basis.

3. The portion of cost attributable to the agreement or arbitration awarded under section 357A.21 may be apportioned in whole or in part among water customers within an annexed area.

93 Acts, ch 73, §4

Subsection 1, unnumbered paragraph 1 amended

## CHAPTER 400

### CIVIL SERVICE

#### 400.5 Rooms and supplies.

The council shall provide suitable rooms in which the commission may hold its meetings and supply the commission with all necessary equipment and a qualified shorthand reporter or an electronic voice recording device to enable it to properly perform its duties.

93 Acts, ch 147, §1  
Section amended

#### 400.8 Original entrance examination — appointments.

1. The commission, when necessary under the rules, including minimum and maximum age limits, which shall be prescribed and published in advance by the commission and posted in the city hall, shall hold examinations for the purpose of determining the qualifications of applicants for positions under civil service, other than promotions, which examinations shall be practical in character and shall relate to matters which will fairly test the mental and physical ability of the applicant to discharge the duties of the position to which the applicant seeks appointment. The physical examination of applicants for appointment to the positions of police officer, police matron, or fire fighter shall be held in accordance with medical protocols established by the board of trustees of the fire or police retirement system established by section 411.5. The commission shall conduct a medical examination of an applicant for the position of police officer, police matron, or fire fighter after a conditional offer of employment has been made to the applicant. An applicant shall not be discriminated against on the basis of height, weight,

sex, or race in determining physical or mental ability of the applicant. Reasonable rules relating to strength, agility, and general health of applicants shall be prescribed. The costs of the physical examination required under this subsection shall be paid from the trust and agency fund of the city.

2. The commission shall establish the guidelines for conducting the examinations under subsection 1 of this section. It may prepare and administer the examinations or may hire persons with expertise to do so if the commission approves the examinations. It may also hire persons with expertise to consult in the preparation of such examinations if the persons so hired are employed to aid personnel of the commission in assuring that a fair examination is conducted. A fair examination shall explore the competence of the applicant in the particular field of examination.

3. All appointments to such positions shall be conditional upon a probation period of not to exceed six months, and in the case of police patrol officers and fire fighters a probation period not to exceed twelve months, during which time the appointee may be removed or discharged from such position by the appointing person or body without the right of appeal to the commission. A person removed or discharged during a probationary period shall, at the time of discharge, be given a notice in writing stating the reason or reasons for the dismissal. A copy of such notice shall be promptly filed with the commission. Continuance in the position after the expiration of such probationary period shall constitute a permanent appointment.

93 Acts, ch 147, §2  
Subsection 1 amended

#### 400.11 Names certified — temporary appointment.

The commission, within ninety days after the beginning of each competitive examination for original appointment or for promotion, shall certify to the city council a list of the names of the ten persons who qualify with the highest standing as a result of each examination for the position they seek to fill, or the number which have qualified if less than ten, in the order of their standing, and all newly created offices or other vacancies in positions under civil service which occur before the beginning of the next examination for the positions shall be filled from the lists, or from the preferred list existing as provided for in case of diminution of employees, within thirty days. If a tie occurs in the examination scores which would qualify persons for the tenth position on the list, the list of the names of the persons who qualify with the highest standing as a result of each examination shall include all persons who qualify for the tenth position. Preference for temporary service in civil service positions shall be given those on the lists. However, the commission may certify a list of names eligible for appointment subject to successfully completing a medical examination. The medical examination shall be provided pursuant to commission rules adopted under section 400.8.

The commission may hold in reserve, for original appointments and for promotions, additional lists of ten persons each next highest in standing, in order of their grade, or such number as may qualify if less than ten. If the list of ten persons provided in the first paragraph is exhausted within one year, the commission may certify such additional lists of ten persons each, in order of their standing, to the council as eligible for appointment to fill such vacancies as may exist. However, for original appointments only, no more than four lists of ten persons each shall be certified for each one-year period of eligibility.

Except where the preferred list exists, persons on the certified eligible list for promotion shall hold preference for promotion for two years following the date of certification, except for certified eligible lists of fire fighters as defined in section 411.1, subsection 9, which lists shall hold preference for three years upon approval of the commission, after which the lists shall be canceled and promotion to the grade shall not be made until a new list has been certified eligible for promotion.

When there is no such preferred list or certified eligible list, or when the eligible list shall be exhausted, the person or body having the appointing power may temporarily fill a newly created office or other vacancy only until an examination can be held and the names of qualified persons be certified by the commission, and such temporary appointments are hereby limited to ninety days for any one person in the same vacancy, but such limitation shall not apply to persons temporarily acting in positions regularly held by another. Any person temporarily filling a vacancy in a position of higher grade for twenty days or more, shall receive the salary paid in such higher grade.

93 Acts, ch 147, §3

Transition provision concerning additional lists, see 93 Acts, ch 147, §6  
Unnumbered paragraph 2 amended

#### 400.17 Employees under civil service — qualifications.

Except as otherwise provided in section 400.7, a person shall not be appointed, promoted, or employed in any capacity, including a new classification, in the fire or police department, or any department which is governed by the civil service, until the person has passed a civil service examination as provided in this chapter, and has been certified to the city council as being eligible for the appointment. However, in an emergency in which the peace and order of the city is threatened by reason of fire, flood, storm, or mob violence, making additional protection of life and property necessary, the person having the appointing power may deputize additional persons, without examination, to act as peace officers until the emergency has passed. A person may be appointed to a position subject to successfully completing a civil service medical examination. A person shall not be appointed or employed in any capacity in the fire or police department if the person is unable to meet reasonable physical condition training requirements and reasonable level of experience requirements necessary for the performance of the position; if the person is a habitual criminal; if the person is addicted to narcotics or alcohol and has not been rehabilitated for a period of one year or more, or is not presently undergoing treatment; or if the person has attempted a deception or fraud in connection with a civil service examination.

Except as otherwise provided in this section and section 400.7, a person shall not be appointed or employed in any capacity in any department which is governed by civil service if the person is unable to meet reasonable physical condition training requirements and reasonable level of experience requirements necessary for the performance of the position; if the person is addicted to narcotics or alcohol and has not been rehabilitated for a period of one year or more, or is not presently undergoing treatment; or if the person has attempted a deception or fraud in connection with a civil service examination.

Employees shall not be required to be a resident of the city in which they are employed, but they shall become a resident of the state at the time such appointment or employment begins and shall remain a resident of the state during employment. Cities may set reasonable maximum distances outside of the corporate limits of the city that police officers, fire fighters and other critical municipal employees may live.

A person shall not be appointed, promoted, discharged, or demoted to or from a civil service position or in any other way favored or discriminated against in that position because of political or religious opinions or affiliations, race, national origin, sex, or age. However, the maximum age for a police officer or fire fighter covered by this chapter and employed for police duty or the duty of fighting fires is sixty-five years of age.

93 Acts, ch 147, §4, 5

Unnumbered paragraph 1 amended and subsections 1 3 stricken  
NEW unnumbered paragraph 2

## CHAPTER 411

### RETIREMENT SYSTEMS FOR POLICE OFFICERS AND FIRE FIGHTERS

#### 411.1A Purpose of chapter.

The purpose of this chapter is to promote economy and efficiency in the municipal public safety service by providing an orderly means for police officers and fire fighters to have a retirement system which will provide for the payment of pensions to retired and disabled members and to the surviving spouses and dependents of deceased members.

93 Acts, ch 44, §15  
NEW section

#### 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, as provided pursuant to section 411.36.

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 compensation 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.*

a. 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. The board of trustees shall submit a certified audit report prepared by a certified public accountant to the auditor of state annually. The system shall

comply with the filing fee requirement of section 11.6, subsection 10.

b. The system shall maintain records, including but not limited to names, addresses, ages, and lengths of service, salaries and wages, contributions, designated beneficiaries, benefit amounts, if applicable, and other information pertaining to members as necessary in the administration of this chapter, as well as the names, addresses, and benefit amounts of beneficiaries. For the purpose of obtaining these facts, the system shall have access to the records of the participating cities and the cities shall provide such information upon request. Member and beneficiary records containing personal information are not public records for the purposes of chapter 22. However, summary information concerning the demographics of the members and general statistical information concerning the system is subject to chapter 22, as well as aggregate information by category.

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 mor-

tality, 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.

93 Acts, ch 44, §16, 17

1993 amendment to subsection 2 is retroactive to January 1, 1992, 93 Acts, ch 44, §21

Subsections 2 and 6 amended

#### 411.6A Optional retirement benefits.

1. In lieu of the payment of a service retirement allowance under section 411.6, subsection 2, and the payment of a pension to the spouse of a deceased pensioned member under section 411.6, subsection 11, a member may select an option provided under this section. The board of trustees shall adopt rules under section 411.5, subsection 3, providing the optional forms of payment that may be selected by the member. The optional forms of payment may provide adjustments to the amount of the retirement allowance paid to the member, may alter the pension amount and period of payment to the member's spouse after the death of the member, and may provide for payments to a designated recipient other than the member's spouse for a designated period of time or an unlimited period of time.

2. Prior to the member's retirement and as a part of the application for a service retirement allowance, the member shall elect, in writing, either the benefits provided under section 411.6, subsections 2 and 11, or one of the optional forms adopted by the board of trustees. If the member is married at the time of application and the member elects an optional form, the member's spouse must consent in writing to the optional form selected and to the receipt of payments to a designated recipient, if applicable. Upon acceptance by a member of an initial retirement benefit paid in accordance with the election under this section, the election of the member is irrevocable.

3. The optional forms of payment determined by the board of trustees under this section, shall be the actuarial equivalent of the amount of retirement benefits payable to the member and the member's spouse pursuant to section 411.6, subsections 2 and 11. The actuarial equivalent shall be based upon the actuarial assumptions adopted for this purpose pursuant to section 411.5. Election of an optional form

adopted by the board of trustees shall not affect the benefits, if any, payable to the member's child or children pursuant to section 411.6, subsection 11.

4. Optional benefits shall be adjusted annually in a manner consistent with that provided in section 411.6, subsection 12. However, if the member has selected a designated recipient other than the member's spouse, the designated recipient shall be deemed to be the member's surviving spouse for the purpose of calculating the annual adjustment in the manner provided in section 411.6, subsection 12.

93 Acts, ch 44, §18  
NEW subsection 4

#### 411.23 Withdrawal of contributions — repayment.

1. Commencing July 1, 1990, if an active member, in service on or after that date, terminates service, other than by death or disability, the member may elect to withdraw the member's contributions under section 411.8, subsection 1, paragraphs "f" and "h", together with interest thereon at a rate determined by the board of trustees. If a member withdraws contributions as provided in this section, the member shall be deemed to have waived all claims for other benefits from the system for the period of membership service for which the contributions are withdrawn.

2. A layoff for an indefinite period of time shall be deemed to be a termination of service for the purposes of this section. A member who withdraws the member's contributions as provided in this section following a layoff for an indefinite period of time and who is subsequently recalled to service may repay the contributions. The contributions repaid by the member for such service shall be equal to the amount of contributions withdrawn, plus interest computed based upon the investment interest rate assumption established by the board of trustees as of the time the contributions are repaid. However, the member must make the contributions within two years of the date of the member's return to service. The period of membership service for which contributions are repaid shall be treated as though the contributions were never withdrawn.

93 Acts, ch 44, §19

1993 amendment is retroactive to January 1, 1992, 93 Acts, ch 44, §21  
Section 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. a. 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 mem-

bers from the fire and police retirement fund created in section 411.8.

b. A participating city shall allow an employee who is a member of the board to attend all meetings of the board. In their capacity as members of the board, which is an instrumentality of political subdivisions of the state, members of the board shall be deemed to be jointly serving the members of the system and the participating cities. The members of the board shall perform their duties in the best interest of the system. Board members who are employees of participating cities shall be allowed to attend board meetings without being required to use paid leave. Costs incurred by a board member which are associated with having a replacement perform the member's other duties for the participating city while serving in the capacity of a member of the board may be considered a necessary expense of the system.

c. 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.

93 Acts, ch 44, §20  
 1993 amendment to subsection 5 is retroactive to January 1, 1992, 93 Acts, ch 44, §21  
 Subsection 5 amended

## CHAPTER 414

### CITY ZONING

#### 414.22 Zoning for family homes.

1. It is the intent of this section to assist in improving the quality of life of developmentally disabled persons by integrating them into the mainstream of society by making available to them community residential opportunities in the residential areas of this state. In order to implement this intent, this section shall be liberally construed.

2. a. "Developmental disability" or "developmentally disabled" means a disability of a person which has continued or can be expected to continue indefinitely and which is one of the following:

(1) Attributable to mental retardation, cerebral palsy, epilepsy, or autism.

(2) Attributable to any other condition found to be closely related to mental retardation because the condition results in impairment of general intellectual functioning or adaptive behavior similar to that of mentally retarded persons or requires treatment and services similar to those required for the persons.

(3) Attributable to dyslexia resulting from a disability described in either subparagraph (1) or (2).

(4) Attributable to a mental or nervous disorder.

b. "Family home" means a community-based residential home which is licensed as a residential care facility under chapter 135C or as a child foster care

facility under chapter 237 to provide room and board, personal care, habilitation services, and supervision in a family environment exclusively for not more than eight developmentally disabled persons and any necessary support personnel. However, family home does not mean an individual foster care family home licensed under chapter 237.

c. "Permitted use" means a use by right which is authorized in all residential zoning districts.

d. "Residential" means regularly used by its occupants as a permanent place of abode, which is made one's home as opposed to one's place of business and which has housekeeping and cooking facilities for its occupants only.

3. Notwithstanding any provision of this chapter to the contrary, a city, city council, or city zoning commission shall consider a family home a residential use of property for the purposes of zoning and shall treat a family home as a permitted use in all residential zones or districts, including all single-family residential zones or districts, of the city. A city, city council, or city zoning commission shall not require that a family home, its owner, or operator obtain a conditional use permit, special use permit, special exception, or variance. However, new family homes owned and operated by public or private agencies shall be disbursed\* throughout the residential zones and districts and shall not be located within contiguous city block areas. Section 135C.23, subsection 2, shall apply to all residents of a family home.

4. Any restriction, reservation, condition, exception, or covenant in any subdivision plan, deed, or other instrument of or pertaining to the transfer, sale, lease, or use of property in a city which permits residential use of property but prohibits the use of property as a family home for developmentally disabled persons, to the extent of the prohibition, is void as against the public policy of this state and shall not be given legal or equitable effect.

93 Acts, ch 90, §4

\*Word "dispersed" probably intended, corrective legislation pending  
Subsection 3 amended

#### 414.28 Manufactured home.

A city shall not adopt or enforce zoning regulations or other ordinances which disallow the plans and specifications of a proposed residential structure solely because the proposed structure is a manufac-

ture home. However, a zoning ordinance or regulation shall require that a manufactured home be located and installed according to the same standards, including but not limited to, a foundation system, set-back, and minimum square footage which would apply to a site-built, single family dwelling on the same lot. A zoning ordinance or other regulation shall not require a foundation system for a manufactured home which is incompatible with the structural design of the manufactured home structure. When units are located outside a mobile home park, requirements may be imposed which ensure visual compatibility of the foundation system with surrounding residential structures. As used in this section, "manufactured home" means a factory-built structure, which is manufactured or constructed under the authority of 42 U.S.C. § 5403 and is to be used as a place for human habitation, but which is not constructed or equipped with a permanent hitch or other device allowing it to be moved other than for the purpose of moving to a permanent site, and which does not have permanently attached to its body or frame any wheels or axles. A mobile home as defined in section 435.1 is not a manufactured home, unless it has been converted to real property as provided in section 435.26, and shall be taxed as a site-built dwelling. This section shall not be construed as abrogating a recorded restrictive covenant.

93 Acts, ch 154, §4

Section amended

#### 414.30 Homes for persons with physical disabilities.

A city council or city zoning commission shall consider a home for persons with physical disabilities a family home, as defined in section 414.22, for purposes of zoning in accordance with chapter 135L.\*

93 Acts, ch 90, §5

\*Reference to chapter 504C probably intended, corrective legislation pending

NEW section

#### 414.31 Elder group 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 231B.2, and may establish limitations regarding the proximity of one proposed elder group home to another.

93 Acts, ch 72, §8

NEW section

## 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 tax-



payers 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.

a. This includes any of the following:

(1) Any debt 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.

(2) Any debt which has accrued through a court judgment which is due and owing as a support obligation for the debtor's spouse or former spouse when enforced in conjunction with a child support obligation.

(3) Any debt 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 assistance under the family investment program, medical assistance, food stamps, foster care, and state supplementary assistance.

b. The procedure shall meet the following conditions:

(1) 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.

(2) 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 relevant 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.

(3) 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.

(4) 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.

(5) 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.

(6) 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 department 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.

(7) 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.

21A. To cooperate with the child support recovery unit created in chapter 252B to establish and maintain a process to implement the provisions of section 252B.5, subsection 8. The department of revenue and finance shall forward to individuals meeting the criteria under section 252B.5, subsection 8, paragraph "a", a notice by first-class mail that the individual is obligated to file a state estimated tax form and to remit a separate child support payment.

a. Individuals notified shall submit a state estimated tax form on a quarterly basis.

b. The individual shall pay monthly, the lesser of the total delinquency or one hundred fifty percent of the current or most recent monthly obligation.

c. The individual shall remit the payment to the department of revenue and finance separate from any tax liability payments, identify the payment as a support payment, and make the payment payable

to the collection services center. The department shall forward all payments received pursuant to this section to the collection services center established pursuant to chapter 252B, for processing and disbursement. The department of revenue and finance may establish by rule a process for the child support recovery unit or collection services center to directly receive the payments.

d. The notice shall provide that, as an alternative to the provisions of paragraph "b", the individual may contact the child support recovery unit to formalize a repayment plan and obtain an exemption from the quarterly payment requirement or to contest the balance due listed in the notice when payments are made pursuant to the plan.

e. The department of revenue and finance, in cooperation with the child support recovery unit, may adopt rules, if necessary, to implement this subsection.

21B. To provide information contained in state individual tax returns to the child support recovery unit for the purposes of establishment or enforcement of support obligations. The department of revenue and finance and child support recovery unit may exchange information in a manual or automated fashion. The department of revenue and finance, in cooperation with the child support recovery unit, may adopt rules, if necessary, to implement this subsection.

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, court costs, or restitution of attorney fees incurred as a result of services provided under chapters 13B and 815, and section 232.141. 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 of the district court. However, only relevant information required by the clerk of the district court 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 of the district court, on the first day of February and August of each calendar year, shall 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 send written notification to the debtor of the clerk of the district court'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.

e. Upon the request of a debtor or a debtor's spouse to the department, 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 department shall 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.

f. The department shall set off the debt against, and deduct a fee established by rule to reflect the cost of processing from, the debtor's income tax refund or rebate. The department shall transfer ninety percent of the amount set off to the treasurer of state for deposit in the general fund of the state. The remaining ten percent shall be remitted to the judicial department and used to defray the costs of this procedure. 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.

g. The department shall file with the clerk of the district court a notice of the satisfaction of each obligation to the full extent of all moneys collected in satisfaction of the obligation. The clerk shall record the notice and enter a satisfaction for the amounts collected.

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 or a support debt being enforced by the child support recovery unit pursuant to chapter 252B, 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 opportunity 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 autho-

rized 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.

34. a. To establish, administer, and make available a centralized debt collection capability and procedure for the use by any state agency as defined in subsection 29 to collect delinquent accounts, charges, fees, loans, or other indebtedness due the state. The department's collection facilities shall only be available for use by other state agencies for their discretionary use when resources are available to the director and subject to the director's determination that use of the procedure is feasible. The director shall prescribe the appropriate form and manner in which this information is to be submitted to the office of the department. The obligations or indebtedness must be delinquent and not subject to litigation, claim, appeal, or review pursuant to the appropriate remedies of each state agency.

b. The director shall establish, as provided in this section, a centralized computer data bank to compile the information provided and shall establish in the centralized data bank all information provided from all sources within the state concerning addresses, financial records, and other information useful in assisting the department in collection services.

c. The director shall establish a formal debt collection policy for use by state agencies which have not established their own policy. Other state agencies may use the collection facilities of the department pursuant to formal agreement with the department. The agreement shall provide that the information provided to the department shall be sufficient to establish the obligation in a court of law and to render it as a legal judgment on behalf of the state. After transferring the file to the department for collection, an individual state agency shall terminate all collection procedures and be available to provide assistance to the department. Upon receipt of the file, the department shall assume all liability for its actions without recourse to the agency, and shall comply with all applicable state and federal laws governing collection of the debt. The department has the powers granted in this section regarding setoff from income tax refunds or other accounts payable by the state for any of the obligations transferred by state agencies.

d. The department's existing right to credit against tax due shall not be impaired by any right granted to, or duty imposed upon, the department or other state agency by this section.

e. All state agencies shall be given access, at the discretion of the director, to the centralized comput-

er data bank and may deny any license or renewal authorized by the laws of this state to any person who has defaulted on an obligation owing to the state. The confidentiality provisions of sections 422.20 and 422.72 do not apply to tax information contained in the centralized computer data bank. State agencies shall endeavor to obtain the applicant's social security or federal tax identification number, or state driver's license number from all applicants.

f. At the director's discretion, the department may accept payment of debts, interest, and fees, or any portion 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 charge by the credit card issuer.

g. The director shall adopt administrative rules to implement this section, including, but not limited to, rules necessary to prevent conflict with federal laws and regulations or the loss of federal funds, to establish procedures necessary to guarantee due process of law, and to provide for reimbursement of the

department by other state agencies for the department's costs related to debt collection.

h. The director shall report quarterly to the legislative fiscal committee, the legislative fiscal bureau, and the chairpersons and ranking members of the joint administration appropriations subcommittee concerning the implementation of the centralized debt collection program, the number of departmental collection programs initiated, the amount of debts collected, and an estimate of future costs and benefits which may be associated with the collection program. It is the intent of the general assembly that the centralized debt collection program will result in the collection of at least two dollars of indebtedness for every dollar expended in administering the collection program during a fiscal year. It is also the intent of the general assembly that the centralized debt collection program be administered without the anticipation of future additional commitments of computer equipment and personnel.

93 Acts, ch 79, §34, 93 Acts, ch 97, §40, 93 Acts, ch 110, §5, 6  
 Subsection 21, paragraph a, subparagraph (3) amended  
 NEW subsections 21A and 21B  
 Subsections 25 and 26 amended

## CHAPTER 422

### INCOME, SALES, SERVICES, AND FRANCHISE TAXES

#### 422.3 Definitions controlling chapter.

For the purpose of this chapter and unless otherwise required by the context:

1. "Court" means the district court in the county of the taxpayer's residence.
2. "Department" means the department of revenue and finance.
3. "Director" means the director of revenue and finance.
4. "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, 1993, whichever is applicable.
5. The word "taxpayer" includes any person, corporation, or fiduciary who is subject to a tax imposed by this chapter.

93 Acts, ch 113, §1  
 1993 amendment to subsection 4 is retroactive to January 1, 1992, for tax years beginning on or after that date, 93 Acts, ch 113, §4  
 Subsection 4 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 income 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 prop-

erty 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 904, 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 employ-

ment 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 16.1, subsection 36, 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 904, 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 individu-

al 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 individu-

als, 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.

26. Add depreciation taken for federal income tax purposes on a speculative shell building defined in section 427.1, subsection 41, which is owned by a for-profit entity and the for-profit entity is receiving the proper tax exemption. Subtract depreciation computed as if the speculative shell building were classified as fifteen-year property under the accelerated cost recovery system of the Internal Revenue Code during the period during which it is owned by the for-profit entity and is receiving the property tax exemption. However, this subsection does not apply to a speculative shell building which is used by the for-profit entity, subsidiary of the for-profit entity, or majority owners of the for-profit entity, for other than as a speculative shell building, as defined in section 427.1, subsection 41.

27. Subtract, to the extent included, payments received by an individual providing unskilled in-home health-related care services pursuant to section 249.3, subsection 2, paragraph "a", subparagraph (2), to a member of the individual caregiver's family. For purposes of this subsection, a member of the individual caregiver's family includes a spouse, parent, stepparent, child, stepchild, brother, stepbrother, sister, stepsister, lineal ancestor, or lineal descendant, and such persons by marriage or adoption. A health care professional licensed by an examination board designated in section 147.13, subsections 1 through 10, is not eligible for the exemption authorized in this subsection.

28. If the taxpayer is owner of an individual development account certified under chapter 541A at any time during the tax year the following adjustments shall be made:

a. Subtract, to the extent included, all of the following:

(1) Contributions made to the account by persons and entities, other than the taxpayer, as authorized in chapter 541A.

(2) The amount of any savings refund authorized under section 541A.3, subsection 1.

(3) Earnings from the account to the extent not withdrawn.

b. Add, to the extent not included, all of the following:

(1) Earnings from the account which are withdrawn.

(2) Amounts withdrawn which are not authorized by section 541A.2, subsection 4, paragraphs "a" and "b" and which are attributable to contributions by persons and entities, other than the taxpayer, as provided in section 541A.2, subsection 4.

(3) If the account is closed, amounts received by the taxpayer which have not previously been taxed under this division, except amounts that are redeposited in another individual development account, or the state human investment reserve pool as provided in section 541A.2, subsection 5, and including

the total amount of any savings refund authorized under section 541A.3.

93 Acts, ch 97, §14

Subsection 28 is effective January 1, 1994, for tax years beginning on or after that date, 93 Acts, ch 97, § 20

NEW subsection 28

#### 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, 1993.

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.

93 Acts, ch 113, §2

1993 amendment to unnumbered paragraph 1 is retroactive to January 1, 1992, for tax years beginning on or after that date, 93 Acts, ch 113, § 4

Unnumbered paragraph 1 amended

**[422.12A — CONTINGENT EFFECTIVENESS OF 1993 AMENDMENT PROVIDING FOR FUTURE REPEAL. See 1993 Acts, chapter 144, section 6, and Code editor's note to this section concerning provision making the effectiveness of the 1993 amendment (adding unnumbered paragraph 7 providing for future repeal of the checkoff in this section) contingent upon the enactment of certain appropriations.]**

#### 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.

The income tax return checkoff provided in this section is repealed for tax years beginning on or after January 1, 1994.

93 Acts, ch 144, §2  
See Code editor's note  
NEW unnumbered paragraph 7

**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, zero 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.

93 Acts, ch 172, §44  
1993 amendment to subsection 1 is retroactive to January 1, 1993, for tax years beginning on or after that date, 93 Acts, ch 172, § 56  
Subsection 1, paragraph f stricken and rewritten and paragraphs g and h stricken

**[422.12D — CONTINGENT EFFECTIVENESS OF SECTION. See 1993 Acts, chapter 144, section 6, and Code editor's note to section 422.12A concerning provision making the effectiveness of this section contingent upon the enactment of certain appropriations.]**

**422.12D Income tax checkoff for the Iowa state fair foundation.**

1. 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 one dollar or more to be paid to the Iowa state fair foundation as established in section 173.22. 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 Iowa state fair foundation, the amount designated shall be reduced to the remaining amount of the refund or the remaining amount remitted with the return. The designation of a contribution to the Iowa state fair foundation under this section is irrevocable.

2. The director of revenue and finance shall draft the income tax form to allow the designation of contributions to the Iowa state fair foundation on the tax return. The department, on or before January 31, shall transfer the total amount designated on the tax form due in the preceding year to the foundation fund created pursuant to section 173.22.

3. The Iowa state fair board may authorize payment from the foundation fund for purposes of supporting foundation activities.

4. 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.

93 Acts, ch 144, §3  
See Code editor's note to §422.12A  
Section retroactive to January 1, 1993, for tax years beginning on or after that date  
NEW section

**[422.12E — CONTINGENT EFFECTIVENESS OF SECTION.** See 1993 Acts, chapter 144, section 6, and Code editor's note to section 422.12A concerning provision making the effectiveness of this section contingent upon the enactment of certain appropriations.]

**422.12E Income tax return checkoffs limited.**

For tax years beginning on or after January 1, 1995, there shall be allowed no more than three income tax return checkoffs on each income tax return. When the same three income tax return checkoffs have been provided on the income tax return for three consecutive years, the checkoff for which the least amount has been contributed, in the aggregate for the first two tax years and through March 15 of the third tax year, shall be repealed. This section does not apply to the income tax return checkoff provided in section 56.18.

93 Acts, ch 144, §4  
See Code editor's note to §422.12A  
NEW section

**422.13 Return by individual.**

1. Except as provided in subsection 1A, a resident or nonresident of this state shall make a return, signed in accordance with forms and rules prescribed by the director, if any of the following are applicable:

a. The individual has net income of nine thousand dollars or more for the tax year from sources taxable under this division.

b. The individual is claimed as a dependent on another person's return and has net income of four thousand dollars or more for the tax year from sources taxable under this division.

c. However, if that part of the net income of a nonresident which is allocated to Iowa pursuant to section 422.8, subsection 2 is less than one thousand dollars the nonresident is not required to make and sign a return.

1A. Notwithstanding any other provision in this section, a resident of this state is not required to make and file a return if the person's net income is equal to or less than the appropriate dollar amount listed in section 422.5, subsection 2, upon which tax is not imposed. A nonresident of this state is not required to make and file a return if the person's total net income in section 422.5, subsection 1, paragraph "j", is equal to or less than the appropriate dollar amount provided in section 422.5, subsection 2, upon which tax is not imposed. For purposes of this subsection, the amount of a lump sum distribution subject to separate federal tax shall be included in net income for purposes of determining if a resident is required to file a return and the portion of the lump sum distribution that is allocable to Iowa is included

in total net income for purposes of determining if a nonresident is required to make and file a return.

2. For purposes of determining the requirement for filing a return under subsection 1, the combined net income of a husband and wife from sources taxable under this division shall be considered.

3. If the taxpayer is unable to make the return, the return shall be made by a duly authorized agent or by a guardian or other person charged with the care of the person or property of the taxpayer.

4. A nonresident taxpayer shall file a copy of the taxpayer's federal income tax return for the current tax year with the return required by this section.

5. Notwithstanding subsections 1 through 4 and sections 422.15 and 422.36, a partnership, trust, or corporation whose stockholders are taxed on the corporation's income under the provisions of the Internal Revenue Code is entitled to request permission from the director to file a composite return for the nonresident partners, beneficiaries, or shareholders. The director may grant permission to file or require that a composite return be filed under the conditions deemed appropriate by the director. A partnership, trust, or corporation filing a composite return is liable for tax required to be shown due on the return. All powers of the director and requirements of the director apply to returns filed under this subsection including, but not limited to, the provisions of this division and division VI of this chapter.

93 Acts, ch 123, §1-3  
Subsection 1A and the 1993 amendments to subsection 1 are retroactive to January 1, 1993, for tax years beginning on or after that date, 93 Acts, ch 123, §4  
Subsection 1, unnumbered paragraph 1 and paragraphs b and c amended  
NEW subsection 1A

**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 royalties shall be reasonably apportioned within and without the state under rules adopted by the director.

(2) Capital gains and losses from the sale or other disposition of assets shall be apportioned to the state based upon the business activity ratio applicable to the year the gain or loss is determined if the corporation determines Iowa taxable income by a sales, gross receipts or other business activity ratio. If the corporation has only allocable income, capital gains and losses from the sale or other disposition of assets shall be allocated in accordance with paragraph "a", subparagraph (4).

(3) Where income is derived from business other than the manufacture or sale of tangible personal property, the income shall be specifically allocated or equitably apportioned within and without the state under rules of the director.

(4) Where income is derived from the manufacture or sale of tangible personal property, the part attributable to business within the state shall be in that proportion which the gross sales made within the state bear to the total gross sales.

(5) Where income consists of more than one class of income as provided in subparagraphs (1) to (4) of this paragraph, it shall be reasonably apportioned by the business activity ratio provided in rules adopted by the director.

(6) The gross sales of the corporation within the state shall be taken to be the gross sales from goods delivered or shipped to a purchaser within the state regardless of the f.o.b. point or other conditions of the sale, excluding deliveries for transportation out of the state.

For the purpose of this section, the word "sale" shall include exchange, and the word "manufacture" shall include the extraction and recovery of natural resources and all processes of fabricating and curing. The words "tangible personal property" shall be taken to mean corporeal personal property, such as machinery, tools, implements, goods, wares, and merchandise, and shall not be taken to mean money deposits in banks, shares of stock, bonds, notes, credits, or evidence of an interest in property and evidences of debt.

3. If any taxpayer believes that the method of allocation and apportionment hereinbefore prescribed, as administered by the director and applied to the taxpayer's business, has operated or will so operate as to subject the taxpayer to taxation on a greater portion of the taxpayer's net income than is reasonably attributable to business or sources within the state, the taxpayer shall be entitled to file with the director a statement of the taxpayer's objections and of such alternative method of allocation and apportionment as the taxpayer believes to be proper under the circumstances with such detail and proof and within such time as the director may reasonably prescribe; and if the director shall conclude that the method of allocation and apportionment theretofore employed is in fact inapplicable and inequitable, the

director shall redetermine the taxable income by such other method of allocation and apportionment as seems best calculated to assign to the state for taxation the portion of the income reasonably attributable to business and sources within the state, not exceeding, however, the amount which would be arrived at by application of the statutory rules for apportionment.

4. In addition to all taxes imposed under this division, there is imposed upon each corporation doing business within the state 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, 1993.

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 260E 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 37, 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 260E.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 260E 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 im-

posed 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.

93 Acts, ch 113, §3

1993 amendment to subsection 5, unnumbered paragraph 1, is retroactive to January 1, 1992, for tax years beginning on or after that date, 93 Acts, ch 113, § 4

Subsection 5, unnumbered paragraph 1 amended

#### 422.43 Tax imposed.

1. There is imposed a tax of five 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 re-

ceipts from all sales of tickets or admissions to places of amusement, fairs, and athletic events except those of elementary and secondary educational institutions; a like rate of tax on the gross receipts from an entry fee or like charge imposed solely for the privilege of participating in an activity at a place of amusement, fair, or athletic event unless the gross receipts from the sales of tickets or admissions charges for observing the same activity are taxable under this division; 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 five 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, the tax to be collected from the operator in the same manner as 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 tax of five percent 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 tax of five percent 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 five 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 taxes shall not be levied on services, parts, or labor provided under optional service or warranty contracts which are subject to tax under this section.

7. There is imposed a tax of five percent 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 five 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; vehicle repair; battery, tire and allied; investment counseling; service charges of all financial institutions; barber and beauty; boat repair; vehicle wash and wax; carpentry; roof, shingle, and glass repair; dance schools and dance studios; dating services; 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 repair; jewelry and watch repair; limousine service, including driver; 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 ser-



vices for placing a person in employment where the principal place of employment of that person is to be located outside of the state; sewage services for non-residential commercial operations; sewing and stitching; shoe repair and shoeshine; sign construction and installation; storage of household goods, mini-storage, and warehousing of raw agricultural products; swimming pool cleaning and maintenance; taxidermy services; 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 five 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.

13. a. A tax of five percent is imposed upon the gross receipts from the sales, furnishing, or service of solid waste collection and disposal service.

For purposes of this subsection, “*solid waste*” means garbage, refuse, sludge from a water supply treatment plant or air contaminant treatment facility, and other discarded waste materials and sludges, in solid, semisolid, liquid, or contained gaseous form, resulting from nonresidential commercial operations, but does not include hazardous waste; animal waste used as fertilizer; earthen fill, boulders, rock; foundry sand used for daily cover at a sanitary landfill; sewage sludge; solid or dissolved material in domestic sewage or other common pollutants in water resources, such as silt, dissolved or suspended solids in industrial waste water effluents or discharges which are point sources subject to permits under section 402 of the federal Water Pollution Control Act, dissolved materials in irrigation return flows; or source, special nuclear, or by-product material defined by the federal Atomic Energy Act of 1954.

A recycling facility that separates or processes recyclable materials and that reduces the volume of the waste by at least eighty-five percent is exempt from the tax imposed by this subsection if the waste exempted is collected and disposed of separately from other solid waste.

b. A person who transports mixed municipal solid waste generated by that person or another person without compensation shall pay the tax imposed by this subsection at the collection or disposal facility based on the disposal charge or tipping fee. However, the costs of a service or the portion of a service to collect and manage recyclable materials separated from mixed municipal solid waste by the waste generator is exempt from the tax imposed by this subsection. For purposes of this paragraph, “*mixed municipal solid waste*” means garbage, refuse, and other solid waste from nonresidential commercial operations which is generated and collected in aggregate, but does not include auto hulks, street sweepings, ash, construction debris, mining waste, sludges, tree and agricultural wastes, tires, lead acid batteries, used oil, and other materials collected, processed, and disposed of as separate waste streams.

93 Acts, ch 135, §1  
Subsection 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, 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, and except the rental of aircraft for a period of sixty days or less.

3. The gross receipts from sales of educational,

religious, or charitable activities, where the entire proceeds from the sales 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. This exemption is disallowed on the amount of the gross receipts only to the extent the gross receipts are not expended for educational, religious, or charitable purposes.

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 324A.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; except the sales, furnishing or providing of sewage services to a county or municipality on behalf of nonresidential commercial operations; and except the sales, furnishing, or service of solid waste collection and disposal service to a county or municipality on behalf of nonresidential commercial operations located within the county or municipality.

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 subsection 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 452A.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 or rental of prescription drugs or medical devices intended for human use or consumption.

For the purposes of this subsection:

a. "Medical device" means equipment or a supply, intended to be prescribed by a practitioner, including orthopedic or orthotic devices. However, "medical device" also includes prosthetic devices, osotomy, urological, and tracheostomy equipment and supplies, and diabetic testing materials, hypodermic syringes, and oxygen equipment, intended to be dispensed for human use with or without a prescription to an ultimate user.

b. "Practitioner" means a practitioner as defined in section 155A.3, or a person licensed to prescribe drugs.

c. "Prescription drug" means a drug intended to be dispensed to an ultimate user pursuant to a prescription drug order or medication order from a practitioner, or oxygen or insulin dispensed for human consumption with or without a prescription drug order or medication order.

d. "Ultimate user" means an individual who has lawfully obtained and possesses a prescription drug or medical device for the individual's own use or for the use of a member of the individual's household, or an individual to whom a prescription drug or medical device has been lawfully supplied, administered, dispensed, or prescribed.

13A. Reserved.

14. Reserved.

15. Reserved.

16. Reserved.

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, wrapping 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, does not apply to the sales, furnishing, or service of solid waste collection and disposal service to nonresidential commercial operations; does not apply to the sales, furnishing, or service of sewage service for nonresidential commercial operations; 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 260E 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 15C. 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, sawdust, hay, straw, paper, or other materials used for bedding 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, auto-

motive 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 435.1, 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.

47. The gross receipts from the rendering, furnishing, or performing of additional services taxed by 1992 Iowa Acts, chapter 1232, pursuant to a written service contract in effect on March 1, 1992. This exemption is repealed August 31, 1992.

48. The gross receipts from the sale of wind energy conversion property to be used as an electric power source and the sale of the materials used to manufacture, install, or construct wind energy conversion property used or to be used as an electric power source.

For purposes of this section, "wind energy conversion property" means any device, including, but not limited to, a wind charger, windmill, wind turbine, tower and electrical equipment, pad mount transformers, power lines, and substation, which converts wind energy to a form of usable energy.

93 Acts, ch 122, §1, 2, 93 Acts, ch 135, §2, 93 Acts, ch 161, §1  
\*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

Repeal of retroactive applicability provision and refund procedures relating to the 1992 amendments to subsections 13, 13A, 15, and 16, claims disallowed, see 93 Acts, ch 122, § 3

Subsection 3 amended  
Subsection 13 stricken and rewritten  
Subsections 13A, 14, 15 and 16 stricken  
NEW subsection 48

**422.65 Allocation of revenue.**

All moneys received from the franchise tax shall be deposited in the state general fund. Commencing with the fiscal year beginning July 1, 1993, there is appropriated for each fiscal year from the franchise tax money received and deposited in the state general fund the sum of eight million eight hundred thousand dollars which 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 activity 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.

93 Acts, ch 180, §2  
Unnumbered paragraph 1 amended

**422.100 Allocation to the child day care credit fund.**

The treasurer of state shall credit during the first month of each quarter of each fiscal year to the child day care credit fund created in section 237A.28 the sum of six hundred fifty thousand dollars from the individual income tax withholding receipts.

93 Acts, ch 172, §45  
NEW section

## CHAPTER 422B

## LOCAL OPTION TAXES

**422B.1 Authorization — election — imposition and repeal.**

1. A county may impose by ordinance of the board of supervisors local option taxes authorized by this chapter, subject to this section.

2. A local option tax shall be imposed only after an election at which a majority of those voting on the question favors imposition and shall then be imposed until repealed as provided in subsection 5, paragraph "a". If the tax is a local vehicle tax imposed by a county, it shall apply to all incorporated and unincorporated areas of the county. If the tax is a local sales and services tax imposed by a county, it shall only apply to those incorporated areas and the unincorporated area of that county in which a majority of those voting in the area on the tax favors its imposition. For purposes of the local sales and services tax, all cities contiguous to each other shall be treated as part of one incorporated area and the tax would be imposed in each of those contiguous cities only if the majority of those voting in the total area covered by the contiguous cities favors its imposition. For purposes of the local sales and services tax, a city is not contiguous to another city if the only road access between the two cities is through another state.

3. *a.* A county board of supervisors shall direct within thirty days the county commissioner of elections to submit the question of imposition of a local vehicle tax or a local sales and services tax to the qualified electors of the incorporated and unincorporated areas of the county upon receipt of a petition, requesting imposition of a local vehicle tax or a local sales and services tax, signed by eligible electors of the whole county equal in number to five percent of the persons in the whole county who voted at the last preceding state general election. In the case of a local vehicle tax, the petition requesting imposition shall specify the rate of tax and the classes, if any, that are to be exempt. If more than one valid petition is received, the earliest received petition shall be used.

*b.* The question of the imposition of a local sales and services tax shall be submitted to the qualified electors of the incorporated and unincorporated areas of the county upon receipt by the county commissioner of elections of the motion or motions, requesting such submission, adopted by the governing body or bodies of the city or cities located within the county or of the county, for the unincorporated areas of the county, representing at least one half of the population of the county. Upon adoption of such motion, the governing body of the city or county, for the unincorporated areas, shall submit the motion to the county commissioner of elections and in the case of the governing body of the city shall notify the board

of supervisors of the adoption of the motion. The county commissioner of elections shall keep a file on all the motions received and, upon reaching the population requirements, shall publish notice of the ballot proposition concerning the imposition of the local sales and services tax. A motion ceases to be valid at the time of the holding of the regular election for the election of members of the governing body which adopted the motion. The county commissioner of elections shall eliminate from the file any motion that ceases to be valid. The manner provided under this paragraph for the submission of the question of imposition of a local sales and services tax is an alternative to the manner provided in paragraph "a".

4. The county commissioner of elections shall submit the question of imposition of a local option tax at a state general election or at a special election held at any time other than the time of a city regular election. The election shall not be held sooner than sixty days after publication of notice of the ballot proposition. The ballot proposition shall specify the type and rate of tax and in the case of a vehicle tax the classes that will be exempt and in the case of a local sales and services tax the date it will be imposed. The ballot proposition shall also specify the approximate amount of local option tax revenues that will be used for property tax relief and shall contain a statement as to the specific purpose or purposes for which the revenues shall otherwise be expended. If the county board of supervisors decides under subsection 5 to specify a date on which the local option sales and services tax shall automatically be repealed, the date of the repeal shall also be specified on the ballot. The rate of the vehicle tax shall be in increments of one dollar per vehicle as set by the petition seeking to impose the tax. The rate of a local sales and services tax shall not be more than one percent as set by the governing body. The state commissioner of elections shall establish by rule the form for the ballot proposition which form shall be uniform throughout the state.

5. *a.* If a majority of those voting on the question of imposition of a local option tax favor imposition of a local option tax, the governing body of that county shall impose the tax at the rate specified for an unlimited period. However, in the case of a local sales and services tax, the county shall not impose the tax in any incorporated area or the unincorporated area if the majority of those voting on the tax in that area did not favor its imposition. For purposes of the local sales and services tax, all cities contiguous to each other shall be treated as part of one incorporated area and the tax shall be imposed in each of those contiguous cities only if the majority of

those voting on the tax in the total area covered by the contiguous cities favored its imposition. The local option tax may be repealed or the rate increased or decreased or the use thereof changed after an election at which a majority of those voting on the question of repeal or rate or use change favored the repeal or rate or use change. The election at which the question of repeal or rate or use change is offered shall be called and held in the same manner and under the same conditions as provided in subsections 3 and 4 for the election on the imposition of the local option tax. However, in the case of a local sales and services tax where the tax has not been imposed countywide, the question of repeal or imposition or rate or use change shall be voted on only by the qualified electors of the areas of the county where the tax has been imposed or has not been imposed, as appropriate.

When submitting the question of the imposition of a local sales and services tax, the county board of supervisors may direct that the question contain a provision for the repeal, without election, of the local sales and services tax on a specific date, which date shall be the end of a calendar quarter.

b. Within ten days of the election at which a majority of those voting on the question favors the imposition, repeal, or change in the rate of a local option tax, the governing body shall give written notice to the director of revenue and finance or, in the case of a local vehicle tax, to the director of the department of transportation, of the result of the election.

6. More than one of the authorized local option taxes may be submitted at a single election and the

different taxes shall be separately implemented as provided in this section.

Costs of local option tax elections shall be apportioned among jurisdictions within the county voting on the question at the same election on a pro rata basis in proportion to the number of qualified electors in each taxing jurisdiction and the total number of qualified electors in all of the taxing jurisdictions.

7. Local option taxes authorized to be imposed as provided in this chapter are a local sales and services tax and a local vehicle tax. The rate of the tax shall be in increments of one dollar per vehicle for a vehicle tax as set on the petition seeking to impose the vehicle tax. The rate of a local sales and services tax shall not be more than one percent as set by the governing body.

8. In a county that has imposed a local option sales and services tax, the board of supervisors shall, notwithstanding any contrary provision of this chapter, repeal the local option sales and services tax in the unincorporated areas or in an incorporated city area in which the tax has been imposed upon adoption of its own motion for repeal in the unincorporated areas or upon receipt of a motion adopted by the governing body of that incorporated city area requesting repeal. The board of supervisors shall repeal the local option sales and services tax effective at the end of the calendar quarter during which it adopted the repeal motion or the motion for the repeal was received. For purposes of this subsection, incorporated city area includes an incorporated city which is contiguous to another incorporated city.

93 Acts, ch 143, §50

Subsection 6, NEW unnumbered paragraph 2

## CHAPTER 423

### USE TAX

#### 423.1 Definitions.

The following words, terms, and phrases when used in this chapter shall have the meanings ascribed to them in this section:

1. "Certificate of title" means a certificate of title issued for a vehicle under chapter 321.
2. "Department" and "director" shall have the same meaning as defined in section 422.3.
3. "Mobile home" means mobile home as defined in section 321.1, subsection 39, paragraph "a".
4. "Person" and "taxpayer" shall have the same meaning as defined in section 422.42.
5. "Purchase" means any transfer, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, for a consideration.
6. "Purchase price" means the total amount for

which tangible personal property is sold, valued in money, whether paid in money or otherwise; provided:

- a. That cash discounts taken on sales are not included. A cash rebate which is provided by a motor vehicle manufacturer to the purchaser of a vehicle subject to registration shall not be included so long as the rebate is applied to the purchase price of the vehicle.
- b. That in transactions, except those subject to paragraph "c", in which tangible personal property is traded toward the purchase price of other tangible personal property the purchase price is only that portion of the purchase price which is payable in money to the retailer if the following conditions are met:



(1) The tangible personal property traded to the retailer is the type of property normally sold in the regular course of the retailer's business.

(2) The tangible personal property traded to the retailer is intended by the retailer to be ultimately sold at retail or is intended to be used by the retailer or another in the remanufacturing of a like item.

c. That in transactions between persons, neither of which is a retailer of vehicles subject to registration, in which a vehicle subject to registration is traded toward the purchase price of another vehicle subject to registration, the purchase price is only that portion of the purchase price represented by the difference between the total purchase price of the vehicle subject to registration acquired and the amount of the vehicle subject to registration traded.

7. "Retailer" means and includes every person engaged in the business of selling tangible personal property for use within the meaning of this chapter; provided, however, that when in the opinion of the director it is necessary for the efficient administration of this chapter to regard any salespersons, representatives, truckers, peddlers, or canvassers as the agents of the dealers, distributors, supervisors, employers, or persons under whom they operate or from whom they obtain the tangible personal property sold by them, irrespective of whether they are making sales on their own behalf or on behalf of such dealers, distributors, supervisors, employers, or persons, the director may so regard them and may regard the dealers, distributors, supervisors, employers, or persons as retailers for purposes of this chapter.

8. "Retailer maintaining a place of business in this state" or any like term includes any retailer having or maintaining within this state, directly or by a subsidiary, an office, distribution house, sales house, warehouse, or other place of business, or any agent operating within this state under the authority of the retailer or its subsidiary, irrespective of whether such place of business or agent is located here permanently or temporarily.

9. "Street railways" shall mean and include urban transportation systems.

10. "Tangible personal property" means tangible goods, wares, merchandise, optional service or warranty contracts, vulcanizing, recapping, or retreading services, engraving, photography, retouching, printing, or binding services, and gas, electricity, and water when furnished or delivered to consumers or users within this state.

11. "Trailer" shall mean every trailer, as is now or may be hereafter so defined by the motor vehicle law of this state, which is required to be registered or is subject only to the issuance of a certificate of title under such motor vehicle law.

12. "Use" means and includes the exercise by any person of any right or power over tangible personal property incident to the ownership of that property, except that it shall not include processing, or the sale of that property in the regular course of business. Property used in "processing" within the meaning of

this subsection shall mean and include (a) any tangible personal property including containers which it is intended shall, by means of fabrication, compounding, manufacturing, or germination, become an integral part of other tangible personal property intended to be sold ultimately at retail, and containers used in the collection, recovery or return of empty beverage containers subject to chapter 455C, or (b) fuel which is consumed in creating power, heat, or steam for processing or for generating electric current, or (c) chemicals, solvents, sorbents, or reagents, which are directly used and are consumed, dissipated, or depleted in processing personal property, which is intended to be sold ultimately at retail, and which may not become a component or integral part of the finished product. The distribution to the public of free newspapers or shoppers guides shall be deemed a retail sale for purposes of the processing exemption.

13. "Vehicles subject to registration" means any vehicle subject to registration pursuant to section 321.18.

14. Definitions contained in section 422.42 shall apply to this chapter according to their context. The use in this state of building materials, supplies, or equipment, the sale or use of which is not treated as a retail sale or a sale at retail under section 422.42, subsections 12 and 13, shall not be subject to tax under this chapter.

93 Acts, ch 126, §2  
Subsection 8 amended

**423.22 Revoking permits.**

If a retailer maintaining a place of business in this state, or authorized to collect the tax imposed pursuant to section 423.10, fails to comply with any of the provisions of this chapter or any orders or rules prescribed and adopted under this chapter, 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 director may, upon notice and hearing as provided, by order revoke the permit, if any, issued to the retailer under section 422.53. The secretary of state shall, upon receipt of the certified copy, revoke the permit authorizing the corporation to do business in this state, and shall issue a new permit only when the corporation has obtained from the director an order finding that the corporation has complied with its obligations under this chapter. No order authorized in this section shall be made until the retailer is given an opportunity to be heard and to show cause why the order should not be made, and the retailer shall be given ten days' notice of the time, place, and purpose of the hearing. The director may issue a new permit pursuant to section 422.53 after revocation. The preceding provision applies to users and persons supplying services enumerated in section 422.43.

93 Acts, ch 126, §3  
Section amended

#### 423.24 Deposit of revenue — appropriations.

1. Eighty percent of all revenues derived from the use tax on motor vehicles, trailers, and motor vehicle accessories and equipment as collected pursuant to section 423.7 shall be deposited and credited as follows:

a. Twenty-five percent of all such revenue, up to a maximum of three million eight hundred twenty-five thousand dollars per quarter, shall be deposited into and credited to 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. Beginning on July 1, 1993, three and one-half percent of the revenue, not to exceed one million dollars per quarter, derived from the use tax on motor vehicles, trailers, and motor vehicle accessories and equipment as collected pursuant to section 423.7, shall be deposited in the ethanol production incentive account of the renewable fuel fund created in section 159A.7. Moneys deposited according to this paragraph are a continuing appropriation for expenditure under section 159A.8. Moneys deposited during a state fiscal year to the ethanol production incentive account which remain unobligated and unencumbered on July 31 of the following state fiscal year shall be credited to the road use tax fund as provided in this section.

c. Any such revenues remaining 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.

d. Any such revenues remaining shall be credited to the road use tax fund.

2. Twenty 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 shall be deposited in the GAAP deficit reduction account established in the department of management pursuant to section 8.57, subsection 2, and shall be used in accordance with the provisions of that section.

3. All other revenue arising under the operation of this chapter shall be credited to the general fund of the state.

92 Acts, ch 1099, §6, 10, 92 Acts, ch 1239, §41, 93 Acts, ch 180, §7

Subsection 1, paragraph b, repealed effective July 1, 1998, use and reversion of funds in ethanol production incentive account at that time, 92 Acts, ch 1099, § 11

Subsection 1, paragraph b, added by 92 Acts, ch 1099, §6, 10, as amended by 92 Acts, ch 1239, §41, effective July 1, 1993, and former paragraphs b and c relettered as c and d

NEW subsection 2 and former subsection 2 renumbered as 3

## CHAPTER 425

### HOMESTEAD TAX CREDITS AND REIMBURSEMENT

#### 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 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, 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 twenty-three years on or before December 31 of the

base year or was a head of household on December 31 of the base year, as defined in the Internal Revenue Code, 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, amount of in-kind assistance for housing expenses, the gross amount of any pension or annuity, including but not limited to railroad retirement benefits, payments received under the federal Social Security Act, except child insurance benefits received by a member of the claimant's household, 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 non-governmental sources, or surplus foods or other relief in kind supplied by a governmental agency. In determining income, net operating losses and net capital losses shall not be considered.

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.

93 Acts, ch 156, §1, 93 Acts, ch 180, §4  
 1992 amendments to subsection 2 were to take effect January 1, 1993, for mobile home tax claims and property tax claims and apply to rent reimbursement claims filed on or after January 1, 1994 but were deferred one year and further amended, 92 Acts, 2nd Ex, ch 1001, § 225, 93 Acts, ch 180, § 4, 15, 16, 22, 23

1993 amendments to subsections 2 and 7 are effective January 1, 1994, for property tax claims filed on or after that date and apply to rent reimbursement claims filed on or after January 1, 1995, 93 Acts, ch 156, § 2, 93 Acts, ch 180, § 22

See Code editor's note to §6A 10  
 See also Code editor's note to this section  
 Subsections 2 and 7 amended

**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" and paragraph "b" if no appropriation is made to the fund created in section 425.40 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. If moneys have been appropriated to the fund created in section 425.40, the tentative credit or reimbursement for a claimant described in section 425.17, subsection 2, paragraph "b", shall be determined as follows:

(1) If the amount appropriated under section 425.40 plus any supplemental appropriation made for a fiscal year for purposes of this lettered paragraph is at least twenty-seven million dollars, the tentative credit or reimbursement 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

(2) If the amount appropriated under section 425.40 plus any supplemental appropriation made for a fiscal year for purposes of this lettered paragraph is less than twenty-seven million dollars the tentative credit or reimbursement 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

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 an unpaid 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 an unpaid special assessment is presently levied against the homestead. The department shall provide to the respective 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, interest for late payment shall not accrue against the amount of the unpaid 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 upon the unpaid special assessment, plus interest, payable during the fiscal year for which the claim is filed against the homestead of the claimant. However, where the claimant is an individual described in section 425.17, subsection 2, paragraph "b", and the tentative credit is determined according to the schedule in section 425.23, subsection 1, paragraph "b", subparagraph (2), 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. The department of revenue and finance shall, upon the filing of the claim with the department by the treasurer, pay that amount of the unpaid special assessment during the current fiscal year to the treasurer. The 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 unpaid 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 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 treasurer shall credit any moneys received from the department against the amount of the unpaid 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.

93 Acts, ch 180, §5, 6

1992 amendments to subsection 1 were to take effect January 1, 1993, for mobile home tax claims and property tax claims and apply to rent reimbursement claims filed on or after January 1, 1994 but were deferred one year and further amended, 92 Acts, 2nd Ex, ch 1001, § 225, 93 Acts, ch 180, § 5, 15, 16, 22, 23

1992 amendments to subsection 3 were to be effective January 1, 1993 for claims filed on or after that date but were deferred one year and further amended, 92 Acts, ch 1016, § 42, 92 Acts, 2nd Ex, ch 1001, § 225, 93 Acts, ch 180, § 5, 15, 16, 22, 23

1993 amendments to subsections 1 and 3 are effective January 1, 1994, for property tax claims filed on or after that date and apply to rent reimbursement claims filed on or after January 1, 1995, 93 Acts, ch 180, § 22

See Code editor's note to §425 17

Subsection 1 amended

Subsection 3, paragraph a amended

**425.39 Fund created — appropriation — priority, proration.**

1. 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.

2. If the amount appropriated under subsection 1, as limited by section 8.59, plus any supplemental appropriation made for purposes of this section for a fiscal year is insufficient to pay all claims in full, the director shall pay, in full, all claims to be paid during the fiscal year for reimbursement of rent constituting property taxes paid or if moneys are insufficient to pay all such claims on a pro rata basis. If the amount of claims for credit for property taxes due to be paid during the fiscal year exceed the amount remaining after payment to renters, the director of revenue and finance shall prorate the payments to the counties for the property tax credit. In order for the director to carry out the requirements of this subsection, notwithstanding any provision to the contrary in this division, claims for reimbursement for rent constituting property taxes paid filed before May 1 of the fiscal year shall be eligible to be paid in full during the fiscal year and those claims filed on or after May 1 of the fiscal year shall be eligible to be paid during the following fiscal year and the director is not required to make payments to counties for the property tax credit before June 15 of the fiscal year.

93 Acts, ch 180, §8

Item veto applied

NEW subsection 2 and former unnumbered paragraph 1 editorially numbered as subsection 1

**425.40 Low-income fund created.**

1. A low-income tax credit and reimbursement fund is created.

2. If the amount appropriated under subsection 1\* plus any supplemental appropriation made for purposes of this section for a fiscal year is insufficient to pay all claims in full, the director shall pay, in full, all claims to be paid during the fiscal year for reimbursement of rent constituting property taxes paid or if moneys are insufficient to pay all such claims on a pro rata basis. If the amount of claims for credit for property taxes due to be paid during the fiscal year exceed the amount remaining after payment to renters, the director of revenue and finance shall prorate the payments to the counties for the property tax credit. In order for the director to carry out the requirements of this subsection, notwithstanding any provision to the contrary in this division, claims for reimbursement for rent constituting property taxes paid filed before May 1 of the fiscal year shall be eligible to be paid in full during the fiscal year and those claims filed on or after May 1 of the fiscal year shall be eligible to be paid during the following fiscal year and the director is not required to make payments to counties for the property tax credit before June 15 of the fiscal year.

93 Acts, ch 180, §9

\*Standing appropriation to pay credits and reimbursements under § 425 17(2b) was deleted from subsection 1 by item veto

Effective date and applicability of section, 93 Acts, ch 180, § 22

Item veto applied

NEW section

## 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 shall be transferred annually to the fund the first ten million dollars of the amount annually appropriated to the agri-

cultural land credit fund, provided in section 426.1. Any balance in the fund on June 30 shall revert to the general fund.

93 Acts, ch 180, §10  
Section amended

## CHAPTER 426

### AGRICULTURAL LAND TAX CREDIT

#### 426.1 Agricultural land credit fund.

There is 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 this fund for each fiscal year there is appropriated thereto from funds in the general fund not otherwise appropriated the sum

of thirty-nine million one hundred thousand dollars of which the first ten million dollars shall be transferred to and deposited into the family farm tax credit fund created in section 425A.1. Any balance in said fund on June 30 shall revert to the general fund.

93 Acts, ch 180, §11  
Section 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 prop-

erty 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 manufacturing corporations organized under the laws of other states having their main operating offices and principal factories in the state of Iowa, and corporations not organized for pecuniary profit.

20. *Public airports.* Any lands, the use of which (without charge by or compensation to the holder of the legal title thereto) has been granted to and accepted by the state or any political subdivision thereof for airport or aircraft landing area purposes.

21. 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 July 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. Reserved.

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 direc-



tor 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 and recycling.* Pollution-control or recycling 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 or recycling 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, and this exemption shall apply beginning January 1, 1994, to recycling property.

This exemption shall be limited to the market value, as defined in section 441.21, of the pollution-control or recycling property. If the pollution-control or recycling property is assessed with other property as a unit, this exemption shall be limited to the net market value added by the pollution-control or recycling 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 or recycling property to be exempted.

The application for a specific pollution-control or recycling 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 or, if the property is recycling property, that the primary use of the property is for recycling.

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 or recycling 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 or recycling 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 and "*recycling property*" means personal property or improvements to real property or any portion of the property, used primarily in the manufacturing process and resulting directly in the conversion of waste plastic, wastepaper products, or waste paperboard, into new raw materials or products composed primarily of recycled material. 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, to the enhancement of the quality of the air or water of this state, or for recycling 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 73A.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 ex-

emption 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 456B.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 456B.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 483A.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 327I.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 or for-profit entities for speculative purposes or the portion of the value added to buildings being reconstructed or renovated by community development organizations or for-profit entities 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, which ordinance shall specify if the exemption will be available for community development organizations, for-profit entities, or both, 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. Eligibility for an exemption as a speculative shell building shall be determined as of January 1 of the assessment year. However, an exemption shall not be granted a speculative shell building of a for-profit entity if the building is used by the for-profit entity, subsidiary of the for-profit entity, or majority owners of the for-profit entity for other than as a speculative shell building. 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 or for-profit entities 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 or a for-profit entity 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.

43. *Methane gas conversion.* Methane gas conversion property shall be exempt from taxation.

For purposes of this subsection, *“methane gas conversion property”* means personal property, real property, and improvements to real property, and machinery, equipment, and computers assessed as real property pursuant to section 427A.1, subsection 1, paragraphs “e” and “j”, used in an operation connected with a publicly owned sanitary landfill to collect methane gas or other gases produced as a by-product of waste decomposition and to convert the gas to energy.

If the property used to convert the gas to energy also burns another fuel, the exemption shall apply to that portion of the value of such property which equals the ratio that its use of methane gas bears to total fuel consumed.

Application for this exemption shall be filed with the assessing authority not later than February 1 of each 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 methane gas conversion property to be exempted. If the property consuming methane gas also consumes another fuel, the first year application shall contain a statement to that effect and shall identify the other fuel and estimate the ratio that the methane gas consumed bears to the total fuel consumed. Subsequent year applications shall identify the actual ratio for the previous year which ratio shall be used to calculate the exemption for that assessment year.

CHAPTER 427B

SPECIAL TAX PROVISIONS

**427B.10 Property subject to special valuation.** Repealed by 93 Acts, ch 180, § 20. See § 427B.17.

**427B.11 Assessor and county auditor duties.** Repealed by 93 Acts, ch 180, § 20.

**427B.12 Reimbursement.** Repealed by 93 Acts, ch 180, § 20.

**427B.14 Property not eligible.** Repealed by 93 Acts, ch 180, § 20.

DIVISION III

SPECIAL VALUATION FOR MACHINERY AND COMPUTERS ACQUIRED OR LEASED ON OR AFTER JANUARY 1, 1982

**427B.17 Property subject to special valuation.**

For property defined in section 427A.1, subsection 1, paragraphs “e” and “j”, acquired or initially leased on or after January 1, 1982, the taxpayer’s valuation shall be limited to thirty percent of the net acquisition cost of the property. For purposes of this section, “*net acquisition cost*” means the acquired cost of the property including all foundations and installation cost less any excess cost adjustment.

For purposes of this section:

1. Property assessed by the department of revenue and finance pursuant to sections 428.24 to 428.29, or chapters 433, 434 and 436 to 438 shall not receive the benefits of this section.
2. Property acquired before January 1, 1982, which was owned or used before January 1, 1982, by a related person shall not receive the benefits of this section.
3. Property acquired on or after January 1, 1982, which was owned and used by a related person shall not receive any additional benefits under this section.
4. Property which was owned or used before January 1, 1982, and subsequently acquired by an exchange of like property shall not receive the benefits of this section.
5. Property which was acquired on or after January 1, 1982, and subsequently exchanged for like property shall not receive any additional benefits under this section.
6. Property acquired before January 1, 1982, which is subsequently leased to a taxpayer or related person who previously owned the property shall not receive the benefits of this section.
7. Property acquired on or after January 1, 1982,

which is subsequently leased to a taxpayer or related person who previously owned the property shall not receive any additional benefits under this section.

For purposes of this section, “*related person*” means a person who owns or controls the taxpayer’s business and another business entity from which property is acquired or leased or to which property is sold or leased. Business entities are owned or controlled by the same person if the same person directly or indirectly owns or controls fifty percent or more of the assets or any class of stock or who directly or indirectly has an interest of fifty percent or more in the ownership or profits.

Property assessed pursuant to this section shall not be eligible to receive a partial exemption under sections 427B.1 to 427B.6.

93 Acts, ch 180, §12  
Section amended

**427B.23 through 427B.25** Reserved.

DIVISION V

SPECIAL VALUATION FOR WIND ENERGY CONVERSION PROPERTY

**427B.26 Special valuation of wind energy conversion property.**

1. a. A city council or county board of supervisors may provide by ordinance for the special valuation of wind energy conversion property as provided in subsection 2. The ordinance may be enacted not less than thirty days after a public hearing on the ordinance is held. Notice of the hearing shall be published in accordance with section 331.305 in the case of a county, or section 362.3 in the case of a city. The ordinance shall only apply to property first assessed on or after the effective date of the ordinance.

b. If in the opinion of the city council or the county board of supervisors continuation of the special valuation provided under this section ceases to be of benefit to the city or county, the city council or the county board of supervisors may repeal the ordinance authorized by this subsection. Property specially valued under this section prior to repeal of the ordinance shall continue to be valued under this section until the end of the nineteenth assessment year following the assessment year in which the property was first assessed.

2. In lieu of the valuation and assessment provisions in section 441.21, subsection 9, paragraphs “b” and “c”, and sections 428.24 to 428.29, wind energy conversion property which is first assessed for property taxation on or after January 1, 1994, and on or after the effective date of the ordinance enacted pur-

suant to subsection 1, shall be valued by the local assessor for property tax purposes as follows:

a. For the first assessment year, at zero percent of the net acquisition cost.

b. For the second through sixth assessment years, at a percent of the net acquisition cost which rate increases by five percentage points each assessment year.

c. For the seventh and succeeding assessment years, at thirty percent of the net acquisition cost.

3. The taxpayer shall file with the local assessor by February 1 of the assessment year in which the wind energy conversion property is first assessed for property tax purposes, a declaration of intent to have the property assessed at the value determined

under this section in lieu of the valuation and assessment provisions in section 441.21, subsection 9, paragraphs "b" and "c", and sections 428.24 to 428.29.

4. For purposes of this section:

a. "Net acquisition cost" means the acquired cost of the property including all foundations and installation cost less any excess cost adjustment.

b. "Wind energy conversion property" means the entire wind plant including, but not limited to, a wind charger, windmill, wind turbine, tower and electrical equipment, pad mount transformers, power lines, and substation.

93 Acts, ch 161, §2  
NEW section

## CHAPTER 444

### TAX LEVIES

#### 444.25 Property tax limitations for 1994 and 1995 fiscal years.

1. *County limitation.* The maximum amount of property tax dollars which may be certified by a county for taxes payable in the fiscal year beginning July 1, 1993, shall not exceed the amount of property tax dollars certified by the county for taxes payable in the fiscal year beginning July 1, 1992, and, except as otherwise provided in section 444.28, the maximum amount of property tax dollars which may be certified by a county for taxes payable in the fiscal year beginning July 1, 1994, shall not exceed the amount of property tax dollars certified by the county for taxes payable in the fiscal year beginning July 1, 1993, for each of the levies for the following, except for the levies on the increase in taxable valuation due to new construction, additions or improvements to existing structures, remodeling of existing structures for which a building permit is required, annexation, and phasing out of tax exemptions, and on the increase in valuation of taxable property as a result of a comprehensive revaluation by a private appraiser under a contract entered into prior to January 1, 1992, or as a result of a comprehensive revaluation directed or authorized by the conference board prior to January 1, 1992, with documentation of the contract, authorization, or directive on the revaluation provided to the director of revenue and finance, if the levies are equal to or less than the levies for the previous year, levies on that portion of the taxable property located in an urban renewal project the tax revenues from which are no longer divided as provided in section 403.19, subsection 2, or as otherwise provided in this section:

a. General county services under section 331.422, subsection 1.

b. Rural county services under section 331.422, subsection 2.

c. Other taxes under section 331.422, subsection 4.

2. *City limitation.* The maximum amount in property tax dollars which may be certified by a city for taxes payable in the fiscal year beginning July 1, 1993, shall not exceed the amount in property tax dollars certified by the city for taxes payable in the fiscal year beginning July 1, 1992, and, except as otherwise provided in section 444.28, the maximum amount of property tax dollars which may be certified by a city for taxes payable in the fiscal year beginning July 1, 1994, shall not exceed the amount of property tax dollars certified by the city for taxes payable in the fiscal year beginning July 1, 1993, for each of the levies for the following, except for the levies on the increase in taxable valuation due to new construction, additions or improvements to existing structures, remodeling of existing structures for which a building permit is required, annexation, and phasing out of tax exemptions, and on the increase in valuation of taxable property as a result of a comprehensive revaluation by a private appraiser under a contract entered into prior to January 1, 1992, or as a result of a comprehensive revaluation directed or authorized by the conference board prior to January 1, 1992, with documentation of the contract, authorization, or directive on the revaluation provided to the director of revenue and finance, if the levies are equal to or less than the levies for the previous year, levies on that portion of the taxable property located in an urban renewal project the tax revenues from which are no longer divided as provided in section 403.19, subsection 2, or as otherwise provided in this section:

a. City government purposes under section 384.1.

b. Capital improvements reserve fund under section 384.7.

c. Emergency fund purposes under section 384.8.

d. Other city government purposes under section 384.12.

3. *Exceptions.* The limitations provided in subsections 1 and 2 do not apply to the levies made for the following:

a. Debt service to be deposited into the debt service fund pursuant to section 331.430 or section 384.4.

b. Taxes approved by a vote of the people which are payable during the fiscal year beginning July 1, 1993, or July 1, 1994.

c. Hospitals pursuant to chapters 37, 347, and 347A.

d. Unusual need for additional moneys to finance existing programs which would provide substantial benefit to city or county residents or compelling need to finance new programs which would provide substantial benefit to city or county residents. The increase in taxes levied under this exception for the fiscal year beginning July 1, 1993, is limited to no more than the product of the total tax dollars levied in the fiscal year beginning July 1, 1992, and the percent change in the price index for government purchases by type for state and local governments computed for calendar year 1992.

The increase in taxes levied under this exception for the fiscal year beginning July 1, 1994, is limited to no more than the sum of the following:

(1) The product of the total tax dollars levied in the fiscal year beginning July 1, 1993, and seventeen-hundredths of one percent.

(2) The percent change in the price index for government purchases by type for state and local governments computed for calendar year 1993 times the sum of the total tax dollars levied in the fiscal year beginning July 1, 1993, plus the amount in subparagraph (1).

For purposes of this paragraph, the price index for government purchases by type for state and local governments is defined by the bureau of economic analysis of the United States department of commerce and published in table 7.11 of the national income and products accounts. For purposes of this paragraph, tax dollars levied in the fiscal years beginning July 1, 1992, and July 1, 1993, shall not include funds levied for paragraphs "a", "b", and "c" of this subsection.

Application of this exception shall require an original publication of the budget and a public hearing and a second publication and a second hearing both in the manner and form prescribed by the director of the department of management, notwithstanding the provisions of sections 331.434, 384.16, and 362.3. The publications and hearings prescribed in this paragraph shall be held and the budget certified no later than March 15. The taxes levied for cities and counties whose budgets are certified after March 15,

1993, shall be frozen at the fiscal year beginning July 1, 1992, level, and the taxes levied for cities and counties whose budgets are certified after March 15, 1994, shall be frozen at the fiscal year beginning July 1, 1993, level.

4. *Appeal procedures.* In lieu of the procedures in sections 24.48 and 331.426, which procedures do not apply for taxes payable in the fiscal years beginning July 1, 1993, and July 1, 1994, if a city or county needs to raise property tax dollars from a tax levy in excess of the limitations imposed by subsection 1 or 2, the following procedures apply:

a. Not later than March 1, and after the publication and public hearing on the budget in the manner and form prescribed by the director of the department of management, notwithstanding sections 331.434, 384.16, and 362.3, the city or county shall petition the state appeal board for approval of a property tax increase in excess of the increase provided for in subsection 3, paragraph "d", on forms furnished by the director of the department of management. Applications received after March 1 shall be automatically ineligible for consideration by the board.

b. Additional costs incurred by the city or county due to any of the following circumstances shall be the basis for justifying the excess in property tax dollars:

(1) Natural disaster or other life-threatening emergencies.

(2) Unusual need for additional moneys to finance existing programs which would provide substantial benefit to city or county residents or compelling need to finance new programs which would provide substantial benefit to city or county residents.

(3) Need for additional moneys for health care, treatment and facilities, including mental health and mental retardation care and treatment pursuant to section 331.424, subsection 1, paragraphs "a" through "h".

(4) Judgments, settlements, and related costs arising out of civil claims against the city or county and its officers, employees, and agents, as defined in chapter 670.

c. The state appeal board shall approve, disapprove, or reduce the amount of excess property tax dollars requested. The board shall take into account the intent of this section to provide property tax relief. The decision of the board shall be rendered at a regular or special meeting of the board within twenty days of the board's receipt of an appeal.

d. Within seven days of receipt of the decision of the state appeal board, the city or county shall adopt and certify its budget under section 331.434 or 384.16, which budgets may be protested as provided in section 331.436 or 384.19. The budget shall not contain an amount of property tax dollars in excess of the amount approved by the state appeal board.

5. In addition to the requirement of the county auditor in section 444.3 to establish a rate of tax which does not exceed the rate authorized by law, the

county auditor shall also adjust the rate if the amount of property tax dollars to be raised is in excess of the amount specified in subsection 1 or 2, as may be adjusted pursuant to subsection 4.

93 Acts, ch 145, §1-3

Subsection 1, unnumbered paragraph 1 amended

Subsection 2, unnumbered paragraph 1 amended

Subsection 3, paragraph d, unnumbered paragraph 1 divided and amended

#### **444.28 Property tax limitation for 1995 fiscal year — exception.**

For those cities and counties which applied for an exception under section 444.25, subsection 3, paragraph “d”, for the fiscal year beginning July 1, 1993, but did not apply for that exception for the fiscal year beginning July 1, 1994, the maximum amount

of property tax dollars which may be certified by the city or county for taxes payable in the fiscal year beginning July 1, 1994, shall not exceed the sum of the following:

1. The product of the amount of property tax dollars certified for taxes payable in the fiscal year beginning July 1, 1993, and seventeen-hundredths of one percent.

2. The product of the amount of property tax dollars certified for taxes payable in the fiscal year beginning July 1, 1993, and seventeen-hundredths of one percent plus the amount of property tax dollars certified for taxes payable in the fiscal year beginning July 1, 1993.

93 Acts, ch 145, §4  
NEW section

## CHAPTER 445

### TAX COLLECTION

#### **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, interest, 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, including rentals, legally certified to the county treasurer for collection as provided in sections 331.465, 331.489, 358.20, 364.11, 364.12, and 468.589 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 435 which are collectible by the county treasurer.

7. “*Total amount due*” means the aggregate total of all taxes, penalties, interest, costs, and fees due on a parcel.

93 Acts, ch 73, §5  
Subsection 5 amended

#### **445.16 Abatement or compromise of tax.**

If the county holds the tax sale certificate of purchase, 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. In addition, if a parcel is offered at regular tax sale and is not sold, the county, prior to public bidder sale to the county under section 446.19, may compromise by written agreement, or abate by resolution, the tax, interest, fees, or costs, as provided in this section.

A copy of the agreement or resolution shall be filed with the county treasurer.

93 Acts, ch 73, §6  
Section amended



## CHAPTER 446

### TAX SALES

**446.2 Notice of sale.**

For each parcel sold, the county treasurer shall notify the party in whose name the parcel was taxed, according to the treasurer's records at the time of sale, that the parcel was sold at tax sale. The notice of sale shall be sent by regular mail within fifteen days from the date of the annual tax sale or any adjourned tax sale.

93 Acts, ch 73, §7  
Section amended

**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 or a municipality holds a tax sale certificate acquired under section 446.19, 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.

93 Acts, ch 73, §8  
Unnumbered paragraph 2 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. A compromise and assignment shall be by written agreement. A copy of the agreement shall be filed with the treasurer. 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 requirement shall be calculated from the date of assignment.

A certificate of purchase for a parcel shall not be assigned to a person, other than a municipality, who is entitled to redeem that parcel.

93 Acts, ch 73, §9  
NEW unnumbered paragraph 2

**446.32 Payment of subsequent taxes by purchaser.**

The county treasurer shall provide 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 beginning fourteen days following the date from which an installment becomes delinquent as provided in section 445.37.

93 Acts, ch 73, §10  
Section amended

## CHAPTER 447

### TAX REDEMPTION

#### 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, including the fee for the certificate of purchase, 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 or city is the certificate holder of the parcel redeemed from a sale held under section 446.19, 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 regardless of who is the certificate holder. If a city is the certificate holder of the parcel redeemed from a sale held under section 446.7 or 446.28, the city shall be entitled to the total amount redeemed.

93 Acts, ch 73, §11  
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. Costs shall not be filed with the treasurer prior to the filing of the affidavit. 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. A redemption shall not be considered valid unless received by the treasurer prior to the close of business on the ninetieth day from the date of completed service except in the case of a public bidder certificate held by the county in which case the county may accept a redemption at any time prior to the issuance of the tax deed. 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.

93 Acts, ch 73, §12  
Section amended

## CHAPTER 450

### INHERITANCE TAX

#### 450.4 Exemptions.

The tax imposed by this chapter shall not be collected:

1. When the entire estate of the decedent does not exceed the sum of ten thousand dollars after deducting the liabilities, as defined in this chapter.

2. When the property passes in any manner to societies, institutions or associations incorporated

or organized under the laws of this state for charitable, educational, or religious purposes, and which are not operated for pecuniary profit, or to cemetery associations, including humane societies or to resident trustees for such uses within this state, or to organizations composed wholly of veterans of any war of the United States of America; provided, however, that this exemption shall also include property pass-

ing to any society, institution or association incorporated or organized under the laws of any other state for charitable, educational or religious purposes, and which are not operated for pecuniary profit or to trustees for such uses in such other state if under the laws of such state no tax would be imposed upon the passing of property to such institutions, societies or associations incorporated or organized under the laws of this state or to trustees for such uses in this state or to any organization composed wholly of veterans of any war of the United States of America.

3. When the property passes to public libraries or public art galleries within this state, open to the use of the public and not operated for gain, or to hospitals within this state, or to trustees for such uses within this state, or to municipal corporations for purely public purposes.

4. Bequests for the care and maintenance of the cemetery or burial lot of the decedent or the decedent's family, and bequests not to exceed five hundred dollars in any estate of a decedent for the performance of a religious service or services by some

person regularly ordained, authorized, or licensed by some religious society to perform such service, which service or services are to be performed for or in behalf of the testator or some person named in the testator's last will.

5. On the value of that portion of installment payments which will be includable as net income as defined in section 422.7 as received by a beneficiary under an annuity which was purchased under an employee pension or retirement plan.

6. On property in an individual development account in the name of the decedent that passes to another individual development account, up to ten thousand dollars, or the state human investment reserve pool created in section 541A.4. For purposes of this subsection, "individual development account" means an account that has been certified as an individual development account pursuant to chapter 541A.

93 Acts, ch 97, § 15  
 Subsection 6 is effective January 1, 1994, for decedents dying on or after that date, 93 Acts, ch 97, § 20  
 NEW subsection 6

## CHAPTER 452A

### MOTOR FUEL TAXES

#### 452A.66 Statutes applicable to motor vehicle fuel tax.

The appropriate state agency shall administer the taxes imposed by this chapter in the same manner as and subject to section 422.25, subsection 4 and section 422.52, subsection 3.

All the provisions of section 422.26 shall apply in respect to the taxes, penalties, interest, and costs imposed by this chapter excepting that as applied to any tax imposed by this chapter, the lien therein provided shall be prior and paramount over all subsequent liens upon any personal property within this state, or right to such personal property, belonging to the taxpayer without the necessity of recording as therein provided. The requirements for recording shall, as applied to the tax imposed by this chapter, apply only to the liens upon real property. When requested to do so by any person from whom a taxpayer is seeking credit, or with whom the taxpayer is negotiating the sale of any personal property, or by any other person having a legitimate interest in such information, the director shall, upon being satisfied that such a situation exists, inform such person as to the amount of unpaid taxes due by such taxpayer under the provisions of this chapter. The giving of such information under such circumstances shall not

be deemed a violation of section 452A.63 as applied to this chapter.

Section not amended  
 Unnumbered paragraph 2, reference to transferred section corrected editorially

#### 452A.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 452A.84 directing that certain moneys be transferred or deposited into the marine fuel tax

fund, beginning on July 1, 1991, such moneys shall be deposited into the general fund of the state.

93 Acts, ch 131, §17

Restrictions on use of moneys deposited in state general fund, see § 8 60  
Unnumbered paragraph 3 amended

## CHAPTER 453A

### CIGARETTE AND TOBACCO TAXES

#### 453A.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 appropriated annually from the general fund of the state the sum of one hundred fifteen thousand dollars to carry out the provisions of this section.

93 Acts, ch 180, §13

Unnumbered paragraph 2 amended

## CHAPTER 453B

### EXCISE TAX ON UNLAWFUL DEALING IN CERTAIN SUBSTANCES

#### 453B.16 Notice of conviction.

If a person enters a plea of guilty, or forfeits bail or collateral deposited to secure the person's appearance in court, and the forfeiture is not vacated, or if a person is found guilty upon an indictment or information alleging a violation of this chapter, a copy of the minutes attached to the indictment returned by

the grand jury, or to the county attorney's information, a copy of the judgment and sentence, and a copy of the opinion of the judge if one is filed, shall be sent by the clerk of the district court or the judge to the state department of transportation.

93 Acts, ch 16, §12

NEW section

## CHAPTER 455A

### DEPARTMENT OF NATURAL RESOURCES

#### 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 456A. 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 321G, 456A, 456B, 457A, 461A, 462A, 462B, 464A, 465C, 481A, 481B, 483A, 484A, or 484B.

b. Hear appeals in contested cases pursuant to chapter 17A on matters relating to actions taken by the director under chapter 321G, 456A, 456B, 457A, 461A, 462A, 462B, 464A, 465C, 481A, 481B, 483A, 484A, or 484B.

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 321G, 456A, 456B, 457A, 461A, 462A, 462B, 464A, 481A, 481B, 483A, 484A, and 484B. 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.

f. Approve or disapprove proposals involving the dredging or renovation of lakes; the acquisition, development, and maintenance of boating facilities; and the acquisition, development, and maintenance of recreational facilities associated with recreational boating.

Section not amended

Subsection 1, reference to transferred chapter corrected editorially

#### 455A.8 Brushy Creek recreation area trails advisory board.

1. The Brushy Creek recreation trails advisory board shall be organized within the parks and preserves division of the department and shall be composed of ten members including the following: the director of the department or the director's designee who shall serve as a nonvoting ex officio member, the park ranger responsible for the Brushy Creek recreation area, a member of the state advisory board for preserves established under chapter 465C, a person appointed by the governor, and six persons appointed by the legislative council. Each person appointed by the governor or legislative council must actively participate in recreational trail activities such as hiking, an equestrian sport, or a winter sport at the Brushy Creek recreation area. The voting members shall elect a chairperson at the board's first meeting each year.

2. Each voting member of the board shall serve three years, and shall be eligible for reappointment. However, the park ranger responsible for Brushy Creek shall be replaced by the ranger's successor, and the person representing the state advisory board

for preserves shall serve at the pleasure of the board. The department shall reimburse each member, other than the director or the director's designee and the park ranger, for actual expenses incurred by the member in performance of the duties of the board. A majority of voting members constitutes a quorum, and the affirmative vote of a majority present is necessary for any action taken by the board, except that a lesser number may adjourn a meeting. A vacancy in the membership of the board does not impair the rights of a quorum to exercise all rights and perform all duties of the board. The board shall meet as required, but at least twice a year. The board shall meet upon call of the chairperson, or upon written request of three members of the board. Written notice of the time and place of the meeting shall be given to each member.

3. The board shall advise the department and the natural resource commission regarding issues and recommendations relating to the development and maintenance of trails and related activities at or adjacent to the Brushy Creek recreation area.

93 Acts, ch 176, §41  
Subsection 2 amended

#### **455A.8A Brushy Creek area — trail improvements.**

The department, in cooperation with the Brushy Creek recreation trails advisory board, shall provide for trail improvements in the recreation area and the state preserve adjoining the recreation area. The department shall establish and maintain a system of trails in the recreation area and the preserve. The trails shall be established or maintained to ensure the minimum possible disturbance to the natural terrain and the natural growth of vegetation, including but not limited to trees. The system of trails shall include equestrian and pedestrian trails.

The department in conjunction with the board shall provide for the location, type, and distance of trails, consistent with this section. The pedestrian trails shall be located in view of scenic attractions, including the lake and the valley. The trails shall be established and maintained in areas where hunting is permitted. The department and the board shall plan for the development of the lake shore.

The northern and southern part of the area shall be connected by trails. The northern part of the area shall include an equestrian campground which shall be maintained by the department. Trails shall exist on the eastern and western sides of the lake. An equestrian trail shall extend across the dam. There shall be established convenient road crossings. The southern part of the area shall include an area designed to securely confine horses. The southern part of the area shall also include pedestrian trails. The department shall post signs on the trails, the campground, and at the confinement area.

93 Acts, ch 176, §42  
NEW section

#### **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.

Standing appropriation limited for 1993-1994 fiscal year; 93 Acts, ch 176, §12

Section not amended; footnote updated

#### **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 section 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 456A.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 "a" shall not exceed two million dollars unless a public hearing is held on the project in the area of the state af-

ected by the project. However, on and after July 1, 1994, the following shall apply:

(1) If the total amount appropriated by the general assembly to the resources enhancement and protection fund, in any fiscal year as defined in section 8.36, is seven million dollars or more, not more than seventy-five percent of moneys in the open spaces account shall be allocated or obligated during that fiscal year to support a single project.

(2) If the total amount appropriated by the general assembly to the resources enhancement and protection fund, in any fiscal year as defined in section 8.36, is less than seven million dollars, not more than fifty percent of moneys in the open spaces account shall be allocated or obligated during that fiscal year to support a single 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 465A.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 "a". An appropriation made under this paragraph "a" 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 appointees. 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 12C.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 161C.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.

93 Acts, ch 176, §43  
 Subsection 1, paragraph a amended



## CHAPTER 455B

### JURISDICTION OF DEPARTMENT OF NATURAL RESOURCES

**455B.103A General permits — stormwater discharge — air contaminant sources.**

1. If a permit is required pursuant to this chapter for stormwater discharge or an air contaminant source 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.

5. The enforcement provisions of division II of this chapter apply to general permits for air contaminant sources. The enforcement provisions of division III, part 1 of this chapter, apply to general permits for stormwater discharge.

93 Acts, ch 137, §1

Subsection 1, unnumbered paragraph 1, and subsection 5 amended

**455B.104 Permits issued by the department — approval by default.**

The department shall either approve or deny a permit to a person applying for a permit under this chapter, within six months from the date that the department receives a completed application for the permit. An application which is not approved or denied within the six-month period shall be approved by default. The department shall issue a permit to the applicant within ten days following the date of default approval. However, this section shall not apply to applications for permits which are issued under division II, or division IV, parts 2 through 7.

93 Acts, ch 176, §44

NEW section

**455B.131 Definitions.**

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

1. “*Air contaminant*” means dust, fume, mist, smoke, other particulate matter, gas, vapor (except water vapor), odorous substance, radioactive substance, or any combination thereof.

2. “*Air contaminant source*” means any and all sources of emission of air contaminants whether privately or publicly owned or operated.

Air contaminant source includes, but is not limited to, all types of businesses, commercial and industrial plants, works, shops, and stores, heating and power plants and stations, buildings and other structures of all types including single and multiple family residences, office buildings, hotels, restaurants, schools, hospitals, churches and other institutional buildings, automobiles, trucks, tractors, buses, aircraft, and other motor vehicles, garages, vending and

service locations and stations, railroad locomotives, ships, boats, and other water-borne craft, portable fuel-burning equipment, indoor and outdoor incinerators of all types, refuse dumps and piles, and all stack and other chimney outlets from any of the foregoing.

An air contaminant source does not include a fire truck or other fire apparatus operated by an organized fire department.

3. "Air pollution" means presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities and of such characteristics and duration as is or may reasonably tend to be injurious to human, plant, or animal life, or to property, or which unreasonably interferes with the enjoyment of life and property.

4. "Atmosphere" means all space outside of buildings, stacks or exterior ducts.

5. "Earthen waste slurry storage basin" means an uncovered and exclusively earthen cavity which, on a regular basis, receives waste discharges from a confinement animal feeding operation if accumulated wastes from the basin are completely removed at least twice each year.

6. "Emission" means a release of one or more air contaminants into the outside atmosphere.

7. "Major stationary source" means a stationary air contaminant source which directly emits, or has the potential to emit, one hundred tons or more of an air pollutant per year including a major source of fugitive emissions of a pollutant as determined by rule by the department or the administrator of the United States environmental protection agency.

8. "Person" means an individual, partnership, copartnership, co-operative, firm, company, public or private corporation, political subdivision, agency of the state, trust, estate, joint stock company, an agency or department of the federal government or any other legal entity, or a legal representative, agent, officer, employee or assigns of such entities.

9. "Political subdivision" means any municipality, township, or county, or district, or authority, or any portion, or combination of two or more thereof.

10. "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design as defined in rules adopted by the department.

11. "Schedule and timetable of compliance" means a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with an emission limitation, other limitation, prohibition, or standard.

93 Acts, ch 137, §2

NEW subsection 10 and former subsection 10 renumbered as 11

#### **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, 1991.

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 and to reduce emissions contributing to acid rain pursuant to Title IV of the federal Clean Air Act Amendments of 1990.

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 through January 1, 1991. 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 promulgated 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 through 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 through 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 through January 1, 1991.

(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 ref-

erence 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. a. Adopt rules consistent with the federal Clean Air Act Amendments 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. For sources subject to the provisions of Title IV of the federal Clean Air Act Amendments of 1990, permit conditions shall include emission allowances for sulfur dioxide emissions. 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 Amendments of 1990, Pub. L. No. 101-549. Affected units regulated under Title IV of the federal Clean Air Act Amendments of 1990, Pub. L. No. 101-549, shall pay operating permit fees in the same manner as other sources subject to operating permit requirements, except as provided in 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 Amendments 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.

b. Adopt rules allowing the department to issue a state operating permit to an owner or operator of an air contaminant source. The state operating permit granted under this paragraph may only be issued at the request of an air contaminant source and will be used to limit its potential to emit to less than one hundred tons per year of a criteria pollutant as defined by the United States environmental protection agency or ten tons per year of a hazardous air pollutant or twenty-five tons of any combination of hazardous air pollutants.

93 Acts, ch 137, §3  
Subsections 3 and 8 amended

#### **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 Amendments 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 12C.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 Amendments 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.

Section not amended  
Subsection 1, reference to transferred section corrected editorially

#### **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 including emission allowances for sulfur dioxide emissions for sources subject to Title IV of the federal Clean Air Act

Amendments of 1990. 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.

93 Acts, ch 137, §4  
Subsection 3, paragraph e amended

**455B.146A Criminal action — penalties.**

1. A person who knowingly violates any provision of division II of this chapter, any permit, rule, standard, or order issued under division II of this chapter, or any condition or limitation included in

any permit issued under division II of this chapter, is guilty of an aggravated misdemeanor. A conviction for a violation is punishable by a fine of not more than ten thousand dollars for each day of violation or by imprisonment for not more than two years, or both. If the conviction is for a second or subsequent violation committed by a person under this section, however, the conviction is punishable by a fine of not more than twenty thousand dollars for each day of violation or by imprisonment for not more than four years, or by both.

2. a. A person who knowingly makes any false statement, representation, or certification of any application, record, report, plan, or other document filed or required to be maintained under division II of this chapter, or by any permit, rule, standard, or order issued under division II of this chapter or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under division II of this chapter, or by any permit, rule, standard, or order issued under division II of this chapter, or who knowingly fails to notify or report as required by division II of this chapter or by any permit, rule, standard, or order issued under division II of this chapter, or by any condition or limitation included in any permit issued under division II of this chapter, is guilty of an aggravated misdemeanor punishable by a fine of not more than ten thousand dollars per day per violation or by imprisonment for not more than one year, or by both. If the conviction is for a second or subsequent violation committed by a person under this paragraph, however, the conviction is punishable by a fine of not more than twenty thousand dollars for each day of violation or by imprisonment for not more than two years, or by both.

b. A person who knowingly fails to pay any fee owed the state under any provision of division II of this chapter, or any permit, rule, standard, or order issued under division II of this chapter, is guilty of an aggravated misdemeanor punishable by a fine of not more than ten thousand dollars per day per violation or by imprisonment for not more than six months, or by both. If the conviction is for a second or subsequent violation under this paragraph, however, the conviction is punishable by a fine of not more than twenty thousand dollars for each day of violation or by imprisonment for not more than one year, or by both.

3. A person who negligently releases into the ambient air any hazardous air pollutant or extremely hazardous substance, and who at the time negligently places another person in imminent danger of death or serious bodily injury shall, upon conviction, be punished by a fine of not more than twenty-five thousand dollars for each day of violation or by imprisonment for not more than one year, or by both. If the conviction is for a second or subsequent negligent violation committed by a person under this section, however, the conviction is punishable by a fine of not more than fifty thousand dollars for each day of violation or by imprisonment for not more than two years, or by both.

4. a. A person who knowingly releases into the ambient air any hazardous air pollutant or extremely hazardous substance, and who knows at the time that the conduct places another person in imminent danger of death or serious bodily injury shall, upon conviction, if the person committing the violation is an individual or a government entity, be punished by a fine of not more than fifty thousand dollars per violation or by imprisonment for not more than two years, or by both. However, if the person committing the violation is other than an individual or a government entity, upon conviction the person shall be punished by a fine of not more than one million dollars per violation. If the conviction is for a second or subsequent violation under this paragraph, the conviction is punishable by a fine or imprisonment, or both, as consistent with federal law.

b. In determining whether a defendant who is an individual knew that the violation placed another person in imminent danger of death or serious bodily injury the following shall apply:

(1) The defendant is deemed to have knowledge only if the defendant possessed actual awareness or held an actual belief.

(2) Knowledge possessed by a person other than the defendant, and not by the defendant personally, is not attributable to the defendant. In establishing a defendant's possession of actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative action to be shielded from relevant information.

c. It is an affirmative defense that the conduct was freely consented to by the person endangered and that the danger and conduct were reasonably foreseeable hazards of either of the following:

(1) An occupation, a business, or a profession.

(2) Medical treatment or medical or scientific experimentation conducted by professionally approved methods if the person was made aware of the risks involved prior to providing consent. An affirmative defense under this subparagraph shall be established by a preponderance of the evidence.

d. All general defenses, affirmative defenses, and bars to prosecution that are applicable with respect to other criminal offenses apply under paragraph "a". All defenses and bars to prosecution shall be determined by the courts in accordance with the principles of common law as interpreted, taking into consideration the elements of reason and experience. The concepts of justification and legal excuse, as applicable, may be developed, taking into consideration the elements of reason and experience.

e. As used in this subsection, "*serious bodily injury*" means bodily injury which involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

5. a. Notwithstanding this section, a source required to obtain a permit for construction or modification of a source prior to the date on which the state received delegation of the federal operating permit

program which failed to timely file for the permit is subject to the civil penalty for noncompliance in effect at the time.

b. This subsection does not provide an exception from application of the penalties established under this section for failure of a person to file a timely and complete application for a federal construction permit.

c. This subsection does not provide an exception from application of the penalties established in this section for a person who does not file a timely and complete application for a required permit once notified, in writing, by the department of the noncompliance. A person who does not comply following notification of noncompliance is subject to the criminal penalties established under this section.

93 Acts, ch 137, §5  
NEW section

**455B.147 Failure — procedure.**

1. If the director fails to take action within sixty days after an application for a variance is made, or if the department fails to enter a final order or determination within sixty days after the final argument in hearing on appeal, the person seeking the action may treat the failure to act as a grant of the requested variance, or of a finding favorable to the respondent in hearing on appeal, as the case may be.

2. The section shall not apply to an application for a conditional permit for an electrical power generating facility subject to chapter 476A.

93 Acts, ch 137, §6  
Subsection 2 stricken and former subsection 3 renumbered as 2

**455B.150 Compliance advisory panel.**

A compliance advisory panel shall be created, pursuant to Title V, section 507(e) of the federal Clean Air Act Amendments of 1990, to review and report on the effectiveness of the small business technical assistance program required by the federal Clean Air Act Amendments of 1990, Pub. L. No. 101-549.

93 Acts, ch 137, §7  
NEW section

**455B.151 Moratorium — commercial waste incinerators.**

1. The department shall not grant a permit for the construction or operation of a commercial waste incinerator until such time as the department or the United States environmental protection agency adopts rules which establish safe emission standards for releases of toxic air emissions from commercial waste incinerators.

2. For purposes of this section:

a. "Commercial waste incinerator" means an incinerator which burns waste, at least one-third of which is waste as defined by paragraph "c", and the owner or operator of the incinerator derives at least one-third of its expenditures or profits from the incineration of the waste as defined in paragraph "c". A commercial waste incinerator does not include those facilities that use incineration as an emission control device to comply with the federal Clean Air

Act Amendments of 1990 or those facilities which use incineration only as part of their waste reduction programs for reducing waste produced by that facility.

b. "Incinerator" means any enclosed combustion device including a boiler, an industrial furnace, a waste-to-energy facility, a kiln, and a cogeneration unit.

c. "Waste" means toxic or hazardous waste as identified and included in the consolidated chemical list pursuant to Title III of the federal Superfund Amendments and Reauthorization Act of 1986, or substances which have been treated with a toxic or hazardous waste. "Waste" does not include waste oil which is burned under federal environmental protection agency guidelines for purposes of volume reduction, heat production, or energy cogeneration.

93 Acts, ch 120, §1  
NEW section

**455B.152 through 455B.170 Reserved.**

**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.

For the purpose of imposing liability for violation of a section of this part, or a rule or regulation adopted by the department of natural resources under this part, "person" does not include a person who holds indicia of ownership in contaminated property from which prohibited discharges, deposits, or releases of pollutants into any water of the state have been or are evidenced, if the person has satisfied the requirements of section 455B.381, subsection 7, unnumbered paragraph 2, with respect to the contaminated property, regardless of whether the department has determined that the contaminated property constitutes a hazardous condition site.

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 pretreat-

ment 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. "Viable" means a disposal system or a public water supply system which is self-sufficient and has the financial, managerial, and technical capability to reliably meet standards of performance on a long-term basis, as required by state and federal law, including the federal Water Pollution Control Act and the federal Safe Drinking Water Act.

26. "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.

27. "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.

28. "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.

29. "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.

93 Acts, ch 42, §1  
 \*See 76 Acts, ch 1204  
 Subsection 11, NEW unnumbered paragraph 2

**455B.192 Local government — penalties.**

Notwithstanding sections 331.302, 331.307, 364.3, and 364.22, a city or county may assess a civil penalty for a violation of this division which is equal to the amount the department has assessed for a violation under this division.

93 Acts, ch 137, §8  
 NEW section

**455B.193 through 455B.210 Reserved.**

**455B.305A Local approval of sanitary landfill and infectious waste incinerator projects.**

1. Prior to the siting of a proposed, new sanitary landfill, incinerator, or infectious medical waste incinerator, a city, county, or private agency, shall submit a request for local siting approval to the city council or county board of supervisors which governs the city or county in which the proposed site is to be located. The requirements of this section do not apply to the expansion of an existing sanitary landfill owned by a private agency which disposes of waste which the agency generates on property owned by the agency. The city council or county board of supervisors shall approve or disapprove the site for each sanitary landfill, or incinerator, or infectious medical waste incinerator.

Prior to the siting of a proposed new sanitary landfill or incinerator by a private agency disposing of waste which the agency generates on property owned by the agency which is located outside of the city limits and for which no county zoning ordinance exists, the private agency shall cause written notice of the proposal, including the nature of the proposed facility, and the right of the owner to submit a petition for formal siting of the proposed site, to be

served either in person or by mail on the owners and residents of all property within two miles in each direction of the proposed local site area. The owners shall be identified based upon the authentic tax records of the county in which the proposed site is to be located. The private agency shall notify the county board of supervisors which governs the county in which the site is to be located of the proposed siting, and certify that notices have been mailed to owners and residents of the impacted area. Written notice shall be published in the official newspaper, as selected by the county board of supervisors pursuant to section 349.1, of the county in which the site is located. The notice shall state the name and address of the applicant, the location of the proposed site, the nature and size of the development, the nature of the activity proposed, the probable life of the proposed activity, and a description of the right of persons to comment on the request. If two hundred fifty or a minimum of twenty percent, whichever is less, of the owners and residents of property notified submit a petition for formal review to the county board of supervisors or if the county board of supervisors, on the board's own motion, requires formal review of the proposed siting, the private agency proposal is subject to the formal siting procedures established pursuant to this section.

2. An applicant for siting approval shall submit information to the city council or county board of supervisors to demonstrate compliance with the requirements prescribed by this chapter regarding a sanitary landfill or infectious waste incinerator. Siting approval shall be granted only if the proposed project meets all of the following criteria:

a. The project is necessary to accommodate the solid waste management needs of the area which the project is intended to serve.

b. The project is designed, located, and proposed to be operated so that the public health, safety, and welfare will be protected.

c. The project is located so as to minimize incompatibility with the character of the surrounding area and to minimize the effect on the value of the surrounding property. The city council or county board of supervisors shall consider the advice of the appropriate planning and zoning commission regarding the application.

d. The plan of operations for the project is designed to minimize the danger to the surrounding area from fire, spills, or other operational accidents.

e. The traffic patterns to or from the project are designed in order to minimize the impact on existing traffic flows.

f. Information regarding the previous operating experience of a private agency applicant and its subsidiaries or parent corporation in the area of solid waste management or related activities are made available to the city council or county board of supervisors.

g. The department of natural resources has been consulted by the city council or board of supervisors prior to the approval.

3. No later than fourteen days prior to a request for siting approval, the applicant shall cause written notice of the request to be served either in person or by restricted certified mail on the owners of all property within the proposed local site area not solely owned by the applicant, and on the owners of all property within one thousand feet in each direction of the lot line of the proposed local site property if the proposed local site is within the city limits, or within two miles in each direction of the lot line of the proposed local site property if the proposed local site is outside of the city limits. The owners shall be identified based upon the authentic tax records of the county in which the project is to be located.

Written notice shall be published in the official newspaper of the county in which the site is located. The notice shall state the name and address of the applicant, the location of the proposed site, the nature and size of the development, the nature of the activity proposed, the probable life of the proposed activity, the date when the request for site approval will be submitted, and a description of the right of persons to comment on the request.

4. An applicant shall file a copy of its request with the department and with the city council or the county board of supervisors in which the proposed site is located. The request shall include the substance of the applicant's proposal and all documents, if any, submitted as of that date to the department pertaining to the proposed project. All documents or other materials pertaining to the proposed project on file with the city council or county board of supervisors shall be made available for public inspection at the office of the city council or county board of supervisors and may be copied upon payment of the actual cost of reproduction.

Any person may file written comment with the city council or county board of supervisors concerning the appropriateness of the proposed site for its intended purpose. The city council or county board of supervisors shall consider any comment received or postmarked not later than thirty days after the date of the last public hearing.

5. At least one public hearing shall be held by the city council or county board of supervisors no sooner than ninety days but no later than one hundred twenty days from receipt of the request for siting approval. A hearing shall be preceded by published notice in an official newspaper of the county of the proposed site, including in any official newspaper located in the city of the proposed site. The public hearing shall develop a record sufficient to form the basis of an appeal of the decision.

6. Decisions of the city council or the county board of supervisors shall be in writing, specifying the reasons for the decision. The written decision of the city council or the county board of supervisors shall be available for public inspection at the office of the city council or county board of supervisors and may be copied upon payment of the actual cost of reproduction. Final action shall be taken by the city council or the county board of supervisors within one

hundred eighty days after the filing of the request for site approval.

At any time prior to completion by the applicant of the presentation of the applicant's factual evidence and an opportunity for questioning by the city council or the county board of supervisors and members of the public, the applicant may file not more than one amended application upon payment of additional fees pursuant to subsection 9. The time limitation for final action on an amended application shall be extended for an additional ninety days.

7. Construction of a project which is granted local siting approval under this section shall commence within one calendar year from the date upon which it was granted or the permit shall be nullified. If the local siting decision is appealed, the one-year period shall begin on the date upon which the appeal process is concluded.

8. The local siting approval, criteria, and appeal procedures provided for in this section and in section 455B.305B are the exclusive local siting procedures and appeal procedures. Local zoning, ordinances, or other local land use requirements may be considered in such siting decisions.

9. A city council or a county board of supervisors shall charge an applicant for siting approval, under this section, a fee to cover the reasonable and necessary costs incurred by the city or county in the siting approval process.

10. An applicant shall not file a request for local siting approval which is substantially the same as a request which was denied within the preceding two years pursuant to a finding against the applicant under the established criteria.

Moratorium and other provisions relating to permits for commercial infectious waste treatment and disposal facilities, see § 455B 503, 91 Acts, ch 242, § 7, 92 Acts, ch 1182, § 6, and 93 Acts, ch 103, § 2

Section not amended, footnote updated

### **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 city, county, or private agency which files a comprehensive plan to operate a sanitary landfill under section 455B.306 and which accepts solid waste from a service area not included in but contiguous to the service area included in the comprehensive plan, shall charge a tonnage fee for the disposal of that solid waste which is at least the amount of the current tonnage fee charged by the sanitary landfill representing the receiving service area or the sanitary landfill representing the service area from which the solid waste originated, whichever amount is

greater. A sanitary landfill which accepts solid waste from a service area not included in and not contiguous to the service area included in the comprehensive plan shall charge a tonnage fee for the disposal of the solid waste which is three hundred percent of the fee otherwise established in this section. The additional fee charged and the moneys collected shall be used in accordance with section 455E.11, subsection 2, paragraph "a", subparagraph (11), subparagraph subdivision (b).

b. In addition to the tonnage fee amounts imposed under this subsection, 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 as provided in section 455E.11, subsection 2, paragraph "a", subparagraph (12).

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. *a.* Notwithstanding the tonnage fee schedule prescribed under subsection 2, foundry sand used by a sanitary landfill as daily cover, road base, or berm material or for other purposes defined as beneficial uses by rule of the department is exempt from imposition of the tonnage fee imposed under this section.

*b.* Sanitary landfills shall use foundry sand for beneficial uses as defined by rule of the department as a replacement for earthen material, if the foundry sand is generated by a foundry located within the state and if the foundry sand is provided to the sanitary landfill at no cost to the sanitary landfill.

93 Acts, ch 176, §45

Subsection 2, paragraph b stricken and rewritten

### 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 4, 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 administrator 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.

"*Person having control over a hazardous substance*" does not include a person who holds indicia of ownership in a hazardous condition site, if the person satisfies all of the following:

*a.* Holds indicia of ownership primarily to protect that person's security interest in the hazardous condition site, where the indicia of ownership was acquired either for the purpose of securing payment of a loan or other indebtedness, or in the course of protecting the security interest. The term "*primarily to protect that person's security interest*" includes, but is not limited to, ownership interests acquired as a consequence of that person exercising rights as a security interest holder in the hazardous condition site, where the exercise is necessary or appropriate to protect the security interest, to preserve the value of the collateral, or to recover a loan or indebtedness secured by the interest. The person holding indicia of ownership in a hazardous condition site and who acquires title or a right to title to the site upon default under the security arrangement, or at, or in lieu of, foreclosure, shall continue to hold the indicia of ownership primarily to protect that person's security interest so long as the subsequent actions of the person with respect to the site are intended to protect the collateral secured by the interest, and demonstrate that the person is seeking to sell or liquidate the secured property rather than holding the property for investment purposes.

*b.* Does not exhibit managerial control of, or managerial responsibility for, the daily operation of the hazardous condition site through the actual, direct, and continual or recurrent exercise of managerial control over the hazardous condition site in which that person holds a security interest, which managerial control materially divests the borrower, debtor, or obligor of control.

*c.* Has taken no subsequent action with respect to the site which causes or exacerbates a release or threatened release of a 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.

93 Acts, ch 42, §2

Subsection 7, NEW unnumbered paragraph 2

#### 455B.392 Liability for cleanup costs.

1. A person having control over a hazardous substance is strictly liable to the state for all of the following:

a. The reasonable cleanup costs incurred by the state as a result of the failure of the person to clean up a hazardous substance involved in a hazardous condition caused by that person.

b. The reasonable costs incurred by the state to evacuate people from the area threatened by a hazardous condition caused by the person.

c. The reasonable damages to the state for the injury to, destruction of, or loss of natural resources resulting from a hazardous condition caused by that person including the costs of assessing the injury, destruction, or loss.

d. The excessive and extraordinary cost, excluding salaries, incurred by the department in responding at and to the scene of a hazardous condition caused by that person.

If the failure is willful, the person is liable for punitive damages not to exceed triple the cleanup costs incurred by the state. Prompt and good faith notification to the director by the person having control over a hazardous substance that the person does not have the resources or managerial capability to begin or continue cleanup, or a good faith effort to clean up, relieves the person of liability for punitive damages, but not for actual cleanup costs. The director shall keep a record of all expenses incurred in carrying out a project or activity authorized by this part.

Claims by the state under this subsection may be appealed to the commission by the person filing a written notice of appeal within thirty days after receipt of the bill.

2. Liability under subsection 1 is limited to the following maximum dollar limitations:

a. Five million dollars for any vehicle, boat, aircraft, pipeline, or other manner of conveyance which transports a hazardous substance.

b. Fifty million dollars for any facility generating, storing, or disposing of a hazardous substance.

3. There is no liability under this section for a person otherwise liable if the hazardous condition is solely resulting from one or more of the following:

a. An act of God.

b. An act of war.

c. An act or omission of a third party if the person establishes both of the following:

(1) That taking into consideration the characteristics of the hazardous substance, the person otherwise liable exercised due care with respect to the hazardous substance.

(2) That the person otherwise liable took precautions against the foreseeable acts or omissions of the third party and the foreseeable consequences.

As used in this paragraph, "third party" does not include an employee or agent of the person otherwise liable or a third party whose act or omission occurs directly or indirectly in connection with a contractual relationship with the person otherwise liable.

4. There is no liability under this section for a person otherwise liable if all of the following conditions exist:

a. The liability arises during the transportation of a hazardous substance.

b. The fact that the hazardous substance is a hazardous substance has been misrepresented to the person transporting the hazardous substance.

c. The person transporting the hazardous substance does not know or have reason to know that the misrepresentation has been made.

5. Money collected pursuant to this section shall be deposited in the hazardous waste remedial fund created in section 455B.423 and used in the manner permitted for the fund.

6. This section does not deny any person any legal or equitable rights, remedies or defenses or affect any legal relationship other than the legal relationship between the state and a person having control over a hazardous substance pursuant to subsection 1.

7. a. There is no liability under this section for a person who has satisfied the requirements of section 455B.381, subsection 7, unnumbered paragraph 2, regardless of when that person acquired title or right to title to the hazardous condition site, except that a person otherwise exempt from liability under this subsection shall be liable to the state for the lesser of:

(1) The total reasonable cleanup costs incurred by the state to clean up a hazardous substance at the hazardous condition site; or

(2) The amount representing the postcleanup fair market value of the property comprising the hazardous condition site.

b. Liability under this subsection shall only be imposed when the person holds title to the hazardous condition site at the time the state incurs reasonable cleanup costs.

c. For purposes of this subsection, "postcleanup fair market value" means the actual amount of consideration received by such person upon sale or transfer of the hazardous condition site which has been cleaned up by the state to a bona fide purchaser for value.

d. Cleanup expenses incurred by the state shall

be a lien upon the real estate constituting the hazardous condition site, recordable and collectable in the same manner as provided for in section 424.11, subject to the terms of this subsection. The lien shall attach at the time the state incurs expenses to clean up the hazardous condition site. The lien shall be valid as against subsequent mortgagees, purchasers, or judgment creditors, for value and without notice of the lien, only when a notice of the lien is filed with the recorder of the county in which the property is located. Upon payment by the person to the state, of the amount specified in this subsection, the state shall release the lien. If no lien has been recorded at the time the person sells or transfers the property, then the person shall not be liable for any cleanup costs incurred by the state.

93 Acts, ch 42, §3  
NEW subsection 7

#### 455B.418 Enforcement.

1. If the director has substantial evidence that a person has violated or is violating a provision of sections 455B.411 to 455B.421, or of a rule or standard established or permit issued pursuant to sections 455B.411 to 455B.421:

a. The director may issue an order directing the person to desist in the practice that constitutes the violation or to take corrective action as necessary to ensure that the violation will cease. The person to whom the order is issued may commence a contested case within the meaning of chapter 17A by filing with the director within thirty days of receipt of the order a notice of appeal to the commission. On appeal, the commission may affirm, modify or vacate the order of the director.

b. If it is determined by the director that an emergency exists, the director may issue without notice or hearing an order necessary to terminate the emergency. The order shall be binding and effective immediately and until the order is modified or vacated at a hearing before the commission or by a court. "Emergency" as used in this subsection means a situation where the handling, storage, treatment, transportation or disposal of a hazardous waste is presenting an imminent and substantial threat to human health or the environment.

c. When the director determines that a disposal site contains hazardous waste in an amount and under conditions that cause an imminent threat to human health and that the person responsible for the site will not properly and promptly remove the waste or eliminate the threat, the director may take action as necessary to remove the waste or permanently alleviate or eliminate the threat to human health. The costs of removing the waste or alleviating or eliminating the threat shall be recovered from the person responsible for the disposal site.

d. The director with the approval of the commission, may request the attorney general to institute legal proceedings pursuant to subsection 2 of this section.

2. The attorney general shall, at the request of the director pursuant to paragraph "d" of subsection

1 of this section, institute legal proceedings, including an action for an injunction, necessary to enforce the penalty provisions of sections 455B.411 to 455B.421 or to obtain compliance with said sections or a rule promulgated or a condition of a permit or order issued under said sections.

3. In a case arising from the violation of an order issued under subsection 1, paragraph "a" of this section, the burden of proof shall be on the state to show that the time specified in the order within which the individual must take corrective action is reasonable.

4. For the purpose of determining violations under this section and section 455B.417, the term "person" does not include a person who holds indicia of ownership in the hazardous waste or hazardous substance disposal site which contains a hazardous waste or hazardous substance, or where hazardous substances or wastes are treated, stored, or disposed of, if such person has satisfied the requirements of section 455B.381, subsection 7, unnumbered paragraph 2, with respect to the disposal site, whether or not the director has determined that such disposal site constitutes a hazardous condition site.

93 Acts, ch 42, §4  
NEW subsection 4

#### 455B.471 Definitions.

As used in this part unless the context otherwise requires:

1. "Board" means the Iowa comprehensive petroleum underground storage tank fund board.

2. "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 purpose of repairing a leak or removal of a tank, removal of contaminated soil, disposal or processing of contaminated soil, and cleansing of groundwaters or surface waters. Corrective action does not include replacement of an underground storage tank. Corrective action specifically excludes third-party liability.

3. "Fund" means the Iowa comprehensive petroleum underground storage tank fund.

4. "Nonoperational storage tank" means an underground storage tank in which regulated substances will not be deposited or from which regulated substances will not be dispensed after July 1, 1985.

5. "Operator" means a person in control of, or having responsibility for, the daily operation of the underground storage tank.

6. a. "Owner" means:

(1) In the case of an underground storage tank in use on or after July 1, 1985, a person who owns the underground storage tank used for the storage, use, or dispensing of regulated substances.

(2) In the case of an underground storage tank in use before July 1, 1985, but no longer in use on that date, a person who owned the tank immediately before the discontinuation of its use.

b. "Owner" does not include a person who holds indicia of ownership in the underground storage tank or the tank site property if all of the following apply:

(1) The person holds indicia of ownership primarily to protect that person's security interest in the underground storage tank or tank site property, where such indicia of ownership was acquired either for the purpose of securing payment of a loan or other indebtedness, or in the course of protecting the security interest. The term "*primarily to protect that person's security interest*" includes but is not limited to ownership interests acquired as a consequence of that person exercising rights as a security interest holder in the underground storage tank or tank site property, where such exercise is necessary or appropriate to protect the security interest, to preserve the value of the collateral, or to recover a loan or indebtedness secured by such interest. The person holding indicia of ownership in the underground storage tank or tank site property and who acquires title or a right to title to such underground storage tank or tank site property upon default under the security arrangement, or at, or in lieu of, foreclosure, shall continue to hold such indicia of ownership primarily to protect that person's security interest so long as subsequent actions taken by that person with respect to the underground storage tank or tank site property are intended to protect the collateral secured by the interest, and demonstrate that the person is seeking to sell or liquidate the secured property rather than holding the property for investment purposes.

(2) The person does not exhibit managerial control of, or managerial responsibility for, the daily operation of the underground storage tank or tank site property through the actual, direct, and continual or recurrent exercise of managerial control over the underground storage tank or tank site property in which that person holds a security interest, which managerial control materially divests the borrower, debtor, owner or operator of the underground storage tank or tank site property of such control.

(3) The person has taken no subsequent action with respect to the site which causes or exacerbates a release or threatened release of a hazardous substance.

7. "*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).

8. "*Regulated substance*" means an element, compound, mixture, solution or substance which, when released into the environment, may present substantial danger to the public health or welfare or the environment. Regulated substance includes substances designated in 40 C.F.R., Parts 61 and 116, and section 401.15, and petroleum including crude oil or any fraction of crude oil which is liquid at standard conditions of temperature and pressure (sixty degrees Fahrenheit and fourteen and seven-tenths pounds per square inch absolute). However, regulated substance does not include a substance regulated as a hazardous waste under the Resource Conservation and Recovery Act of 1976. Substances may be

added or deleted as regulated substances by rule of the commission pursuant to section 455B.474.

9. "*Release*" means spilling, leaking, emitting, discharging, escaping, leaching, or disposing of a regulated substance, including petroleum, from an underground storage tank into groundwater, surface water, or subsurface soils.

10. "*Tank site*" means a tank or grouping of tanks within close proximity of each other located on the facility for the purpose of storing regulated substances.

11. "*Underground storage tank*" means one or a combination of tanks, including underground pipes connected to the tanks which are used to contain an accumulation of regulated substances and the volume of which, including the volume of the underground pipes, is ten percent or more beneath the surface of the ground. Underground storage tank does not include:

a. Farm or residential tanks of one thousand one hundred gallons or less capacity used for storing motor fuel for noncommercial purposes.

b. Tanks used for storing heating oil for consumptive use on the premises where stored.

c. Residential septic tanks.

d. Pipeline facilities regulated under the Natural Gas Pipeline Safety Act of 1968, as amended to January 1, 1985 (49 U.S.C. § 1671 et seq.), the Hazardous Liquid Pipeline Safety Act of 1979, as amended to January 1, 1985 (49 U.S.C. § 2001 et seq.), or an intrastate pipeline facility regulated under chapter 479.

e. A surface impoundment, pit, pond, or lagoon.

f. A storm water or wastewater collection system.

g. A flow-through process tank.

h. A liquid trap or associated gathering lines directly related to oil or gas production and gathering operations.

i. A storage tank situated in an underground area including, but not limited to, a basement, cellar, mineworking, drift, shaft, or tunnel if the storage tank is situated upon or above the surface of the floor.

Underground storage tank does not include pipes connected to a tank described in paragraphs "a" to "i".

93 Acts, ch 42, §5

Subsection 6, former unnumbered paragraph 1 editorially lettered as paragraph a and former paragraphs a and b renumbered as subparagraphs (1) and (2)

Subsection 6, former unnumbered paragraph 2 stricken and rewritten and lettered as paragraph b

#### **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 and notify the general assembly of the submission of the proposed rules pursuant to section 7A.11 and the commission shall adopt rules by January 15, 1994. The department shall not grant permits

for the construction or operation of a commercial infectious waste treatment or disposal facility until the commission has adopted the required rules, and in no event earlier than July 1, 1994.

93 Acts, ch 103, §1

Conditions for the construction or operation of facilities, existing facilities to comply by July 1, 1995, facilities which are established or become operational on or after May 1, 1991, to comply with standards and limitations as they are adopted, 90 Acts, ch 1191, §5, 91 Acts, ch 242, §7, 92 Acts, ch 1182, §6, 93 Acts, ch 103, §2

Section amended

## CHAPTER 455D

### WASTE VOLUME REDUCTION AND RECYCLING

#### **455D.16 Packaging products — recycling — prohibition of polystyrene products.**

The department, in cooperation with businesses involved in the manufacturing and use of packaging products or food service items, shall establish a recycling program to increase the recycling of packaging products or food service items by twenty-five percent

by July 1, 1993, and by fifty percent by July 1, 1994. If the recycling goals are not reached, beginning January 1, 1996, a person shall not manufacture, offer for sale, sell, or use any polystyrene packaging products or food service items in this state.

93 Acts, ch 180, §98

Section 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 12C.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 7A.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 assistance division.

(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 assistance division 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 ground-water 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 implement demonstration projects for landfill alterna-

tives 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 assistance division 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 ground-water 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 be-

ginning 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 assistance division 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) Each additional seventy-five cents per ton per year received from the additional tonnage fee imposed pursuant to section 455B 310, subsection 2, paragraph "b", shall be allocated for the following purposes

(a) 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 subdivision 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 transfer existing contracts to one or more community colleges or councils of governments and shall

revise the criteria and rules for this program to allow community colleges or councils of governments to be applicants for competitive grants.

(b) 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 populations 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.

(c) Twelve and one-half cents per ton per year is appropriated to the department of natural resources 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.

(d) 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.

(e) Five cents per ton per year 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.

(f) Eight cents per ton per year is appropriated to the department of natural resources for the provision of assistance to public and private entities in developing and implementing waste reduction and minimization programs for Iowa industries.

(g) The remaining moneys are appropriated to the department of natural resources to be used in accordance with subparagraph (8), subparagraph subdivision (b), subparagraph subdivision subparts (ii) through (iv).

(13) 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.

(14) 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 management 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.

(15) Notwithstanding the limitations of use of the fees imposed under section 455B.310 and retained by a city, county, public agency, or private agency under this section, moneys retained by the city, county, public agency, or private agency may be used to defray the cost of installation of a scale at a sanitary landfill or to defray the costs of closure of the sanitary landfill, the costs related to the establishment of a transfer station, or the costs of a hydrogeological plan.

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 period 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 hun-

dred 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 161B 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.

93 Acts, ch 176, §46

\*Section 93 11 repealed by 86 Acts, ch 1249, § 7, effective July 1, 1992, see § 473 11

Subsection 2, paragraph a, NEW subparagraph (12) and former subparagraphs (12) through (14) renumbered as (13) through (15)

## CHAPTER 455G

COMPREHENSIVE PETROLEUM  
UNDERGROUND STORAGE TANK FUND**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.

e. The director of the legislative fiscal bureau, or the director's designee. The director under this paragraph shall not participate as a voting member of the board.

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 prac-

tice 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 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.

g. The board shall adopt rules relating to appeal procedures which shall require the administrator to deliver notice of appeal to the affected parties within fifteen days of receipt of notice, require that the hearing be held within one hundred eighty days of the filing of the petition unless good cause is shown for the delay, and require that a final decision be issued no later than one hundred twenty days following the close of the hearing. The time restrictions in this paragraph may be waived by mutual agreement of the parties.

4. *Public bid.* All contracts entered into by the board, including contracts relating to community remediation, shall be awarded on a competitive basis to the maximum extent practical. In those situations where it is determined that public bidding is not practical, the basis for the determination of impracticability shall be documented by the board or its designee. This subsection applies only to contracts entered into on or after July 1, 1992.

5. *Contract approval.*

a. The board shall approve any contract entered into pursuant to this chapter if the cost of the contract exceeds seventy-five thousand dollars.

b. A listing of all contracts entered into pursuant to this chapter shall be presented at each board

meeting and shall be made available to the public. The listing shall state the interested parties to the contract, the amount of the contract, and the subject matter of the contract.

c. The board shall be required to review and approve or disapprove the administrator's failure to approve a contract under section 455G.12A. Review by the board shall not be required for cancellation or replacement of a contract for a site included in a community remediation project or when an emergency situation exists.

93 Acts, ch 155, §1  
Subsection 3, NEW paragraph g

#### 455G.9 Remedial program.

1. *Limits of remedial account coverage.* Monies 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 responsi-

bility 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, 1984, 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 action 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 moneys 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. 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.

f. 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.

g. 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 December 31, 1975.

(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 October 26, 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.

h. 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.

i. Notwithstanding section 455G.1, subsection 2, corrective action, for a release which was tested prior to October 26, 1990, and for which the site was issued a no-further-action letter by the department of natural resources and which was later determined, due to sale of the property or removal of a nonoperating tank, to require remediation which was reported to the administrator by October 26, 1992, in an amount as specified in subsection 4. In order to qualify for benefits under this paragraph, the applicant must not have operated a tank on the property during the period of time for which the applicant owned the property and the applicant must not be a financial institution.

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 ac-

quired 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 operator" 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.

93 Acts, ch 155, §2-4

Subsection 1, paragraph a, subparagraph (3), unnumbered paragraph 1 amended

Subsection 1, paragraph g amended

Subsection 1, NEW paragraph 1

#### 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.

The benefits under this section shall be available

to small businesses entering into the petroleum business.

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 assign-

ment 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.

93 Acts, ch 155, §5  
 Subsection 3, NEW unnumbered paragraph 2

**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 January 1, 1995, provided that prior to the provision

of insurance account coverage, the tank site tests release free. An owner or operator who fails to comply as certified to the board on or before January 1, 1995, shall not insure that tank through the insurance account unless and until the tank satisfies the requirements of paragraph "a" or "b". An owner or operator who fails to comply with either paragraph "a" or "b" by October 26, 1993, or who fails to enter into a contract on or before October 26, 1993, which, upon completion, will bring the owner or operator into compliance with either paragraph "a" or "b" by January 1, 1995, shall pay an additional surcharge of four hundred dollars per tank, per insured time period.

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, in accordance with the following:

(1) For a tank satisfying subsection 3, paragraph "a" or "b", three hundred dollars per tank.

(2) For a tank qualifying under subsection 3, paragraph "c", six hundred dollars per tank.

f. For the period from July 1, 1994, through December 31, 1994, in accordance with the following:

(1) For a tank satisfying subsection 3, paragraph "a" or "b", three hundred fifty dollars per tank.

(2) For a tank qualifying under subsection 3, paragraph "c", seven hundred dollars per tank.

g. For subsequent time periods, 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 fac-

tor 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.

*h.* 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 the period from July 1, 1994, through December 31, 1994, three hundred fifty dollars per insured tank.

(5) For subsequent time periods, 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.

(6) 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), (3), and (4).

*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 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.

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 coverage is purchased for any part of a year, the purchaser shall pay the full annual premium.

After December 31, 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.

93 Acts, ch 155, §6-9

Subsection 3, paragraph c amended

Subsection 4 amended

Subsection 6, paragraph b amended

Subsection 10, paragraph c amended

#### 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. The rules shall include provisions for suspension or revocation of registration for good cause.

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.

93 Acts, ch 155, §10  
Subsection 1 amended

## CHAPTER 456A

### REGULATION AND FUNDING — NATURAL RESOURCES DEPARTMENT

#### 456A.24 Specific powers.

The department is hereby authorized and empowered to:

1. Expend, as authorized by the general assembly under section 456A.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 481A.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 harvesting 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 1 or extend beyond November 1. A person violating this section or rules adopted by the department pursuant to this section is subject to a scheduled fine pursuant to section 805.8.

12. Adopt rules authorizing officers and employ-

ees of the department who are peace officers to issue warning citations for violations of this chapter and chapters 321G, 350, 456B, 457A, 461A through 461C, 462A, 462B, 463B, 464A, 465A through 465C, 481A, 481B, 482, 483A, 484A, and 484B.

13. Apply to any appropriate agency or officer of the United States government to participate in or receive aid from any federal program relating to forests or forestry management. The department may enter into contracts and agreements with the United States government or an appropriate agency of the United States government as necessary to secure funding for the acquisition, development, improvement, and management of forests and forestry resources and to provide funds or assistance to local governments or private citizens involved in forestry management. In connection with obtaining the benefits of a forestry program, the director shall coordinate the department's activities with and represent the interests of all state agencies and the political subdivisions of the state having interests in forests or forestry management.

93 Acts, ch 13, §1, 93 Acts, ch 38, §1  
 Subsection 11 amended  
 NEW subsection 13

## CHAPTER 461A

### PUBLIC LANDS AND WATERS

#### 461A.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 su-

pervisors 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 devel-

opment for the expenditure of these funds for this purpose.

4. Notwithstanding any other provision of law, beginning on July 1, 1991, 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.

93 Acts, ch 131, §18  
Restrictions on use of moneys deposited in state general fund, see § 8 60  
Subsection 4 amended

## CHAPTER 468

### LEVEE AND DRAINAGE DISTRICTS AND IMPROVEMENTS

#### 468.327 Trustee control.

A district formed pursuant to this part, under the control of a city council, may be placed under the control and management of a board of trustees as provided in subchapter III of this chapter. Each trustee shall be a citizen of the United States not less than eighteen years of age and a bona fide owner of benefited land in the district for which the trustee is elected. If the owner is a family farm corporation as defined by section 9H.1, subsection 8, a business corporation organized and existing under chapter 490 or 491, or a partnership, a stockholder or officer authorized by the corporation or a general partner may be elected as a trustee of the district.

93 Acts, ch 126, §4  
Section amended

#### 468.506 Eligibility of trustees.

Each trustee shall be a citizen of the United States not less than eighteen years of age, and one of the following:

1. The bona fide owner of agricultural land in the election district for which the trustee is elected, and a resident of the county in which that district is located or of a county which is contiguous to or corners on that county.

2. The bona fide owner of nonagricultural land in the election district for which the trustee is elected, and a resident of that district. This subsection applies only when the election district is wholly within the corporate limits of a city.

3. A stockholder of a family farm corporation as defined in section 9H.1, subsection 8, which owns land in the election district who is a resident of the county in which that district is located or of a county which is contiguous to or corners on that county.

4. In a district which is a levee and drainage dis-

trict which has eighty-five percent of its acreage within the corporate limits of a city and has been under the control of a city under subchapter II, part 3, a bona fide owner of benefited land in the district. If the owner is a family farm corporation as defined by section 9H.1, subsection 8, a business corporation organized and existing under chapter 490 or 491, or a partnership, a stockholder or officer authorized by the corporation or a general partner may be elected as a trustee of the district.

93 Acts, ch 126, §5  
Subsection 4 amended

#### 468.589 Rates and charges for services and connection.

If a county and city have entered into an agreement pursuant to chapter 28E to create an urban drainage district, the county or city or both may, to the extent and in the manner provided in the agreement, establish, impose, adjust, and provide for the collection of rates to produce gross revenues at least sufficient to pay the expenses of operation and maintenance of a drainage improvement against property within the district and establish, impose, adjust, and provide for the collection of charges for connection to a drainage improvement. Rates and charges must be established by ordinance of the governing body of the county or city imposing the rates or charges. Rates or charges for the services of and connection to the drainage improvement if not paid as provided by the ordinance of the governing body, are a lien upon the premises served or benefited by that improvement and may be certified to the county treasurer and collected in the same manner as other taxes.

93 Acts, ch 73, §13  
Section amended



## CHAPTER 470

### LIFE CYCLE COST ANALYSIS OF PUBLIC FACILITIES

#### **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 7D.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 recommendations 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 7D.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.

Section not amended  
Unnumbered paragraph 2, reference to transferred section corrected editorially

## CHAPTER 473

### ENERGY DEVELOPMENT AND CONSERVATION

#### **473.11 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 United States department of energy 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 12C.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 paragraph directing that moneys be deposited into the energy research and development fund, beginning July 1, 1991, all moneys shall be deposited into the general fund of the state.

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 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, after consultation with the majority leader and the minority leader 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 do all of the following:

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 federal court decisions finding oil companies in violation of federal petroleum pricing regulations shall be expended expeditiously, until all the receipts are depleted 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 moneys from the fund in the trust for other projects only if the projects meet 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.

d. The projects meet the guidelines for allowable projects under the petroleum violation settlement agreement expenditure plan approved by the United

States department of energy.

93 Acts, ch 11, § 1 3, 93 Acts, ch 131, § 19  
Restrictions on use of energy research and development moneys deposited in state general fund, see § 8 60

Section repealed June 30, 2000, 93 Acts, ch 11, § 3  
This section is a successor to former §93 11 and applies retroactively to June 30, 1992, 93 Acts, ch 11, § 2

NEW section  
Subsection 1, paragraph f, unnumbered paragraph 2 amended

## CHAPTER 476

### PUBLIC UTILITY REGULATION

#### 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 customers served by the public utility no more than sixty-two days prior to and prior to the time the applica-

tion 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 outlining 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 evaluation may review the reasonableness and prudence of actions taken by a rate-regulated public utility to comply with the federal Clean Air Act Amendments of 1990, Pub. L. No. 101-549. 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 and allowance transaction costs, the board shall not allow the utility to recover from its customers fuel and allowance transaction costs in excess of those costs that would be or would have been 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 mo-

tion. 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 intrastate 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 en-

ergy 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.

93 Acts, ch 68, §1  
Subsection 16 amended

#### **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 476.77, 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. Beginning on July 1, 1991, 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, beginning on July 1, 1991, 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.

93 Acts, ch 131, §20, 21  
 Restrictions on use of moneys deposited in state general fund, see § 8 60  
 Availability of general fund for payment of expenses, see 91 Acts, ch 264,  
 § 905, 93 Acts, ch 131, § 28  
 Unnumbered paragraph 1, internal reference corrected editorially  
 Unnumbered paragraphs 4 and 8 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, hard-of-hearing, 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.

93 Acts, ch 75, §6  
 Section amended

## CHAPTER 481A

### WILDLIFE CONSERVATION

#### 481A.1 Definitions.

Words and phrases as used in this chapter and chapters 350, 456A, 456B, 457A, 461A through 461C, 462A, 462B, 463B, 464A, 465A through 465C, 481B, 482, 483A, 484A, and 484B and such other chapters as relate to the subject matter of these chapters shall be construed as follows:

1. "Alien" shall not be construed to mean any person who has applied for naturalization papers.
2. "Amphibian" means a member of the class Amphibia.
3. "Aquaculture" means the controlled propagation, growth, and harvest of aquatic organisms, in-

cluding, but not limited to fish, amphibians, reptiles, mollusks, crustaceans, gastropods, algae, and other aquatic plants, by an aquaculturist.

4. "Aquaculture unit" means all private waters for aquaculture with or without buildings, used for the purpose of propagating, raising, holding, or harvesting aquatic organisms for commercial purposes.

5. "Aquaculturist" means an individual involved in producing, transporting, or marketing aquatic products from private waters for commercial purposes.

6. "Bag limit" or "possession limit" is the number of any kind of game, fish, bird or animal or other

wildlife form permitted to be taken or held in a specified time.

7. "Bait" includes, but is not limited to, minnows, green sunfish, orange-spotted sunfish, gizzard shad, frogs, crayfish, salamanders, and mussels.

8. "Biological balance" means that condition when the number of animals present over the long term is at or near the number of animals of a particular species that the available habitat is capable of supporting.

9. "Bird" means a member of the class Aves.

10. "Buy" means to purchase, offer to purchase, barter for, trade for, or lease.

11. "Closed season" is that period of time during which hunting, fishing, trapping or taking is prohibited.

12. "Commercial purposes" means selling, giving, or furnishing to others.

13. "Commission" means the natural resource commission.

14. "Contraband" as used in the laws pertaining to the work of the commission shall mean anything, the possession of which was illegally procured, or the possession of which is unlawful.

15. "Department" means the department of natural resources.

16. "Director" means the director of the department or the director's designee.

17. "Fish" means a member of the class Pisces.

18. "Frog" means a member of the order Anura.

19. "Fur-bearing animals" means the following which are declared to be fur-bearing animals for the purpose of regulation and protection under the Code: beaver, badger, mink, otter, muskrat, raccoon, skunk, opossum, spotted skunk or civet cat, weasel, coyote, bobcat, wolf, groundhog, red fox, and gray fox. This chapter does not apply to domesticated fur-bearing animals.

20. "Game" means all of the animals specified in this subsection except those designated as not protected, and includes the heads, skins, and any other parts, and the nests and eggs of birds and their plumage.

a. The Anatidae: such as swans, geese, brant, and ducks.

b. The Rallidae: such as rails, coots, mudhens, and gallinules.

c. The Limicolae: such as shorebirds, plovers, surfbirds, snipe, woodcock, sandpipers, tattlers, godwits, and curlews.

d. The Gallinae: such as wild turkeys, grouse, pheasants, partridges, and quail.

e. The Columbidae: such as mourning doves and wild rock doves only.

f. The Scuridae: such as gray squirrels and fox squirrels.

g. The Leporidae: cottontail rabbits and jackrabbits only.

h. The Cervidae: such as deer and elk.

21. "Measurement of fish" is the length from end of nose to longest tip of tail.

22. "Minnows" means chubs, suckers, shiners,

dace, stonerollers, mud minnows, redhorse, bluntnose, and fathead minnows.

23. "Mussels" means the pearly fresh water mussels, clams or naiads, and their shells.

24. "Open season" is that period of time during which hunting, fishing, trapping or taking is permitted.

25. "Person" shall mean any person, firm, partnership or corporation.

26. "Possession" is both active and constructive possession and any control of things referred to.

27. "Private waters for aquaculture" means waters confined within an artificial containment, such as man-made ponds, vats, tanks, raceways, and other indoor or outdoor facilities constructed wholly within or on the land of an owner or lessee and used for aquaculture.

28. "Reptile" means a member of the class Reptilia.

29. "Sell" or "sale" is selling, bartering, exchanging, offering or exposing for sale.

30. "Spawn" means any of the eggs of any fish, amphibian, or mussel.

31. "Take" or "taking" or "attempting to take" or "hunt" is any pursuing, or any hunting, fishing, killing, trapping, snaring, netting, searching for or shooting at, stalking or lying in wait for any game, animal, bird, or fish protected by the state laws or rules adopted by the commission whether or not such animal be then subsequently captured, killed, or injured.

32. "Transport" or "transportation" is all carrying or moving or causing to be carried or moved.

33. "Turtle" means any member of the order Testudines.

34. "Wild animal" means a wild mammal, bird, fish, amphibian, reptile, or other wildlife found in this state, whether game or nongame, migratory or nonmigratory, the ownership and title to which is claimed by this state.

35. "Wild mammal" means a member of the class Mammalia.

93 Acts, ch 99, §1

NEW subsection 7 and former subsections 7 20 renumbered as 8-21

NEW subsection 22 and former subsections 21 33 renumbered as 23 35

#### 481A.24 Use of mobile transmitter prohibited — exception.

A person who is hunting shall not use a mobile radio transmitter to communicate the location or direction of game or fur-bearing animals or to coordinate the movement of other hunters. This section does not apply to the hunting of coyotes except during the shotgun deer season as set by the commission under section 481A.38.

93 Acts, ch 119, §1

Section amended

#### 481A.42 Nongame protected — exclusion.

Protected nongame species include wild fish, wild birds, wild bats, wild reptiles, and wild amphibians, an egg, a nest, a dead body or part of a dead body, and a product made from part of a body of a wild

fish, wild bird, wild bat, wild reptile, or wild amphibian. However, nongame does not include game, fish that may be taken pursuant to regulations established under the Code or departmental rule, furbearing animals, turtles, or frogs, as defined in this chapter. The commission shall designate by rule those species of nongame which by their abundance or habits are declared a nuisance, and these species shall not be protected. Rules adopted shall include, but are not limited to, a provision that states that any bat, except for the Indiana bat, which is found within a building that is occupied by human beings is not a protected nongame species.

93 Acts, ch 20, §1  
Section amended

**481A.63 Sale of bait — license.** Repealed by 93 Acts, ch 99, § 6. See § 481A.144.

**481A.80 Minnows and other bait — violations — limitations.** Repealed by 93 Acts, ch 99, § 6. See § 481A.1, 481A.144, and 481A.145.

**481A.81 Selling minnows outside state.** Repealed by 93 Acts, ch 99, § 6. See § 481A.145.

**481A.82 Prohibited bait.** Repealed by 93 Acts, ch 99, § 6. See § 481A.145.

**481A.130 Damages in addition to penalty — animals — ginseng.**

1. In addition to the penalties for violations of this chapter and chapters 350, 461A, 481B, and 482, a person convicted of unlawfully selling, taking, catching, killing, injuring, destroying, or having in possession any animal, shall reimburse the state for the value of such as follows:

- a. For each elk, antelope, buffalo, or moose, two thousand five hundred dollars.
- b. For each wild turkey, two hundred dollars.
- c. For each bird or animal or the raw pelt or plumage of such bird or animal for which damages are not otherwise prescribed, fifty dollars.
- d. For each fish, reptile, mussel, or amphibian, fifteen dollars.
- e. For each beaver, mink, otter, red fox, gray fox, or raccoon, two hundred dollars.
- f. For each animal classified by the commission as an endangered or threatened species, one thousand dollars.
- g. For each deer, one thousand five hundred dollars.

2. In addition to any other penalty, a person convicted of unlawfully harvesting wild ginseng in violation of section 456A.24 shall reimburse the state at one hundred fifty percent of the ginseng's market value, as determined by the department.

93 Acts, ch 38, §2  
Unnumbered paragraph 1 editorially numbered as subsection 1 and former subsections 1-7 renumbered as paragraphs a-g  
NEW subsection 2

**481A.144 Licensed bait dealers — requirements.**

1. A person shall not sell minnows, frogs, crayfish, salamanders, and mussels for fish bait without first obtaining a bait dealer's license from the department upon payment of the license fee. A licensee shall comply with all laws pertaining to taking, possessing, and selling of bait handled by the licensee. If convicted of violating a provision of this chapter or a rule adopted pursuant to this chapter, a licensee shall forfeit the licensee's bait dealer license upon demand of the director.

2. When taking bait from lakes and streams, bait dealers shall take only the size of bait which they can use, and shall return all small minnows and frogs to the water immediately.

3. A minnow and bait box and a tank shall be open to inspection by the department at all times. A licensee shall have tanks and bait boxes of sufficient size and with proper aeration to keep the bait alive and prevent substantial loss.

4. A person shall not take or attempt to take minnows for commercial purposes from any waters of the state or shall not transport minnows without first obtaining a bait dealer's license. However, a person taking or transporting minnows for personal use is not required to have a bait dealer's license.

93 Acts, ch 99, §2  
Section stricken and rewritten

**481A.145 Taking and selling of minnows and other bait — regulations.**

1. Except for species listed as threatened or endangered under chapter 481B, a licensed bait dealer may take sufficient bait from lakes and streams of this state that are not closed to the taking of bait, to supply the licensee's customers for hook and line fishing if the licensee is present while the bait is being taken.

2. Except as otherwise provided in this chapter, a person shall not carry, transport, ship, or cause to be carried, transported, or shipped, any minnows for the purpose of sale beyond the boundaries of the state. Minnows which are bred, hatched, propagated, or raised on a licensed aquaculture unit may be transported outside the state.

3. A person shall not transport, use, sell or offer to sell for bait or introduce into any inland waters of this state or into any waters from which the waters of the state may become stocked, any minnows or fish of the carp, quillback, gar, or dogfish species. Fish of the carp, quillback, gar, or dogfish species may be returned to the waters from which they are taken. A person shall not possess live gizzard shad at any lake in this state.

4. Minnow traps not exceeding thirty-six inches in length may be used when the taking of minnows is allowed. Each trap, when in use, shall have a metal tag attached plainly labeled with the owner's name and address.

5. A person shall not use a minnow dip net which exceeds four feet in diameter, a cast net which exceeds ten feet in diameter, or a minnow seine which exceeds twenty feet in length or has a mesh size smaller than one-quarter inch bar measure. Licensed bait dealers may obtain a permit from the department to use minnow seines longer than twenty feet, but not exceeding fifty feet in length.

6. The department may designate certain lakes and streams, and parts of them, from which minnow

populations should be protected for the best management of the lakes or streams. If an investigation of a lake or stream or a portion of a lake or stream by the department indicates that the minnow population should be protected, the lake or stream or a portion of the lake or stream shall be closed to the taking of minnows for a period of time deemed advisable by the department.

93 Acts, ch 99, §3-5  
Subsections 1 and 3 stricken and rewritten  
Subsections 2 and 5 amended

## CHAPTER 487

### UNIFORM LIMITED PARTNERSHIP LAW

#### 487.104A Change of registered office or registered agent.

1. A limited partnership may change its registered office or registered agent by delivering to the secretary of state for filing a statement of change that sets forth all of the following:

- a. The name of the limited partnership.
- b. The street address of its current registered office.
- c. If the current registered office is to be changed, the street address of the new registered office.
- d. The name of its current registered agent.
- e. If the current registered agent is to be changed, the name of the new registered agent and the new agent's written consent, either on the statement or attached to it, to the appointment.
- f. That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

2. If a registered agent changes the street address of the registered agent's business office, the registered agent may change the street address of the registered office of any limited partnership for which the person is the registered agent by notifying the

limited partnership in writing of the change and signing, either manually or in facsimile, and delivering to the secretary of state for filing a statement that complies with the requirements of subsection 1 and recites that the limited partnership has been notified of the change.

3. If a registered agent changes the registered agent's business address to another place, the registered agent may change the business address and the address of the registered agent by filing a statement as required in subsection 2 for each limited partnership, or a single statement for all limited partnerships named in the notice, except that it need be signed only by the registered agent or agents and need not be responsive to subsection 1, paragraph "e", and must recite that a copy of the statement has been mailed to each limited partnership named in the notice.

4. A document delivered to the secretary of state for the purpose of changing a limited partnership's registered agent or registered office may be executed by a general partner.

93 Acts, ch 126, §6  
NEW section

## CHAPTER 490

### BUSINESS CORPORATIONS

#### **490.1422 Reinstatement following administrative dissolution.**

1. A corporation administratively dissolved under section 490.1421 may apply to the secretary of state for reinstatement within two years after the effective date of dissolution. The application must meet all of the following requirements:

*a.* Recite the name of the corporation at its date of dissolution and the effective date of its administrative dissolution.

*b.* State that the ground or grounds for dissolution either did not exist or have been eliminated.

*c.* State a corporate name that satisfies the requirements of section 490.401.

*d.* State the state tax identification number of the corporation.

2. *a.* The secretary of state shall refer the state tax identification number contained in the application for reinstatement to the department of revenue and finance. The department of revenue and finance shall report to the secretary of state the tax status of the corporation. If the department reports to the secretary of state that a filing delinquency or liability exists against the corporation, the secretary of state shall not cancel the certificate of dissolution until the filing delinquency or liability is satisfied.

*b.* If the secretary of state determines that the application contains the information required by subsection 1, and that a delinquency or liability reported pursuant to paragraph "a" of this subsection has been satisfied, and that the information is correct, the secretary of state shall cancel the certificate of dissolution and prepare a certificate of reinstatement that recites the secretary of state's determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the corporation under section 490.504. If the corporate name in subsection 1, paragraph "c", is different than the corporate name in subsection 1, paragraph "a", the certificate of reinstatement shall constitute an amendment to the articles of incorporation insofar as it pertains to the corporate name.

3. When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution as if the administrative dissolution had never occurred.

93 Acts, ch 17, §1, 93 Acts, ch 126, §7, 8  
Subsection 1, unnumbered paragraph 1 amended  
Subsection 1, paragraph d stricken and rewritten  
Subsection 2 amended

#### **490.1701 Application to existing corporations.**

1. Except as provided in this subsection or chapter 504 or 504A, this chapter does not apply to or af-

fect entities subject to chapter 504 or 504A. Such entities continue to be governed by all laws of this state applicable to them before December 31, 1989, as those laws are amended. This chapter does not derogate or limit the powers to which such entities are entitled.

2. Unless otherwise provided, this chapter does not apply to an entity subject to chapter 174, 176, 497, 498, 499, 499A, 524, 533, or 534 or a corporation organized on the mutual plan under chapter 491, or a telephone company organized as a corporation under chapter 491 qualifying pursuant to an internal revenue service letter ruling under I.R.C. §501(c)(12) as a nonprofit corporation entitled to distribute profits in a manner similar to a chapter 499 corporation, unless such entity voluntarily elects to adopt the provisions of this chapter and complies with the procedure prescribed by subsection 3 of this section.

3. The procedure for the voluntary election referred to in subsection 2 is as follows:

*a.* A resolution reciting that the corporation voluntarily adopts this chapter and designating the address of its initial registered office and the name of its registered agent or agents at that office and, if the name of the corporation is not in compliance with the requirements of this chapter, amending the articles of incorporation of the corporation to change the name of the corporation to one complying with the requirements of this chapter, shall be adopted by the board of directors and shareholders by the procedure prescribed by this chapter for the amendment of articles of incorporation.

*b.* Upon adoption of the required resolution or resolutions, an instrument shall be executed by the corporation by its president or a vice president and by its secretary or an assistant secretary and verified by one of the officers signing the instrument, which shall set forth all of the following:

(1) The name of the corporation.

(2) Each such resolution adopted by the corporation and the date of adoption of each resolution.

(3) The address of its registered office and the name of its registered agent.

*c.* The instrument shall be delivered to the secretary of state for filing and recording in the secretary of state's office, and shall be filed and recorded in the office of the county recorder. The corporation shall at the time it files the instrument with the secretary of state deliver also to the secretary of state for filing in the secretary of state's office any annual report which is then due.

If the county of the initial registered office as stated in the instrument is one which is other than the county where the principal place of business of the corporation, as designated in its articles of incorpo-

ration, was located, the secretary of state shall forward also to the county recorder of the county in which the principal place of business of the corporation was located a copy of the instrument and the secretary of state shall forward to the recorder of the county in which the initial registered office of the corporation is located, in addition to the original of the instrument, a copy of the articles of incorporation of the corporation together with all amendments to them as then on file in the secretary of state's office.

d. Upon the filing of the instrument by a corporation all of the following apply:

(1) All of the provisions of this chapter apply to the corporation.

(2) The secretary of state shall issue a certificate as to the filing of the instrument and deliver the certificate to the corporation or its representative.

(3) The secretary of state shall not file the instrument with respect to a corporation unless at the time of filing the corporation is validly existing and in good standing in that office under the chapter under which it is incorporated. The corporation shall be considered validly existing and in good standing for the purpose of this chapter for a period of three months following the expiration date of the corporation, provided all annual reports due have been filed and all fees due in connection with the annual reports have been paid.

e. The provisions of this chapter becoming applicable to a corporation voluntarily electing to be governed by this chapter do not affect any right accrued or established, or any liability or penalty incurred, under the chapter under which it is incorporated

prior to the filing by the secretary of state in the secretary of state's office of the instrument manifesting the election by the corporation to adopt the provisions of this chapter as provided in this subsection.

4. Except as specifically provided in this chapter, this chapter applies to all domestic corporations in existence on December 31, 1989, that were incorporated under any general statute of this state providing for incorporation of corporations for profit if power to amend or repeal the statute under which the corporation was incorporated was reserved.

5. A corporation subject to this chapter which does not have a registered office or registered agent or both designated on the records of the secretary of state is subject to all of the following provisions:

a. The office of the corporation set forth in its first annual report filed under this chapter shall be deemed its registered office until December 31, 1990, or until it files a designation of registered office with the secretary of state, whichever is earlier.

b. The person signing the first annual report of the corporation filed under this chapter shall be deemed the registered agent until December 31, 1990, or a statement designating a registered agent has been filed with the secretary of state, whichever is earlier.

c. Section 490.502 does not apply to the corporation until December 31, 1990, or until the corporation files a designation of registered office and registered agent at that office with the secretary of state, whichever is earlier.

6. A corporation subject to this chapter is not subject to chapter 491, 492, 493, or 495.

93 Acts, ch 126, §9  
Subsection 6 amended

## CHAPTER 490A

### LIMITED LIABILITY COMPANIES

#### 490A.124 Fees.

1. The secretary of state shall collect the following fees when documents described in this subsection are delivered to the secretary's office for filing:

a. Articles of organization .....	\$ 50
b. Application for use of indistinguishable name .....	\$ 10
c. Application for reserved name .....	\$ 10
d. Notice of transfer of reserved name .....	\$ 10
e. Application for registered name per month or part thereof .....	\$ 2

f. Application for renewal of registered name .....	\$ 20
g. Statement of change of registered agent or registered office or both .....	No fee
h. Agent's statement of change of registered office for each affected limited liability company .....	No fee
i. Agent's statement of resignation .....	No fee
j. Amendment of articles of organization .....	\$ 50
k. Restatement of articles of organization with amendment of articles .....	\$ 50
l. Articles of merger .....	\$ 50

*m.* Articles of dissolution ..... \$ 5  
*n.* Articles of revocation of dissolution ..... \$ 5  
..... \$ 5  
*o.* Certificate of administrative dissolution ..... No fee  
.....  
*p.* Application for reinstatement following administrative dissolution ..... \$ 5  
*q.* Certificate of reinstatement ..... No fee  
*r.* Certificate of judicial dissolution ..... No fee  
*s.* Application for certificate of authority ..... \$ 100  
.....  
*t.* Application for amended certificate of authority ..... \$ 100  
*u.* Application for certificate of cancellation ..... \$ 10  
.....  
*v.* Certificate of revocation of authority to transact business ..... No fee  
*w.* Articles of correction ..... \$ 5  
*x.* Application for certificate of existence or authorization ..... \$ 5  
*y.* Any other document required or permitted to be filed by this chapter ..... \$ 5

2. The secretary of state shall collect a fee of five dollars each time process is served on the secretary under this chapter. The party to a proceeding causing service of process is entitled to recover this fee as costs if the party prevails in the proceeding.

3. The secretary of state shall collect the following fees for copying and certifying the copy of any filed document relating to a domestic or foreign corporation:

- a.* One dollar a page for copying.
- b.* Five dollars for the certificate.

93 Acts, ch 39, §21  
 Subsection 1, paragraph u amended

**490A.202 Powers.**

Unless its articles of organization provide otherwise, a limited liability company has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including without limitation power to do all of the following:

- 1. Sue and be sued, complain, and defend in its name.
- 2. Transact its business, carry on its operations, and have and exercise the powers granted by this chapter in any state and in any foreign country.
- 3. Purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, and otherwise deal with, real or personal property, or any legal or equitable interest in property, wherever located.
- 4. Sell, convey, transfer, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property.

5. Purchase, receive, subscribe for, or otherwise acquire and hold, to sell, mortgage, lend, pledge, or otherwise dispose of, and deal in and with, shares or other interests in, or obligations of any other person.

6. Make contracts and guaranties, incur liabilities, borrow money, issue its notes, bonds, and other obligations, which may be convertible into or include the option to purchase other securities of the limited liability company, and secure any of its obligations by mortgage, deed of trust, or pledge of any of its property, franchises, or income.

7. Lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment.

8. Elect and appoint managers, employees, and agents of the limited liability company, define their duties, fix their compensation, and lend them money and credit.

9. Pay pensions and establish pension plans, pension trusts, profit sharing plans, and benefit and incentive plans for all or any of its current or former members, managers, employees, and agents.

10. Make donations for the public welfare or for religious, charitable, scientific, or educational purposes.

11. Make payments or donations, or do any other act, not inconsistent with law, that furthers the business and affairs of the limited liability company.

12. Cease its activities and dissolve.

13. Be a promoter, stockholder, partner, member, associate, agent, or manager of any corporation, partnership, limited liability company, joint venture, trust, or other entity.

14. Make and amend operating agreements, not inconsistent with its articles of organization or with the law of this state, for the administration and regulation of its affairs.

15. Transact any lawful business that a corporation, partnership, or other entity may conduct under the law of this state subject, however, to any and all laws and restrictions that govern or limit the conduct of such activity by such corporation, partnership, or other entity.

16. Have and exercise all powers necessary or convenient to effect any or all of the purposes for which the limited liability company is organized.

17. *a.* Except as provided in paragraph "d", indemnify an individual made a party to a proceeding because the individual is or was a member or manager against liability incurred in the proceeding if all of the following apply:

- (1) The individual acted in good faith.
- (2) The individual reasonably believed:
  - (a) In the case of conduct in the individual's official capacity with the limited liability company, that

the individual's conduct was in the limited liability company's best interests.

(b) In all other cases, that the individual's conduct was at least not opposed to the limited liability company's best interests.

(3) In the case of any criminal proceeding, the individual had no reasonable cause to believe the individual's conduct was unlawful.

b. A member's or manager's conduct with respect to an employee benefit plan for a purpose the member or manager reasonably believed to be in the interests of the participants in and beneficiaries of the plan is conduct that satisfies the requirement of paragraph "a", subparagraph (2), subparagraph subdivision (b).

c. The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent is not, of itself, determinative that the director did not meet the standard of conduct described in this subsection.

d. A limited liability company shall not indemnify a member or manager under this subsection in either of the following circumstances:

(1) In connection with a proceeding by or in the right of the limited liability company in which the member or manager was adjudged liable to the limited liability company.

(2) In connection with any other proceeding charging improper personal benefit to the member or manager, whether or not involving action in the member's or manager's official capacity, in which the member or manager was adjudged liable on the basis that personal benefit was improperly received by the member or manager.

e. Indemnification permitted under this subsection in connection with a proceeding by or in the right of the limited liability company is limited to reasonable expenses incurred in connection with the proceeding.

93 Acts, ch 39, §22  
NEW subsection 17

#### **490A.701 Voting rights of members.**

1. Unless otherwise provided in the articles of organization or an operating agreement, the members of a limited liability company shall vote in proportion to their capital contributions to the limited liability company, as adjusted from time to time to reflect any additional contributions or withdrawals.

2. Unless otherwise provided in the articles of organization or an operating agreement, a majority vote shall be required to approve the following matters:

a. The dissolution and winding up of the limited liability company.

b. The sale, exchange, lease, mortgage, pledge, or other transfer of all or substantially all of the assets of the limited liability company other than in the ordinary course of business.

c. Merger of the limited liability company with another entity.

3. Unless otherwise provided in the articles of organization or an operating agreement, a unanimous

vote shall be required to approve an amendment to the articles of organization or operating agreement.

93 Acts, ch 39, §23, 24  
Subsection 2, unnumbered paragraph 1 and paragraph b amended and paragraph d stricken  
NEW subsection 3

#### **490A.702 Management of limited liability company.**

1. Unless the articles of organization or an operating agreement provides for management of a limited liability company by a manager or managers, management of a limited liability company shall be vested in its members.

2. Unless otherwise provided in the articles of organization and except as provided in subsection 3, every member is an agent of the limited liability company for the purpose of its business or affairs. The act of any member, including, but not limited to, the execution in the name of the limited liability company of any instrument, for apparently carrying on in the ordinary course the business or affairs of the limited liability company shall bind the limited liability company, unless the member so acting has, in fact, no authority to act for the limited liability company in the particular matter, and the person with whom the member is dealing has knowledge of the fact that the member has no such authority.

3. If the articles of organization provide that management of the limited liability company is vested in a manager or managers the following apply:

a. A member, acting solely in the capacity as a member, is not an agent of the limited liability company.

b. Every manager is an agent of the limited liability company for the purpose of its business or affairs. The act of any manager, including, but not limited to, the execution in the name of the limited liability company of any instrument, for apparently carrying on in the ordinary course the business or affairs of the limited liability company shall bind the limited liability company, unless the manager so acting has, in fact, no authority to act for the limited liability company in the particular matter, and the person with whom the manager is dealing has knowledge of the fact that the manager has no such authority.

4. An act of a manager or a member which is not apparently for the carrying on in the ordinary course of business of the limited liability company does not bind the limited liability company unless authorized in accordance with the articles of organization or an operating agreement, at the time of the transaction or at any other time.

5. An act of a manager or member in contravention of a restriction on authority shall not bind the limited liability company to persons having knowledge of the restriction.

93 Acts, ch 39, §25  
Section amended

#### **490A.704 Withdrawal of member.**

A member may withdraw from a limited liability company at the time or upon the happening of



events specified in writing in the articles of organization or an operating agreement. If the articles of organization or an operating agreement does not specify in writing the time or the events upon the happening of which a member may withdraw, a member may withdraw upon not less than six months' prior written notice to each member at the member's address on the books of the limited liability company. The articles of organization or an operating agreement may prohibit withdrawal by a member.

93 Acts, ch 39, §26  
Section amended

#### **490A.707 Limitation of liability of managers.**

The articles of organization may contain a provision eliminating or limiting the personal liability of a manager to the limited liability company or to its members or of the members with whom the management of the limited liability company is vested pursuant to section 490A.702, to the limited liability company or to its members for monetary damages for breach of fiduciary duty as a manager or a member with whom management of the limited liability company is vested, if the provision does not eliminate or limit the liability of a manager or a member with whom management of the limited liability company is vested for any of the following:

1. Breach of the manager's or member's duty of loyalty to the limited liability company or to its members.

2. Acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law.

3. Transaction from which the manager or member derives an improper personal benefit or a wrongful distribution in violation of section 490A.807.

A provision shall not eliminate or limit the liability of a manager or member with whom management of the limited liability company is vested for an act or omission occurring prior to the date when the provision in the articles of organization becomes effective.

93 Acts, ch 39, §27  
Section amended

#### **490A.1203 Action on plan.**

1. A proposed plan of merger complying with the requirements of section 490A.1202 shall be approved in the manner provided by this section:

a. A limited liability company which is a party to a proposed merger shall have the plan of merger authorized and approved as required by section 490A.701.

b. A corporation which is a party to a proposed merger shall have the plan of merger authorized and approved in the manner and by the vote required by chapter 490.

c. A limited partnership which is a party to a proposed merger shall have the plan of merger authorized and approved in the manner and by the vote required by its partnership agreement and in accordance with chapter 487.

2. After a merger is authorized, unless the plan of merger provides otherwise, and at any time before articles of merger as provided for in section 490A.1204 are filed, the plan of merger may be abandoned subject to any contractual rights, in accordance with the procedure set forth in the plan of merger or, if none is set forth, in one of the following ways:

a. By the majority consent of the members of each limited liability company that is a constituent entity, unless the articles of organization or an operating agreement of any such limited liability company provides otherwise.

b. In the manner determined by the board of directors of any corporation that is a constituent entity.

c. By the limited partners of any limited partnership that is a constituent entity by the vote, if any, required by its limited partnership agreement and in accordance with the law of this state.

93 Acts, ch 39, §28  
Subsection 2, paragraph a amended

#### **490A.1206 Merger with foreign entity.**

1. Any one or more limited liability companies of this state may merge with or into one or more foreign limited liability companies, foreign corporations, or foreign limited partnerships, or any one or more foreign limited liability companies, foreign corporations, or foreign limited partnerships may merge with or into any one or more limited liability companies of this state, if all of the following apply:

a. The merger is permitted by the law of the state or jurisdiction under whose law each foreign constituent entity is organized or formed and each foreign constituent entity complies with that law in effecting the merger.

b. The foreign constituent entity complies with section 490A.1204 of this division if it is the surviving entity.

c. Each domestic constituent entity complies with the applicable provisions of sections 490A.1202 and 490A.1203 and, if it is the surviving entity, with section 490A.1204.

2. Upon a merger involving one or more domestic limited liability companies taking effect, if the surviving entity is to be governed by the law of any state other than this state or of any foreign country, then the surviving entity shall agree to both of the following:

a. That it may be served with process in this state in any proceeding for enforcement of any obligation of any constituent entity, who was a party to the merger, that was organized under the law of this state, as well as for enforcement of any obligation of the surviving entity arising from the merger.

b. To irrevocably appoint the secretary of state as its agent for service of process in any such proceeding, and the surviving entity shall specify the address to which a copy of the process shall be mailed to it by the secretary of state.

3. The effect of the merger shall be as provided in section 490A.1205, if the surviving entity is to be

governed by the law of this state. If the surviving entity is to be governed by the law of any jurisdiction other than this state, the effect of the merger shall be the same as provided in subsection 2 of this section, except insofar as the law of the other jurisdiction provides otherwise.

93 Acts, ch 39, §29  
Subsection 1, unnumbered paragraph 1 amended

#### **490A.1301 Dissolution — general provisions.**

A limited liability company organized under this chapter is dissolved and its affairs shall be wound up upon the happening of the first to occur of the following events:

1. At the time or on the happening of an event specified in this chapter or in the articles of organization or an operating agreement to cause dissolution.

2. Upon the unanimous written consent of the members.

3. Unless otherwise provided in the articles of organization or an operating agreement, upon the death, withdrawal, expulsion, bankruptcy, or dissolution of a member or occurrence of any other event, except assignment of a membership interest voluntarily or by operation of law, that terminates the continued membership of a member in the limited liability company, unless the business of the limited liability company is continued by the consent of the members in the manner stated in the articles of organization or an operating agreement or if not so stated, by the unanimous consent of the remaining members.

4. The entry of a decree of judicial dissolution under section 490A.1302.

93 Acts, ch 39, §30, 31  
Subsections 1 and 3 amended

#### **490A.1402 Registration.**

A foreign limited liability company may apply for a certificate of authority to transact business in this state by delivering an application to the secretary of state for filing. An application for registration as a foreign limited liability company shall set forth all of the following:

1. The name of the foreign limited liability company and, if different, the name under which it proposes to register and transact business in this state.

2. The state or other jurisdiction in which the foreign limited liability company was formed and the date of its formation.

3. The street address of the registered office of the foreign limited liability company in this state, the name of the registered agent at the office, and a statement that the registered office and registered agent comply with the requirements of section 490A.501.

4. The address of the office required to be maintained in the state or other jurisdiction of its formation by the law of that state or jurisdiction or, if not so required, of the principal office of the foreign limited liability company.

5. A copy of the articles of organization filed in the foreign limited liability company's state or other jurisdiction of formation authorizing it to do business in that state or other jurisdiction, duly authenticated by the proper officer of the state or other jurisdiction of its formation.

93 Acts, ch 39, §32  
Unnumbered paragraph 1 amended

#### **490A.1406 Cancellation of certificate of authority.**

1. A foreign limited liability company may cancel its certificate of authority by delivering to the secretary of state for filing a certificate of cancellation which shall set forth all of the following:

a. The name of the foreign limited liability company and the name of the state or other jurisdiction under whose jurisdiction it was formed.

b. That the foreign limited liability company is not transacting business in this state and that it surrenders its registration to transact business in this state.

c. That the foreign limited liability company revokes the authority of its registered agent to accept service on its behalf and appoints the secretary of state as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in this state.

d. A mailing address to which the secretary of state may mail a copy of any process served on the secretary of state under paragraph "c" of this subsection.

e. A commitment to notify the secretary of state in the future of any change in the mailing address of the limited liability company.

2. The certificate of registration shall be cancelled upon the filing of the certificate of cancellation by the secretary of state.

93 Acts, ch 39, §33  
Subsection 1, unnumbered paragraph 1 amended

#### **490A.1407 Authority to transact business required.**

1. A foreign limited liability company shall not transact business in this state until it obtains a certificate of authority from the secretary of state.

2. The following activities, among others, do not constitute transacting business within the meaning of subsection 1:

a. Maintaining, defending, or settling any proceeding.

b. Holding meetings of the members or managers or carrying on other activities concerning internal company affairs.

c. Maintaining bank accounts.

d. Maintaining offices or agencies for the transfer, exchange, and registration of the limited liability company's own securities or maintaining trustees or depositories with respect to those securities.

e. Selling through independent contractors.

f. Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the

orders require acceptance outside this state before they become contracts.

*g.* Creating or acquiring indebtedness, mortgages, and security interests in real or personal property.

*h.* Securing or collecting debts or enforcing mortgages and security interests in property securing the debts.

*i.* Owning, without more, real or personal property.

*j.* Conducting an isolated transaction that is completed within thirty days and that is not one in the course of repeated transactions of a like nature.

*k.* Transacting business in interstate commerce.

3. The list of activities in subsection 2 is not exhaustive.

93 Acts, ch 39, §34

Subsection 2, paragraph b amended

#### **490A.1410 Revocation of certificate of authority.**

1. The certificate of authority of a foreign limited liability company to transact business in this state may be revoked by the secretary of state upon the occurrence of any of the following:

*a.* The foreign limited liability company has failed to:

(1) Pay any fees or penalties prescribed by this chapter.

(2) Appoint and maintain a registered agent as required under section 490A.1402.

(3) Deliver for filing to the secretary of state a report upon any change in the name or address of the registered agent.

(4) Deliver to the secretary of state for filing articles of correction required under section 490A.1405.

*b.* A misrepresentation has been made of any material matter in any application, report, affidavit, or other documents submitted by the foreign limited liability company under this subchapter.

2. A certificate of registration of a foreign limited liability company shall not be revoked by the secretary of state, unless both of the following apply:

*a.* The secretary of state has given the foreign limited liability company not less than sixty days' notice thereof by mail addressed to its registered of-

fice in this state or, if the foreign limited liability company fails to appoint and maintain a registered agent in this state, addressed to the office required to be maintained pursuant to section 490A.1402.

*b.* During the sixty-day period, the foreign limited liability company has failed to pay such fees or penalties prescribed by this chapter, to file a report of change regarding the registered agent, to file any necessary articles of correction, or to correct any such misrepresentation.

3. Upon the expiration of sixty days after the mailing of the notice, the authority of the foreign limited liability company to transact business in this state shall cease.

93 Acts, ch 39, §35

Subsection 1, unnumbered paragraph 1 amended

#### **490A.1516 Dissolution or liquidation.**

Violation of any provision of this subchapter by a professional limited liability company or any of its members or managers shall be cause for its involuntary dissolution, or liquidation of its assets and business by the district court, as provided in section 490A.1302. Upon the death of the last remaining member of a professional limited liability company, or when the last remaining member is not licensed or ceases to be licensed to practice a profession in this state which the professional limited liability company is authorized to practice, or when any person other than the member of record becomes entitled to have all membership interests of the last remaining member of the professional limited liability company transferred into that person's name or to exercise voting rights, except as a proxy, with respect to such membership interests, the professional limited liability company shall not practice any profession and it shall be promptly dissolved. However, if prior to dissolution all outstanding membership interests of the professional limited liability company are acquired by two or more persons licensed to practice a profession in this state which the professional limited liability company is authorized to practice, the professional limited liability company need not be dissolved and may practice the profession as provided in this subchapter.

93 Acts, ch 39, §36

Section amended

## CHAPTER 491

### CORPORATIONS FOR PECUNIARY PROFIT

#### 491.11 Incorporation fee.

Corporations organized for a period of years shall pay the secretary of state, before a certificate of incorporation is issued, a fee of fifty dollars.

93 Acts, ch 126, §10  
Section amended

**491.12 Exemption from fee.** Repealed by 93 Acts, ch 126, § 35.

**491.30 Perpetual corporations — periodic fees.** Repealed by 93 Acts, ch 126, § 35.

**491.31 Exemption from fee.** Repealed by 93 Acts, ch 126, § 35.

#### 491.111 Merger or consolidation of domestic and foreign corporations.

One or more foreign corporations and one or more domestic corporations whether heretofore or hereafter organized may be merged or consolidated in the following manner, provided such merger or consolidation is permitted by the laws of the state under which each such foreign corporation is organized:

1. Each domestic corporation shall comply with the provisions of this chapter with respect to the merger or consolidation, as the case may be, of domestic corporations and each foreign corporation shall comply with the applicable provisions of the laws of the state under which it is organized.

2. If the surviving or new corporation, as the case may be, is to be governed by the laws of any state

other than this state, it shall comply with the provisions of the statutes of the state of Iowa with respect to foreign corporations if it is to do business in this state, and in every case it shall file with the secretary of state of this state:

a. An agreement that it may be served with process in this state in any proceeding for the enforcement of any obligation of any domestic corporation which is a party to such merger or consolidation and in any proceeding for the enforcement of the rights of a dissenting shareholder of any such domestic corporation against the surviving or new corporation.

b. The appointment of a resident agent as provided for in section 490.501.

c. An agreement that it will promptly pay to the dissenting shareholders of any such domestic corporation the amount, if any, to which they shall be entitled under the provisions of this division with respect to the rights of dissenting shareholders.

Insofar as the state of Iowa is concerned, the effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations, if the surviving or new corporation is to be governed by the laws of this state. If the surviving or new corporation is to be governed by the laws of any state other than this state, the effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations except insofar as the laws of such other state provide otherwise.

93 Acts, ch 126, §11  
Subsection 2, paragraph b amended

## CHAPTER 492

### CAPITAL STOCK

#### 492.9 Certificate of issuance of stock.

It shall be the duty of every corporation, except corporations qualified under chapter 534, to file a certificate under oath with the secretary of state, within thirty days after the issuance of any capital stock, stating the date of issue, the amount issued, the sum received therefor, if payment be made in money, or the property or thing taken, if such be the method of payment. If the corporation fails to file said certificate of issuance of stock within the thirty-day period herein provided, it may thereafter file the same upon first paying to the secretary of state a

penalty of ten dollars when the said certificate is offered for filing. Provided further that the penalty herein provided for is first paid and provided the said report contains the specific information required by this section as to the issuance of any capital stock not previously reported, then the first annual report filed by such corporation following such failure to comply with the provisions of this section, shall be received by the secretary of state as a compliance with this section.

93 Acts, ch 126, §12  
Section amended

## CHAPTER 494

### FOREIGN CORPORATIONS

Repealed by 93 Acts, ch 126, §36, see ch 490

## CHAPTER 495

### FOREIGN PUBLIC UTILITY CORPORATIONS

#### 495.1 Capital stock and permit.

Sections 492.5 to 492.9 are applicable to any foreign corporation which directly or indirectly owns, uses, operates, controls, or is concerned in the operation of any public gasworks, electric light plant, heating plant, waterworks, interurban or street railway located within the state, or the carrying on of any gas, electric light, electric power, heating business, waterworks, interurban or street railway business within the state, or that owns or controls, directly or indirectly, any of the capital stock of any corporation which owns, uses, operates or is concerned in the operation of any public gasworks, electric light plant, electric power plant, heating plant, waterworks, interurban or street railway located within the state, or any foreign corporation that exercises any control in any way or in any manner over any of such works, plants, interurban or street railways or the business carried on by such works, plants, interurban or street railways by or through the ownership of the capital stock of any corporation or corporations or in any other manner whatsoever, and the ownership, opera-

tion, or control of any such works, plants, interurban or street railways or the business carried on by any of such works or plants or the ownership or control of the capital stock in any corporation owning or operating any of such works, plants, interurban or street railways by any foreign corporation in violation of this chapter is unlawful.

93 Acts, ch 126, §13  
Section amended

#### 495.5 Violations — stock void.

Shares of capital stock of any corporation owned or controlled in violation of this chapter shall be void and the holder of such shares shall not be entitled to exercise the powers of a shareholder of the corporation or permitted to participate in or be entitled to any of the benefits accruing to shareholders of the corporation. This chapter shall be construed so as to prevent evasion and to accomplish the intents and purposes of this chapter.

93 Acts, ch 126, §14  
Section amended

## CHAPTER 499

### CO-OPERATIVE ASSOCIATIONS

#### 499.14A Electric cooperative association memberships.

An electric generation and transmission cooperative association may have one or more classes of members. Qualifications, requirements, methods of acceptance, terms, conditions, termination, and other incidents of membership shall be set forth in the bylaws of the association. An electric utility as defined in section 476.22 and a person who generates or transmits electric power for sale at wholesale to an electric utility may become a member in accordance with the bylaws.

93 Acts, ch 94, §1  
NEW section

#### 499.40 Articles.

Articles of incorporation must be signed and acknowledged by each incorporator. They may deal with any fiscal or internal affair of the association or any subject hereof in any manner not inconsistent with this chapter. All articles must state in the English language:

1. The name of the association, which must include the word "co-operative"; and the address of its principal office.
2. The purposes for which it is formed, and a statement that it is organized under this chapter.
3. Its duration, which may be perpetual.

4. The name, occupation and post-office address of each incorporator.

5. The number of directors, their qualifications and terms of office, and how they shall be chosen and removed.

6. Who are eligible for membership, how members shall be admitted and membership lost, how earnings shall be distributed among members, how assets shall be distributed in liquidation, and, in addition, either:

a. That the association shall have capital stock; the classes, par value and authorized number of shares of each class thereof; how shares shall be issued and paid for; and what rights, limitations, conditions and restrictions pertain to the stock, which shall be alike as to all stock of the same class; or

b. That the association shall have no capital stock, and what limitations, conditions, restrictions and rights pertain to membership; and if the rights are unequal, the rules respecting them shall be specifically stated.

7. The date of the first regular meeting of members.

8. The name and street address of the association's initial registered agent.

93 Acts, ch 126, §15  
NEW subsection 8

#### 499.45 Fees.

The following fees shall be paid to the secretary of state:

1. Upon filing articles of incorporation or renewals thereof, ten dollars for authorized capital stock up to twenty-five thousand dollars, and one dollar per one thousand dollars or fraction in excess thereof; or ten dollars if there be no capital stock.

2. Upon filing amendments, one dollar, and if authorized capital stock is increased to an amount exceeding twenty-five thousand dollars, an additional fee of one dollar per thousand dollars or fraction of such excess.

3. Upon filing all articles, renewals, or amendments, a recording fee of fifty cents per page.

93 Acts, ch 126, §16  
Subsection 4 stricken

#### 499.49 Annual reports.

Each association shall, before April 1 of each year, file a report with the secretary of state on forms prescribed by the secretary. Such report shall be signed by an officer of the association, or a receiver or trustee liquidating its affairs, and shall state:

1. Its name and address.

2. The names, addresses and occupations of its officers and directors.

3. The number of shares of each class of stock authorized and outstanding and the par value thereof; or, if there be none, the number of members and the amount of membership fees paid in.

4. The nature and character of its business.

5. What percentage of its business was done with or for its own members during the preceding fiscal or calendar year, and what percentage thereof was done

with or for each class of nonmembers specified in section 499.3.

6. Any other information deemed necessary by the secretary to advise the secretary whether the association is actually functioning as a co-operative.

93 Acts, ch 126, §17  
Unnumbered paragraph 1 amended

**499.51 Forfeiture.** Repealed by 93 Acts, ch 126, § 35. See § 499.76 et seq.

**499.52 Reinstatement.** Repealed by 93 Acts, ch 126, § 35. See § 499.76 et seq.

#### 499.54 Foreign associations.

Any foreign corporation organized under generally similar laws of any other state shall be admitted to do business in Iowa upon compliance with the general laws relating to foreign corporations and payment of the same fees as would be required under section 490.122 if the foreign co-operative corporation is a foreign corporation for profit seeking authority to transact business in Iowa under chapter 490. Upon the secretary of state being satisfied that the foreign corporation is so organized and has so complied, the secretary shall issue a certificate authorizing the foreign corporation to do business in Iowa.

Such a foreign corporation thus admitted shall be entitled to all remedies provided in this chapter, and to enforce all contracts theretofore or thereafter made by the foreign corporation which any association might make under this chapter.

If such a foreign corporation amends its articles it shall forthwith file a copy of the amendment with the secretary of state, certified by the secretary or other proper official of the state under whose laws it is formed, and shall pay the fees prescribed for amendments by section 490.122. Foreign corporations shall also file statements and pay fees otherwise prescribed by section 490.122.

93 Acts, ch 126, §18  
Section amended

#### REGISTERED OFFICE AND REGISTERED AGENT

#### 499.72 Registered office and registered agent.

Each association must continuously maintain in this state both of the following:

1. A registered office that may be the same as any of its places of business.

2. A registered agent, who may be any of the following:

a. An individual who resides in this state and whose business office is identical with the registered office.

b. A domestic corporation or not-for-profit domestic corporation whose business office is identical with the registered office.

c. A foreign corporation or not-for-profit foreign corporation authorized to transact business in this state whose business office is identical with the registered office.

93 Acts, ch 126, §19  
NEW section

#### **499.73 Change of registered office or registered agent.**

1. An association may change its registered office or registered agent by delivering to the secretary of state for filing a statement of change that sets forth all of the following:

- a. The name of the association.
- b. The street address of its current registered office.
- c. If the current registered office is to be changed, the street address of the new registered office.
- d. The name of its current registered agent.
- e. If the current registered agent is to be changed, the name of the new registered agent and the new agent's written consent, either on the statement or attached to it, to the appointment.
- f. That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

2. If a registered agent changes the street address of the registered agent's business office, the registered agent may change the street address of the registered office of any association for which the person is the registered agent by notifying the association in writing of the change and signing, either manually or in facsimile, and delivering to the secretary of state for filing a statement that complies with the requirements of subsection 1 and recites that the association has been notified of the change.

3. If a registered agent changes the registered agent's business address to another place, the registered agent may change the business address and the address of the registered agent by filing a statement as required in subsection 2 for each association, or a single statement for all associations named in the notice, except that it need be signed only by the registered agent or agents and need not be responsive to subsection 1, paragraph "e", and must recite that a copy of the statement has been mailed to each association named in the notice.

4. An association may also appoint or change its registered office or registered agent in its annual report.

93 Acts, ch 126, §20  
NEW section

#### **499.74 Resignation of registered agent.**

1. A registered agent may resign the agent's agency appointment by signing and delivering to the secretary of state for filing the signed original and two exact or conformed copies of a statement of resignation. The statement may include a statement that the registered office is also discontinued.

2. After filing the statement the secretary of state shall mail one copy to the registered office, if not discontinued, and the other copy to the association at its principal office.

3. The agency appointment is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed.

93 Acts, ch 126, §21  
NEW section

#### **499.75 Service on association.**

1. An association's registered agent is the association's agent for service of process, notice, or demand required or permitted by law to be served on the association.

2. If an association has no registered agent, or the agent cannot with reasonable diligence be served, the association may be served by registered or certified mail, return receipt requested, addressed to the secretary of the association at its principal office. Service is perfected under this subsection at the earliest of any of the following:

- a. The date the association receives the mail.
- b. The date shown on the return receipt, if signed on behalf of the association.
- c. Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.

3. This section does not prescribe the only means, or necessarily the required means, of serving an association.

93 Acts, ch 126, §22  
NEW section

### **ADMINISTRATIVE DISSOLUTION**

#### **499.76 Grounds for administrative dissolution.**

The secretary of state may commence a proceeding under section 499.77 to administratively dissolve an association if any of the following apply:

1. The association does not pay within sixty days after they are due any franchise taxes or penalties imposed by this chapter or other law.
2. The association has not delivered an annual report to the secretary of state in a form that meets the requirements of section 499.49, within sixty days after it is due.
3. The association is without a registered agent or registered office in this state for sixty days or more.
4. The association does not notify the secretary of state within sixty days that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued.
5. The association's period of duration stated in its articles of incorporation expires.

93 Acts, ch 126, §23  
NEW section

#### **499.77 Procedure for and effect of administrative dissolution.**

1. If the secretary of state determines that one or more grounds exist under section 499.76 for dissolving an association, the secretary of state shall serve the association by ordinary mail with written notice of the secretary of state's determination pursuant to section 499.75.

2. If the association does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist

within sixty days after service of the notice is perfected pursuant to section 499.75, the secretary of state shall administratively dissolve the association by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The secretary of state shall file the original of the certificate and serve a copy on the association pursuant to section 499.75.

3. An association administratively dissolved continues its existence but shall not carry on any business except that necessary to wind up and liquidate its business and affairs and notify claimants.

4. The administrative dissolution of an association does not terminate the authority of its registered agent.

93 Acts, ch 126, §24  
NEW section

#### **499.78 Reinstatement following administrative dissolution.**

1. An association administratively dissolved under section 499.77 may apply to the secretary of state for reinstatement within two years after the effective date of dissolution. The application must meet all of the following requirements:

a. Recite the name of the association at its date of dissolution and the effective date of its administrative dissolution.

b. State that the ground or grounds for dissolution either did not exist or have been eliminated.

2. If the secretary of state determines that the application contains the information required by subsection 1 and that the information is correct, the secretary of state shall cancel the certificate of disso-

lution and prepare a certificate of reinstatement that recites the secretary of state's determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the association pursuant to section 499.75.

3. When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution as if the administrative dissolution had never occurred.

93 Acts, ch 126, §25  
NEW section

#### **499.78A Appeal from denial of reinstatement.**

1. If the secretary of state denies an association's application for reinstatement following administrative dissolution, the secretary of state shall serve the association pursuant to section 499.75 with a written notice that explains the reason or reasons for denial.

2. The association may appeal the denial of reinstatement to the district court within thirty days after service of the notice of denial is perfected. The association appeals by petitioning the court to set aside the dissolution and attaching to the petition copies of the secretary of state's certificate of dissolution, the association's application for reinstatement, and the secretary of state's notice of denial.

3. The court may summarily order the secretary of state to reinstate the dissolved association or may take other action the court considers appropriate.

4. The court's final decision may be appealed as in other civil proceedings.

93 Acts, ch 126, §26  
NEW section

## CHAPTER 503

### MEMBERSHIP SALES

Repealed by 93 Acts, ch 60, §26; see ch 552A

## CHAPTER 504A

### IOWA NONPROFIT CORPORATION ACT

#### **504A.9 Change of registered office or registered agent.**

A corporation may change its registered office or change its registered agent or agents, or both office and agent or agents upon filing in the office of the secretary of state a statement setting forth:

1. The name of the corporation.
2. The address of its then registered office.
3. If the address of its registered office be

changed, the address to which the registered office is to be changed.

4. The name of its then registered agent or agents.

5. If its registered agent or agents are changed, the name of its successor registered agent or agents, and the new agent's or agents' written consent, either on the statement, or by attaching the agent's or agents' consent to the appointment.



6. That the address of its registered office and the address of the business office of its registered agent or agents, as changed, will be identical.

The statement shall be delivered to the secretary of state for filing and recording in the secretary of state's office.

If a registered agent or agents change the agent's or agents' business address to another place within the same county, the agent or agents may change the address of the registered office of any corporations of which that person is registered agent by filing a statement as required above for each corporation, or a single statement for all corporations named therein, except that it need be signed only by the registered agent or agents and need not be responsive to subsection 5 above, and must recite that notification of such change has been mailed to each such corporation.

The change of address of registered office or the change of registered agent or agents or both registered office and agent or agents, as the case may be, shall become effective upon the filing of such statement by the secretary of state.

Any registered agent of a corporation may resign as such agent upon filing a written notice thereof, executed in duplicate, with the secretary of state, who shall record one copy and forthwith mail the other copy thereof to the corporation in care of an officer, who is not the resigning registered agent, at the address of such officer as shown by the most recent annual report of the corporation. The appointment of such agent shall terminate upon the expiration of thirty days after receipt of such notice by the secretary of state.

The secretary of state may provide for the change of registered office or registered agent on the form prescribed by the secretary of state for the annual report pursuant to section 504A.83, provided that the form contains the information required in this section. If the secretary of state determines that an annual report does not contain the information required by section 504A.83 but otherwise meets the requirements of this section for the purpose of changing the registered office or registered agent, the secretary of state shall file the statement of change of registered office or registered agent before returning the annual report to the corporation pursuant to section 504A.84. A statement of change of registered office or registered agent pursuant to this paragraph shall be executed by a person authorized to execute the annual report.

93 Acts, ch 109, §3  
Unnumbered paragraph 2 amended  
Former unnumbered paragraph 3 stricken  
Former unnumbered paragraphs 5-7 amended

#### **504A.30 Filing and recording of articles of incorporation.**

The articles of incorporation shall be delivered to the secretary of state for filing and recording in the secretary of state's office. The secretary of state upon the filing of such articles shall issue a certificate of incorporation and send the certificate to the corporation or its representative.

93 Acts, ch 109, §4  
Section amended

#### **504A.32 Procedure for filing and recording of documents.**

1. If in this chapter, it is required that any document be:

a. Filed in the office of the secretary of state, the secretary of state, when the secretary finds that such document conforms to law and when all fees and taxes due the secretary have been paid as in this chapter prescribed, shall endorse on such document, the word "Filed", and the month, day and year of the filing thereof and file the same in the secretary of state's office;

b. Recorded in the office of the secretary of state, the secretary of state, upon filing thereof, shall record the same.

2. Except for a statement of change of registered office or registered agent filed pursuant to section 504A.9 or 504A.73, and an annual report filed pursuant to section 504A.83, any instrument required to be filed and recorded in the office of the secretary of state only, shall be returned by the secretary to the corporation or its representative. Any instrument required to be filed and recorded in the office of the county recorder shall be returned by the recorder to the corporation or its representative.

3. A document that is filed in the office of the secretary of state shall be executed:

a. By the presiding officer of the board of directors of the corporation or the foreign corporation, its president, or another of its officers.

b. If directors have not been selected or the corporation has not been formed, by an incorporator.

c. If the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

4. The person executing the document shall sign it and state beneath or opposite the signature, the person's name and the capacity in which the person signs. The secretary of state may accept for filing a document containing a copy of a signature, however made. The document may, but need not, contain:

a. The corporate seal.

b. An attestation by the secretary or an assistant secretary.

c. An acknowledgment, verification, or proof.

5. The secretary of state may adopt rules permitting the electronic filing of documents in the office of the secretary of state, and for the certification of copies of electronically filed documents.

93 Acts, ch 109, §5  
Subsection 1, paragraph c stricken

#### **504A.37 Filing of articles of amendment.**

The articles of amendment shall be delivered to the secretary of state for filing and recording in the secretary of state's office. The secretary of state upon the filing of the articles of amendment shall issue a certificate of amendment and send the certificate to the corporation or its representative.

93 Acts, ch 109, §6  
Section amended

**504A.39 Restated articles of incorporation.**

A domestic corporation may at any time restate its articles of incorporation, which may be amended by such restatement, so long as its articles of incorporation as so restated contain only such provisions as might be lawfully contained in original articles of incorporation at the time of making such restatement, by the adoption of restated articles of incorporation, including any amendments to its articles of incorporation to be made thereby, in the following manner:

1. Where there are members having voting rights, the board of directors shall adopt a resolution setting forth the proposed restated articles of incorporation, which may include an amendment or amendments to the corporation's articles of incorporation to be made thereby and directing that such restated articles, including such amendment or amendments be submitted to a vote at a meeting of members having voting rights, which may be either an annual or a special meeting.

2. Written or printed notice setting forth the proposed restated articles or a summary of the provisions thereof shall be given to each member entitled to vote at such meeting within the time and in the manner provided in this chapter for the giving of notice of meetings of members. If the restated articles include an amendment or amendments to the articles of incorporation to be made thereby, the notice shall separately set forth such amendment or amendments or a summary of the changes to be effected thereby.

3. The proposed restated articles shall be adopted upon receiving at least two-thirds of the votes which members present at such meeting or represented by proxy are entitled to cast, unless such restated articles include an amendment to the articles of incorporation to be made thereby which, if contained in a proposed amendment to the articles of incorporation to be made without restatement of the articles of incorporation, would entitle a class of members to vote as a class thereon, in which event the proposed restated articles shall be adopted upon receiving the affirmative vote of at least two-thirds of the members of each class entitled to vote thereon as a class, and of the total members entitled to vote thereon.

4. Where there are no members, or no members having voting rights, proposed restated articles of incorporation, which may include an amendment or amendments to the corporation's articles of incorporation to be made thereby shall be adopted at a meeting of the board of directors upon receiving the vote of a majority of the directors in office.

Upon approval, restated articles of incorporation shall be executed by the corporation and shall set forth, as then stated in the corporation's articles of incorporation and, if the restated articles of incorporation include an amendment or amendments to the articles of incorporation to be made thereby, as so amended:

- a. The name of the corporation;
- b. If its duration is for a limited period, the date of expiration;

c. The purpose or purposes for which the corporation is organized;

d. If the members are divided into classes, the designation of each class and a statement of the preferences, voting rights, if any, limitations and relative rights in respect of the members of each class;

e. Any other provisions, not inconsistent with law or the purposes which the corporation is authorized to pursue, which are to be set forth in articles of incorporation; except that it shall not be necessary to set forth in the restated articles of incorporation any of the corporate powers enumerated in this chapter nor any statement with respect to the chapter of the Code or session laws under which the corporation was incorporated, its registered office, registered agent, directors, or incorporators, or the date on which its corporate existence began.

The restated articles of incorporation shall also set forth a statement that they correctly set forth the provisions of the articles of incorporation as theretofore or thereby amended, that they have been duly adopted as required by law and that they supersede the original articles of incorporation and all amendments thereto.

The restated articles of incorporation shall be delivered to the secretary of state for filing and recording in the secretary of state's office.

The secretary of state upon filing the restated articles of incorporation shall issue a restated certificate of incorporation and send the same to the corporation or its representative.

Upon the issuance of the restated certificate of incorporation by the secretary of state, the restated articles of incorporation, including any amendment or amendments to the articles of incorporation made thereby, shall become effective and shall supersede the original articles of incorporation and all amendments thereto.

93 Acts, ch 109, §7

Subsection 4, unnumbered paragraph 4 amended

**504A.43 Articles of merger or consolidation.**

Upon approval, articles of merger or articles of consolidation shall be executed by each corporation and shall set forth:

1. The plan of merger or the plan of consolidation.

2. Where the members of any merging or consolidating corporation are entitled to vote thereon, then as to each such corporation (a) a statement setting forth the date of the meeting of members at which the plan was adopted, that a quorum was present at such meeting, and that such plan received at least two-thirds of the votes which members present at such meeting or represented by proxy were entitled to cast, or (b) a statement that such amendment was adopted by a consent in writing signed by all members entitled to vote with respect thereto.

3. Where any merging or consolidating corporation has no members, or no members entitled to vote thereon, then as to each such corporation a statement of such fact, the date of the meeting of the

board of directors at which the plan was adopted and a statement of the fact that such plan received the vote of a majority of the directors in office.

The articles of merger or articles of consolidation shall be delivered to the secretary of state for filing and recording in the secretary of state's office.

The secretary of state upon the filing of the articles of merger or articles of consolidation shall issue a certificate of merger or a certificate of consolidation and send the same to the surviving or new corporation as the case may be, or to its representative.

93 Acts, ch 109, §8

Unnumbered paragraph 2 amended

#### **504A.52 Filing of articles of dissolution.**

Such articles of dissolution shall be delivered to the secretary of state for filing and recording in the secretary of state's office.

The secretary of state upon filing the articles of dissolution shall issue a certificate of dissolution, and send the same to the representative of the dissolved corporation. Upon the issuance of such certificate of dissolution the existence of the corporation shall cease, except for the purpose of suits, other proceedings and appropriate corporate action by members, directors and officers as provided in this chapter.

93 Acts, ch 109, §9

Unnumbered paragraph 1 amended

#### **504A.62 Filing of decree of dissolution.**

In case the court shall enter a decree dissolving a corporation, it shall be the duty of the clerk of such court to cause certified copies of the decree to be filed with and recorded by the secretary of state.

93 Acts, ch 109, §10

Section amended

#### **504A.73 Change of registered office or registered agent of foreign corporation.**

A foreign corporation authorized to conduct affairs in this state may change its registered office or change its registered agent or agents, or both office and agent or agents, upon filing in the office of the secretary of state a statement setting forth:

1. The name of the corporation.
2. The address of its then registered office.
3. If the address of its registered office be changed, the address to which the registered office is to be changed.
4. The name of its then registered agent or agents.
5. If its registered agent or agents are changed, the name of its successor registered agent or agents, and the new agent's or agents' written consent, either on the statement, or by attaching the agent's consent to the appointment.
6. That the address of its registered office and the address of the business office of its registered agent or agents, as changed, will be identical.

Such statement shall be executed by the corporation by its president or a vice president, and verified by that person, and delivered to the secretary of

state. If the secretary of state finds that such statement conforms to the provisions of this chapter, the secretary shall file such statement in the secretary of state's office, and upon such filing the change of address of the registered office, or the appointment of a new registered agent or agents, or both, as the case may be, shall become effective.

If a registered agent or agents change the agent's or agents' business address to another place within the same county, the agent or agents may change such address and the address of the registered office of any corporations of which that person is registered agent by filing a statement as required above for each corporation, or a single statement for all corporations named therein, except that it need be signed only by the registered agent or agents and need not be responsive to subsection 5 above, and must recite that notification of such change has been mailed to each such corporation. Such statement executed and filed by a registered agent shall become effective upon the filing thereof in the manner as required above for statements executed by the foreign corporation.

Any registered agent of a foreign corporation may resign as such agent upon filing a written notice thereof, executed in duplicate, with the secretary of state, who shall forthwith mail a copy thereof to the corporation at its principal office in the state or country under the laws of which it is incorporated. The appointment of such agent shall terminate upon the expiration of thirty days after receipt of such notice by the secretary of state.

The secretary of state may provide for the change of registered office or registered agent on the form prescribed by the secretary of state for the annual report pursuant to section 504A.83, provided that the form contains the information required in this section. If the secretary of state determines that an annual report does not contain the information required by section 504A.83 but otherwise meets the requirements of this section for the purpose of changing the registered office or registered agent, the secretary of state shall file the statement of change of registered office or registered agent before returning the annual report to the corporation pursuant to section 504A.84. A statement of change of registered office or registered agent pursuant to this paragraph shall be executed by a person authorized to execute the annual report.

93 Acts, ch 109, §11

Unnumbered paragraph 5 amended

#### **504A.87 Grounds for administrative dissolution.**

The secretary of state may commence a proceeding under section 504A.87A to administratively dissolve a corporation if any of the following apply:

1. The corporation does not pay within sixty days after they are due any franchise taxes or penalties imposed by this chapter or other law.
2. The corporation has not delivered an annual report to the secretary of state in a form that meets the requirements of section 504A.83, within sixty days after it is due.

3. The corporation is without a registered agent or registered office in this state for sixty days or more.

4. The corporation does not notify the secretary of state within sixty days that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued.

5. The corporation's period of duration stated in its articles of incorporation expires.

93 Acts, ch 109, §12, 93 Acts, ch 126, §27  
See Code editor's note  
Section stricken and rewritten

#### **504A.87A Procedure for and effect of administrative dissolution.**

1. If the secretary of state determines that one or more grounds exist under section 504A.87 for dissolving a corporation the secretary of state shall serve the corporation by ordinary mail with written notice of the secretary of state's determination.

2. If the corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within sixty days after the date of the notice, the secretary of state shall administratively dissolve the corporation by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The secretary of state shall file the original of the certificate and serve a copy on the corporation.

3. A corporation administratively dissolved continues its existence but shall not carry on any business except that necessary to wind up and liquidate its business and affairs and notify claimants.

4. The administrative dissolution of a corporation does not terminate the authority of its registered agent.

93 Acts, ch 126, §28  
NEW section

#### **504A.87B Reinstatement following administrative dissolution.**

1. A corporation administratively dissolved under section 504A.87A may apply to the secretary of state for reinstatement within two years after the effective date of dissolution. The application must meet all of the following requirements:

a. Recite the name of the corporation at its date of dissolution and the effective date of its administrative dissolution.

b. State that the ground or grounds for dissolution either did not exist or have been eliminated.

2. If the secretary of state determines that the application contains the information required by subsection 1 and that the information is correct, the secretary of state shall cancel the certificate of dissolution and prepare a certificate of reinstatement that recites the secretary of state's determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the corporation.

3. When the reinstatement is effective, it relates

back to and takes effect as of the effective date of the administrative dissolution as if the administrative dissolution had never occurred.

93 Acts, ch 126, §29  
NEW section

#### **504A.87C Appeal from denial of reinstatement.**

1. If the secretary of state denies a corporation's application for reinstatement following administrative dissolution, the secretary of state shall serve the corporation with a written notice that explains the reason or reasons for denial.

2. The corporation may appeal the denial of reinstatement to the district court within thirty days after service of the notice of denial is perfected. The corporation appeals by petitioning the court to set aside the dissolution and attaching to the petition copies of the secretary of state's certificate of dissolution, the corporation's application for reinstatement, and the secretary of state's notice of denial.

3. The court may summarily order the secretary of state to reinstate the dissolved corporation or may take other action the court considers appropriate.

4. The court's final decision may be appealed as in other civil proceedings.

93 Acts, ch 126, §30  
NEW section

#### **504A.100 Application to existing corporations.**

1. Except for this subsection, this chapter shall not apply to or affect corporations subject to the provisions of chapters 176, 497, 498, 499, or 512B. Such corporations shall continue to be governed by all laws of this state heretofore applicable thereto and as the same may hereafter be amended. This chapter shall not be construed as in derogation of or as a limitation on the powers to which such corporations may be entitled.

2. This chapter shall not apply to any domestic corporation heretofore organized or existing under the provisions of chapter 504 of the Code nor, for a period of two years from and after July 4, 1965, to any foreign corporation holding a permit under the provisions of said chapter on the said date, unless such domestic or foreign corporation shall voluntarily elect to adopt the provisions of this chapter and shall comply with the procedure prescribed by the provisions of subsection 3 of this section.

3. Any domestic corporation organized or existing under the provisions of chapter 504 may voluntarily elect to adopt the provisions of this chapter and thereby become subject to its provisions and, during the period of two years from and after the effective date of this chapter, any foreign corporation holding a permit under the provisions of said chapter on said date may voluntarily elect to adopt the provisions of this chapter and thereby become subject to the provisions of this chapter. The procedure for electing to adopt the provisions of this chapter shall be as follows:

a. A resolution reciting that the corporation vol-

untarily adopts this chapter and designating the address of its initial registered office and the name of its registered agent or agents at that address and, if the name of the corporation does not comply with this chapter, amending the articles of incorporation of the corporation to change the name of the corporation to one complying with the requirements of this chapter, shall be adopted by the procedure prescribed by this chapter for the amendment of articles of incorporation. If the corporation has issued shares of stock, the resolution shall contain a statement of that fact including the number of shares authorized, the number issued and outstanding, and a statement that all issued and outstanding shares of stock have been delivered to the corporation to be canceled upon the adoption of this chapter by the corporation, or will be canceled upon receipt by the corporation, and that from and after the effective date of adoption the authority of the corporation to issue shares of stock is terminated. As to foreign corporations, a resolution shall be adopted by the board of directors, reciting that the corporation voluntarily adopts this chapter, and designating the address of its registered office in this state and the name of its registered agent or agents at that address and, if the name of the corporation does not comply with this chapter, setting forth the name of the corporation with the changes which it elects to make in the name conforming to the requirements of this chapter for use in this state.

b. Upon adoption of the required resolution or resolutions, an instrument shall be executed by the corporation which shall set forth both of the following:

(1) The name of the corporation.

(2) Each such resolution adopted by the corporation and the date of its adoption.

c. As to domestic corporations such instrument shall be delivered to the secretary of state for filing and recording in the secretary of state's office.

d. As to foreign corporations, such instrument shall be delivered to the secretary of state for filing in the secretary of state's office and the corporation shall at the same time deliver also to the secretary of state for filing in the secretary of state's office any annual report which is then due.

e. The secretary of state shall not file such instrument with respect to a domestic corporation unless at the time thereof such corporation is validly existing and in good standing in that office under the provisions of chapter 504 of the Code. If the articles of incorporation of such corporation have not heretofore been filed in the office of the secretary of state, but are on file in the office of a county recorder, no such instrument of adoption shall be accepted by the secretary of state until the corporation shall have caused its articles of incorporation and all amendments duly certified by the proper county recorder to be recorded in the office of the secretary of state. Upon the filing of such instrument the secretary of state shall issue a certificate as to the filing of such instrument and deliver such certificate to the corporation or its representative.

Upon the issuance of such certificate by the secretary of state:

(1) All of the provisions of this chapter shall thereafter apply to the corporation and thereupon every such foreign corporation shall be entitled to all the rights and privileges applicable to foreign corporations procuring certificates of authority to conduct affairs in this state under this chapter, and shall be subject to all the limitations, restrictions, liabilities, and duties prescribed herein for foreign corporations procuring certificates of authority to conduct affairs in this state under this chapter.

(2) In the case of any corporation with issued shares of stock, the holders of such issued shares who surrender them to the corporation to be canceled upon the adoption of this chapter by the corporation becoming effective, shall be and become members of the corporation with one vote for each share of stock so surrendered until such time as the corporation by proper corporate action relative to the election, qualification, terms and voting power of members shall otherwise prescribe.

4. Any domestic corporation which elects to adopt the provisions of this chapter by complying with the provisions of subsection 3 of this section may, at the same time, amend or restate its articles of incorporation by complying with the provisions of this chapter with respect to amending articles of incorporation or restating articles of incorporation, as the case may be.

5. The provisions of this chapter becoming applicable to any domestic or foreign corporation shall not affect any right accrued or established, or any liability or penalty incurred, under the provisions of chapter 504 prior to the filing by the secretary of state in the secretary of state's office of the instrument manifesting the election of such corporation to adopt the provisions of this chapter as provided in subsection 3 of this section.

6. Except for the exceptions and limitations of subsection 1 of this section, this chapter shall apply to: All domestic corporations organized after the date on which this chapter became effective; domestic corporations organized or existing under chapter 504 which voluntarily elect to adopt the provisions of this chapter and comply with the provisions of subsection 3 of this section; all foreign corporations conducting or seeking to conduct affairs within this state and not holding, July 4, 1965, a valid permit so to do; foreign corporations holding, on the date the chapter becomes effective, a valid permit under the provisions of chapter 504 which, during the period of two years from and after said date, voluntarily elect to adopt the provisions of this chapter and comply with the provisions of subsection 3 of this section; and, upon the expiration of the period of two years from and after July 4, 1965, all foreign corporations holding such a permit on July 4, 1965.

7. Upon the expiration of a period of two years from and after the date on July 4, 1965, except for the exceptions and limitations of subsection 1 of this section, this chapter shall apply to every foreign cor-

poration holding a valid permit to do business within this state or seeking to conduct affairs within this state. Every foreign corporation holding a valid permit to do business within this state on July 4, 1965, which has not meanwhile adopted this chapter by complying with the provisions of subsection 3 of this section, shall at the expiration of two years from and after said date be deemed to have elected to adopt this chapter by not voluntarily withdrawing from the state, and thereupon every such foreign corporation, subject to the limitations set forth in its certificate of authority, shall be entitled to all the rights and privileges applicable to foreign corporations procuring certificates of authority to conduct affairs in this state under this chapter, and shall be subject to all the limitations, restrictions, liabilities, and duties prescribed herein for foreign corporations procuring certificates of authority to conduct affairs in this state under this chapter.

8. Within eight months after this chapter becomes applicable to any foreign corporation pursuant to the provisions of subsection 7 of this section, the board of directors of such foreign corporation shall adopt a resolution designating the address of its registered office in this state and the name of its registered agent or agents at such address and, if the name of such corporation does not comply with this chapter, setting forth the name of the corporation with the changes which it elects to make therein conforming to the requirements of this chapter for use in this state.

Upon adoption of the required resolution or resolutions, an instrument or instruments shall be executed by the foreign corporation by its president or a vice president and by its secretary or assistant secretary and verified by one of the officers signing such instrument, which shall set forth the name of the corporation, each resolution adopted as required by the provisions of this subsection, and the date of the adoption thereof. Such instrument shall be delivered to the secretary of state for filing in the secretary of state's office. Upon the filing of such instrument by

a foreign corporation the secretary of state shall issue a certificate as to the filing of such instrument and deliver such certificate to the corporation or its representative. The secretary of state shall not file any annual report of any foreign corporation subject to the provisions of this subsection unless and until said corporation has fully complied with the provisions of this paragraph and, in such event, such foreign corporation shall be subject to the penalties prescribed in this chapter for failure to file such report within the time as provided therefor in this chapter.

9. The first annual report required to be filed by a domestic or foreign corporation under this chapter shall be filed between May 1 and July 1 of the year next succeeding the calendar year in which it becomes subject to the chapter.

10. No corporation to which the provisions of this chapter apply shall be subject to the provisions of chapter 504.

11. The provisions of sections 504A.96 and 504A.97 shall apply to any action required or permitted to be taken under this section.

12. Except as otherwise provided in this section, existing corporations shall continue to be governed by the laws of this state heretofore applicable thereto.

13. Corporations existing under chapter 504 shall be subject to this chapter on July 1, 1990, except that the corporations shall be subject to sections 504A.8 and 504A.83 on January 1, 1995. A corporate existence of a corporation that is not in compliance on the records of the secretary of state with sections 504A.8 and 504A.83 on June 30, 1995, is terminated, effective July 1, 1995. A corporation whose existence is terminated pursuant to this subsection may be reinstated. When the reinstatement is effective, it relates back to and takes effect as of the effective date of the termination of its corporate existence as if such termination had never occurred. The secretary of state shall adopt rules governing the reinstatement of a corporation pursuant to this subsection.

93 Acts, ch 109, §13

Subsection 3, paragraph c amended

## CHAPTER 504C

### NONPROFIT CORPORATIONS — HOUSING FOR PERSONS WITH DISABILITIES

#### 504C.1 Housing — persons with physical disabilities.

1. For the purposes of this chapter, "*physical disability*" means a physical impairment that results in significant functional limitations in one or more areas of major life activity and in the need for specialized care, treatment, or training services of extended duration.

2. Individuals with physical disabilities may form nonprofit corporations pursuant to chapter 504A for the sole purpose of establishing homes for persons with disabilities which are intended to serve two to five residents who are members of the nonprofit corporation.

3. A nonprofit corporation formed under this section may do any of the following:

a. Design, modify, or construct a specific housing facility to provide appropriate services and support to the residents of the specific housing facility. Local requirements shall not be more restrictive than the rules adopted for a family home, as defined in section 335.25 or 414.22, and the state building code requirements for single-family or multiple-family housing.

b. Contract for or employ staff for personal attendant needs and for the management and operation of the housing facility.

c. Purchase, modify, maintain, and operate transportation services for the use of the housing facility residents.

4. Residents of housing facilities established under this chapter shall be eligible to apply for or continue to receive funding provided through federal, state, and county funding sources, and assets of the members of the nonprofit corporation used in the establishment, management, and operation of the housing facility, including but not limited to provision of services to the residents of the facility, shall not be considered in determining a resident's eligibility for funding provided through sources otherwise available to the resident.

93 Acts, ch 90, §1  
NEW section

## CHAPTER 505

### INSURANCE DIVISION

Commissioner to establish rules and procedures for health insurance purchasing cooperative projects, 93 Acts, ch 158, §2, 4

#### 505.1 Insurance division created.

An insurance division is created within the department of commerce to regulate and supervise the conducting of the business of insurance in the state. The commissioner of insurance is the chief executive officer of the division. As used in this chapter, the rest of the insurance title, and chapters 502 and 535C, "division" means the insurance division.

93 Acts, ch 60, §6  
Section amended

#### 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.

7. The insurance division shall, by January 15 of each year, prepare estimates of projected receipts, refunds, and reimbursements to be generated by the examinations function of the division during the calendar year in which the report is due, and such receipts, refunds, and reimbursements shall be treated in the same manner as repayment receipts, as defined in section 8.2, subsection 8, and shall be available to the division to pay the expenses of the division's examination function.

93 Acts, ch 88, §3  
NEW subsection 7

## CHAPTER 507B

### INSURANCE TRADE PRACTICES

#### **507B.4 Unfair methods of competition and unfair or deceptive acts or practices defined.**

The following are hereby defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

1. *Misrepresentations and false advertising of insurance policies.* Making, issuing, circulating, or causing to be made, issued or circulated, any estimate, illustration, circular, statement, sales presentation, omission, or comparison which does any of the following:

a. Misrepresents the benefits, advantages, conditions, or terms of any insurance policy.

b. Misrepresents the dividends or share of the surplus to be received on any insurance policy.

c. Makes any false or misleading statements as to the dividends or share of surplus previously paid on any insurance policy.

d. Is misleading or is a misrepresentation as to the financial condition of any person, or as to the legal reserve system upon which any life insurer operates.

e. Uses any name or title of any insurance policy or class of insurance policies misrepresenting the true nature thereof.

f. Is a misrepresentation for the purpose of inducing or tending to induce the lapse, forfeiture, exchange, conversion, or surrender of any insurance policy.

g. Is a misrepresentation for the purpose of effecting a pledge or assignment of or effecting a loan against any insurance policy.

h. Misrepresents any insurance policy as being shares of stock.

i. Misrepresents any insurance policy to consumers by using the terms "*burial insurance*", "*funeral insurance*", "*burial plan*", or "*funeral plan*" in its names or titles, unless the policy is made with a funeral provider as beneficiary who specifies and fixes a price under contract with an insurance company. This paragraph does not prevent insurers from stating or advertising that insurance benefits may provide cash for funeral or burial expenses.

j. Is a misrepresentation, including any intentional misquote of premium rate, for the purpose of inducing or tending to induce the purchase of an insurance policy.

2. *False information and advertising generally.* Making, publishing, disseminating, circulating or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, an advertisement, announcement or statement containing any assertion, representation, or statement with respect to the business of insurance or with respect to any person in the conduct of the person's insurance business, which is untrue, deceptive or misleading.

3. *Defamation.* Making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting or encouraging the making, publishing, disseminating, or circulating of any oral or written statement or any pamphlet, circular, article or literature which is false, or maliciously critical of or derogatory to the financial condition of any person, and which is calculated to injure such person.



4. *Boycott, coercion and intimidation.* Entering into any agreement to commit, or by any concerted action committing, any act of boycott, coercion or intimidation resulting in or tending to result in unreasonable restraint of, or monopoly in, the business of insurance.

5. *False statements and entries.*

a. Knowingly filing with any supervisory or other public official, or knowingly making, publishing, disseminating, circulating or delivering to any person, or placing before the public, or knowingly causing directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false material statement of fact as to the financial condition of a person.

b. Knowingly making any false entry of a material fact in any book, report or statement of any person or knowingly omitting to make a true entry of any material fact pertaining to the business of such person in any book, report or statement of such person.

6. *Stock operations and advisory board contracts.* Issuing or delivering or permitting agents, officers or employees to issue or deliver, agency company stock or other capital stock, or benefit certificates or shares in any common law corporation, or securities or any special or advisory board contracts or other contracts of any kind promising returns and profits as an inducement to insurance.

7. *Unfair discrimination.*

a. Making or permitting any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any contract of life insurance or of life annuity or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such contract.

b. Making or permitting any unfair discrimination between insureds of the same class for essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of insurance other than life or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever.

8. *Rebates.*

a. Except as otherwise expressly provided by law, knowingly permitting or offering to make or making any contract of life insurance, life annuity or accident and health insurance, or agreement as to such contract other than as plainly expressed in the contract issued thereon, or paying or allowing, or giving or offering to pay, allow, or give, directly or indirectly, as inducement to such insurance, or annuity, any rebate of premiums payable on the contract, or any special favor or advantage in the dividends or other benefits thereon, or any valuable consideration or inducement whatever not specified in the contract; or giving, or selling, or purchasing or offering to give, sell, or purchase as inducement to such insurance or annuity or in connection therewith, any stocks, bonds, or other securities of any insurance company or other corporation, association, or partnership, or any dividends or profits accrued thereon, or any thing of value whatsoever not specified in the contract.

b. Nothing in subsection 7 or paragraph "a" of this subsection shall be construed as including within the definition of discrimination or rebates any of the following practices:

(1) In the case of any contract of life insurance or life annuity, paying bonuses to policyholders or otherwise rebating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance, provided that any such bonuses or rebatement of premiums shall be fair and equitable to policyholders and for the best interests of the company and its policyholders.

(2) In the case of life insurance policies issued on the industrial debit plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer in an amount which fairly represents the saving in collection expenses.

(3) Readjustment of the rate of premium for a group insurance policy based on the loss or expense experienced thereunder, at the end of the first or any subsequent policy year of insurance thereunder, which may be made retroactive only for such policy year.

9. *Unfair claim settlement practices.* Committing or performing with such frequency as to indicate a general business practice any of the following:

a. Misrepresenting pertinent facts or insurance policy provisions relating to coverages of issue.

b. Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies.

c. Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies.

d. Refusing to pay claims without conducting a reasonable investigation based upon all available information.

e. Failing to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed.

f. Not attempting in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear, or failing to include interest on the payment of claims when required under section 511.38.

g. Compelling insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by such insureds.

h. Attempting to settle a claim for less than the amount to which a reasonable person would have believed the person was entitled by reference to written or printed advertising material accompanying or made part of an application.

i. Attempting to settle claims on the basis of an application which was altered without notice to, or knowledge or consent of the insured.

j. Making claims payments to insureds or beneficiaries not accompanied by a statement setting forth the coverage under which payments are being made.

k. Making known to insureds or claimants a policy of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration.

l. Delaying the investigation or payment of claims by requiring an insured, claimant, or the physician of either to submit a preliminary claim report and then requiring the subsequent submission of formal proof of loss forms, both of which submissions contain substantially the same information.

m. Failing to promptly settle claims, where liability has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage.

n. Failing to promptly provide a reasonable explanation of the basis in the insurance policy in rela-

tion to the facts or applicable law for denial of a claim or for the offer of a compromise settlement.

10. *Misrepresentation in insurance applications.* Making false or fraudulent statements or representations on or relative to an application for an insurance policy, for the purpose of obtaining a fee, commission, money, or other benefit from any insurer, agent, broker, or individual.

10A. *Omission from insurance application.* Failing to designate on an insurance policy application the licensee who has solicited and written the policy.

11. *Rating organizations.* Any violation of section 515F.16.

12. *Minor traffic violations.* Failure of a person to comply with section 516B.3.

93 Acts, ch 88, §4  
Subsection 1, NEW paragraph j

## CHAPTER 507C

### INSURERS SUPERVISION, REHABILITATION AND LIQUIDATION

#### 507C.3 Applicability.

This chapter may be applied to any of the following:

1. Insurers who are doing or have done insurance business in this state, and against whom claims arising from that business may exist now or in the future.

2. Insurers who purport to do insurance business in this state.

3. Insurers who have insureds who are residents in this state.

4. Other persons organized or in the process of organizing with the intent to do insurance business in this state.

5. Nonprofit health service corporations and all fraternal benefit societies and beneficial societies subject to chapters 512A, 512B, and 514.

6. Prepaid health care delivery plans which are regulated by the commissioner.

93 Acts, ch 88, §5  
NEW subsection 6

#### 507C.14 Powers and duties of the rehabilitator.

1. The commissioner as rehabilitator may appoint one or more special deputies. The special deputies shall have the powers and responsibilities of the rehabilitator granted under this section. The commissioner may employ counsel, clerks, and assistants as necessary. The compensation of the special deputy, counsel, clerks, and assistants and all expenses of taking possession of the insurer and of conducting the proceedings shall be fixed by the commissioner

with the approval of the court and shall be paid out of the funds or assets of the insurer. The persons appointed under this section shall serve at the pleasure of the commissioner. If the property of the insurer does not contain sufficient cash or liquid assets to defray the costs incurred, the commissioner may advance the costs so incurred out of any appropriation for the maintenance of the division. Amounts so advanced for expenses of administration shall be repaid to the commissioner for the use of the division out of the first available money of the insurer.

2. The rehabilitator may take action as the rehabilitator deems necessary or appropriate to reform and revitalize the insurer. The rehabilitator shall have the powers of the directors, officers, and managers of the insurer, whose authority shall be suspended, except as the powers are redelegated by the rehabilitator. The rehabilitator shall have power to direct and manage, to hire and discharge employees subject to contract rights the employees may have, and to deal with the property and business of the insurer.

3. If it appears to the rehabilitator that there has been criminal or tortious conduct, or breach of a contractual or fiduciary obligation by any person detrimental to the insurer, the rehabilitator may pursue appropriate legal remedies on behalf of the insurer.

4. If the rehabilitator determines that reorganization, consolidation, conversion, reinsurance, merger, or other transformation of the insurer is appropriate, the rehabilitator shall prepare a plan to effect the changes. Upon application of the rehabilita-

tor for approval of the plan, and after notice and hearings as the court may prescribe, the court may either approve, disapprove or modify the plan proposed. Before approving a plan, the court shall find that it is fair and equitable to all parties concerned. If the plan is approved, the rehabilitator shall carry out the plan. In the case of a life insurer, if all rights of shareholders are first relinquished, the plan proposed may include the imposition of liens upon the policies of the company. A plan for a life insurer may also propose imposition of a moratorium upon loan and cash surrender rights under policies.

5. The rehabilitator shall have the power under sections 507C.26 and 507C.27 to avoid fraudulent transfers.

93 Acts, ch 88, §6  
Subsection 3 stricken and former subsections 4-6 renumbered as 3-5

#### **507C.26 Fraudulent transfers prior to petition.**

1. A transfer made and an obligation incurred by an insurer within one year prior to the filing of a successful petition for rehabilitation or liquidation under this chapter is fraudulent as to then existing and future creditors if made or incurred without fair consideration, or with actual intent to hinder, delay, or defraud either existing or future creditors. A fraudulent transfer made or an obligation incurred by an insurer ordered to be rehabilitated or liquidated under this chapter may be avoided by the receiver, except as to a person who in good faith is a purchaser, lienor, or obligee for a present fair equivalent value. A purchaser, lienor, or obligee, who in good faith has given a consideration less than fair for such transfer, lien, or obligation, may retain the property, lien or obligation as security for repayment. The court may, on due notice, order any such transfer or obligation to be preserved for the benefit of the estate, and in that event, the receiver shall succeed to and may enforce the rights of the purchaser, lienor, or obligee.

2. *a.* A transfer of property other than real property is made when it becomes perfected so that a subsequent lien obtainable by legal or equitable proceedings on a simple contract could not become superior to the rights of the transferee under section 507C.28, subsection 3.

*b.* A transfer of real property is made when it becomes perfected so that a subsequent bona fide purchaser from the insurer could not obtain rights superior to the rights of the transferee.

*c.* A transfer which creates an equitable lien is not perfected if there are available means by which a legal lien could be created.

*d.* A transfer not perfected prior to the filing of a petition for liquidation shall be deemed to be made immediately before the filing of the successful petition.

*e.* This subsection applies whether or not there are or were creditors who might have obtained a lien or persons who might have become bona fide purchasers.

3. A transaction of the insurer with a reinsurer

is fraudulent and may be avoided by the receiver under subsection 1 if both of the following exist:

*a.* The transaction consists of the termination, adjustment, or settlement of a reinsurance contract in which the reinsurer is released from any part of its duty to pay the originally specified share of losses that had occurred prior to the time of the transaction, unless the reinsurer gives a present fair equivalent value for the release.

*b.* Part of the transaction took place within one year prior to the date of filing of the petition through which the receivership was commenced.

4. A person receiving property from an insurer or any benefit from an insurer which is a fraudulent transfer under subsection 1 is personally liable for the property or benefit and shall account to the liquidator.

93 Acts, ch 88, §7  
NEW subsection 4

#### **507C.42 Priority of distribution.**

The priority of distribution of claims from the insurer's estate shall be in accordance with the order in which each class of claims is set forth. Claims in each class shall be paid in full or adequate funds retained for the payment before the members of the next class receive any payment. Subclasses shall not be established within a class. The order of distribution of claims is:

1. *Class 1.* The costs and expenses of administration, including but not limited to the following:

*a.* The actual and necessary costs of preserving or recovering the assets of the insurer.

*b.* Compensation for all authorized services rendered in the liquidation.

*c.* Necessary filing fees.

*d.* The fees and mileage payable to witnesses.

*e.* Authorized reasonable attorney's fees and other professional services rendered in the liquidation.

*f.* The reasonable expenses of a guaranty association or foreign guaranty association in handling claims.

2. *Class 2.* Reasonable compensation to employees for services performed to the extent that they do not exceed two months of monetary compensation and represent payment for services performed within one year before the filing of the petition for liquidation or, if the rehabilitation preceded liquidation, within one year before the filing of the petition for rehabilitation. Officers and directors are not entitled to the benefit of this priority. The priority is in lieu of other similar priority which may be authorized by law as to wages or compensation of employees.

3. *Class 3.* Claims under policies, including claims of the federal or any state or local government, for losses incurred, including third-party claims, claims against the insurer for liability for bodily injury or for injury to or destruction of tangible property which are not under policies, and claims of a guaranty association or foreign guaranty association. Claims for unearned premium. Claims under

life insurance and annuity policies, whether for death proceeds, annuity proceeds, or investment values shall be treated as loss claims. That portion of a loss, indemnification for which is provided by other benefits or advantages recovered by the claimant, shall not be included in this class, other than benefits or advantages recovered or recoverable in discharge of familial obligations of support or by way of succession at death or as proceeds of life insurance, or as gratuities. A payment by an employer to an employee is not a gratuity.

4. *Class 4.* Claims of general creditors, including claims of ceding and assuming reinsurers in their capacity as such, and subrogation claims.

5. *Class 5.* Claims of the federal or any state or local government except those under class 3. Claims, including those of a governmental body for a penalty

or forfeiture, are allowed in this class only to the extent of the pecuniary loss sustained from the act, transaction, or proceeding out of which the penalty or forfeiture arose, with reasonable and actual costs incurred. The remainder of such claims shall be postponed to the class of claims under subsection 8.

6. *Class 6.* Claims filed late or any other claims other than claims under subsections 7 and 8.

7. *Class 7.* Surplus or contribution notes, or similar obligations, and premium refunds on assessable policies. Payments to members of domestic mutual insurance companies are limited in accordance with law.

8. *Class 8.* The claims of shareholders or other owners.

93 Acts, ch 88, §8  
Subsections 3 and 4 amended

## CHAPTER 509A

### GROUP INSURANCE FOR PUBLIC EMPLOYEES

#### 509A.14 Approval of self-insurance plans.

The commissioner of insurance shall adopt rules for self-insurance plans for life insurance and accident and health insurance for a political subdivision of the state or a school corporation. The rules adopted shall include, but are not limited to, the following:

1. A requirement that the plan shall include all coverages and provisions that are required by law in insurance policies for the type of risk that the self-insurance plan is intended to cover.

2. A requirement that if the resources of the plan are inadequate to fully cover a claim under the plan, then the public body is liable for any portion of the claim that is left unpaid.

93 Acts, ch 88, §9  
Subsection 2 stricken and former subsection 3 renumbered as 2

#### 509A.15 Certification of self-insurance plans.

1. Within ninety days following the end of a fiscal year, the governing body of a self-insurance plan of a political subdivision or a school corporation shall file with the commissioner of insurance a certificate of compliance, actuarial opinion, and an annual financial report. The filing shall be accompanied by a fee of one hundred dollars. A penalty of fifteen dollars per day shall be assessed for failure to comply with the ninety-day filing requirement, except that the commissioner may waive the penalty upon a showing that special circumstances exist which justify the waiver. The certificate shall be signed and dated by the appropriate public official representing the governing body, and shall certify the following:

a. That the plan meets the requirements of this

chapter and the applicable provisions of the Iowa administrative code.

b. That an actuarial opinion has been attached to the certificate which attests to the adequacy of reserves, rates, and financial condition of the plan. The actuarial opinion must include, but is not limited to, a brief commentary about the adequacy of the reserves, rates, and the financial condition of the plan, a test of the prior year claim reserve, a brief description of how the reserves were calculated, and whether or not the plan is able to cover all reasonably anticipated expenses. The actuarial opinion shall be prepared, signed, and dated by a person who is a member of the American academy of actuaries. If necessary, the actuary should assist the public body in preparing the annual financial report. The annual financial report shall be in a format as prescribed by the commissioner.

c. That a written complaint procedure has been implemented. The certificate shall also list the number of complaints filed by participants under the written complaint procedure, and the percentage of participants filing written complaints, in the prior fiscal year.

d. That the governing body has contracted or otherwise arranged with a third-party administrator who holds a current certificate of registration issued by the commissioner pursuant to section 510.21, or with a person not required to obtain the certificate as an administrator as defined in section 510.11, subsection 1.

2. The commissioner shall by rule require the maintenance of confidentiality of information held by the plan administrator.

3. The failure of the governing body to provide the certificate of compliance required by subsection 1, or the failure of the governing body or plan administrator to abide by a requirement of the plan, this chapter, or applicable rule, is grounds for action

against the plan, including cause for disapproval or discontinuance of the plan.

93 Acts, ch 88, §10  
Subsection 1 amended

## CHAPTER 510

### MANAGING GENERAL AGENTS AND ADMINISTRATORS

#### **510.5A Unfair competition or unfair and deceptive acts or practices prohibited.**

A managing general agent is subject to chapter 507B relating to unfair insurance trade practices.

93 Acts, ch 88, §11  
NEW section

#### **510.23 Unfair competition or unfair and deceptive acts or practices prohibited.**

An administrator is subject to chapter 507B relating to unfair insurance trade practices.

93 Acts, ch 88, §12  
NEW section

## CHAPTER 510A

### BUSINESS PRODUCER CONTROLLED PROPERTY AND CASUALTY INSURERS

#### **510A.6 Penalties.**

1. If the commissioner believes that a controlling producer or any other person subject to this chapter has not materially complied with this chapter, or any rule adopted or order issued pursuant to this chapter, after notice and opportunity to be heard, the commissioner may order the controlling producer to cease placing business with the controlled insurer. Additionally, if the commissioner finds that because of such noncompliance the controlled insurer or any policyholder of the controlled insurer has suffered any loss or damage, the commissioner may maintain a civil action or intervene in an action brought by or on behalf of the insurer or policyholder for recovery of compensatory damages for the benefit of the insurer or policyholder, or for other appropriate relief.

2. If an order for liquidation or rehabilitation of the controlled insurer has been entered pursuant to

chapter 507C, and the receiver appointed under that order believes that the controlling producer or any other person has not materially complied with this chapter, or any rule adopted or order issued pursuant to this chapter, and that the insurer suffered any loss or damage as a result of the noncompliance, the receiver may maintain a civil action for recovery of damages or other appropriate sanctions for the benefit of the insurer.

3. This section shall not be construed to affect or limit the right of the commissioner to impose any other penalties, as appropriate, which the commissioner is authorized to impose.

4. This section shall not be construed to affect or limit the rights of policyholders, claimants, creditors, or other third parties.

93 Acts, ch 88, §13  
NEW section

## CHAPTER 512B

### FRATERNAL BENEFIT SOCIETIES

#### 512B.21A Required reserves.

A society incorporated on or after July 1, 1993, shall have in cash, or in securities which are authorized for investment purposes for insurance compa-

nies pursuant to section 512B.21, surplus in an amount not less than five million dollars.

93 Acts, ch 88, §14  
NEW section

## CHAPTER 513A

### THIRD-PARTY PAYORS OF HEALTH CARE BENEFITS

#### 513A.7 Unfair competition or unfair and deceptive acts or practices prohibited.

A third-party payor of health care benefits is subject to chapter 507B relating to unfair insurance

trade practices.

93 Acts, ch 88, §15  
NEW section

## CHAPTER 513B

### SMALL GROUP HEALTH COVERAGE

#### SUBCHAPTER I

#### RATING PRACTICES — AVAILABILITY

##### 513B.1 Title — purpose.

1. This subchapter shall be known and may be cited as the “*Model Small Group Rating Law*”.

2. The intent of this subchapter 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.

93 Acts, ch 80, §1  
Section amended

##### 513B.2 Definitions.

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

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 compli-

ance 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. “*Basic health benefit plan*” means a plan which is offered pursuant to section 513B.14.

4. “*Carrier*” means any person who provides health insurance in this state. For the purposes of this subchapter, 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.

5. “*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 subchapter.

6. "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 applicable 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.

7. "Commissioner" means the commissioner of insurance.

8. "Division" means the division of insurance.

9. "Eligible employee" means an employee who works on a full-time basis and has a normal work week of thirty or more hours. The term includes a sole proprietor, a partner of a partnership, and an independent contractor, if the sole proprietor, partner, or independent contractor is included as an employee under a health benefit plan of a small employer, but does not include an employee who works on a part-time, temporary, or substitute basis.

10. a. "Health benefit plan" or "plan" means any hospital or medical expense incurred policy or certificate, major medical expense insurance, hospital or medical service plan contract, or health maintenance organization subscriber contract.

b. "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.

c. "Health benefit plan" also does not include policies or certificates of specified disease, hospital con-

finement indemnity, or limited benefit health insurance if the carrier offering such policies or certificates complies with all of the following:

(1) The carrier files on or before March 1 of each year a certification with the commissioner that contains the following statement and information:

(a) A statement from the carrier certifying that policies or certificates described in this paragraph "c" are being offered and marketed as supplemental health insurance and not as a substitute for hospital or medical expense insurance or major medical expense insurance.

(b) A summary description of each policy or certificate described in this paragraph "c" including the average annual premium rates or range of premium rates in cases where premiums vary by age, gender, or other factors, which are to be charged for such policies and certificates in this state.

(2) If a policy or certificate described in this paragraph "c" is offered for the first time in this state on or after July 1, 1993, the carrier files with the commissioner the information and statement required in subparagraph (1) at least thirty days prior to the date such policy or certificate is issued or delivered in this state.

11. "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.

12. "Late enrollee" means an eligible employee or dependent who requests enrollment in a health benefit plan of a small employer following the initial enrollment period for which such individual is entitled to enroll under the terms of the health benefit plan, provided the initial enrollment period is a period of at least thirty days. An eligible employee or dependent shall not be considered a late enrollee if any of the following apply:

a. The individual meets all of the following:

(1) The individual was covered under qualifying previous coverage at the time of the initial enrollment.

(2) The individual lost coverage under qualifying previous coverage as a result of termination of the individual's employment or eligibility, the involuntary termination of the qualifying previous coverage, death of the individual's spouse, or the individual's divorce.

(3) The individual requests enrollment within thirty days after termination of the qualifying previous coverage.

b. The individual is employed by an employer that offers multiple health benefit plans and the individual elects a different plan during an open enrollment period.

c. A court has ordered that coverage be provided for a spouse or minor or dependent child under a covered employee's health benefit plan and the request for enrollment is made within thirty days after issuance of the court order.

13. "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.

14. “Qualifying previous coverage” and “qualifying existing coverage” mean benefits or coverage provided under any of the following:

a. Medicaid pursuant to Title XIX of the Social Security Act, medicare pursuant to Title XVIII of the Social Security Act, or coverage pursuant to the person’s service as a member of a branch of the armed forces of the United States.

b. An employer-based health insurance or health benefit arrangement that provides benefits similar to or exceeding benefits provided under a basic health benefit plan.

c. An individual health insurance policy or contract issued by a carrier which provides benefits similar to or exceeding the benefits provided under the basic health benefit plan, provided the policy or contract has been in effect for a period of at least one year.

15. “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.

16. “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 not less than two and not 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.

17. “Small employer carrier” means any carrier which offers health benefit plans covering the employees of a small employer.

18. “Standard health benefit plan” means a plan which is offered pursuant to section 513B.14.

93 Acts, ch 80, §2, 3  
NEW unnumbered paragraph 1  
Subsections 10 and 16 amended

#### **513B.4 Restrictions relating to the premium rates.**

1. Premium rates for health benefit plans subject to this subchapter 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, provided that the change does not exceed, on a percentage basis, the change in the new business premium rate for the most similar health benefit plan into which the small employer carrier is actively enrolling new insureds who are small employers.

(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”, for a period of three years following July 1, 1992. 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, provided that the change does not exceed, on a percentage basis, the change in the new business premium rate for the most similar health benefit plan into which the small employer carrier is actively enrolling new insureds who are small employers.

(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. Any adjustment in rates for claims experience, health status, and duration of coverage shall not be charged to individual employees or dependents. Any such adjustment shall be applied uniformly to the rates charged for all employees and dependents of the small employer.

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.

For purposes of this subsection, case characteristics may include industry classification, provided that the highest rate factor associated with any in-



dustry classification shall not exceed the lowest rate factor associated with any industry classification by more than fifteen percent. However, case characteristics other than age, industry classification, geographic area, family composition, and group size shall not be used by a small employer carrier without the prior approval of the commissioner. Gender may be used by a small employer carrier as a case characteristic provided the insurance division has conducted an independent actuarial study that determined the use of gender to be actuarially justified and, therefore, an allowed case characteristic. The study shall be based upon Iowa data to the extent the data is statistically valid or actuarially sound. The commissioner may assess the cost of the study to health insurance carriers admitted to this state pursuant to the procedures established for the assessment of fees and charges against certain insurers under section 507D.4. The commissioner, upon receipt of the findings of the study, shall adopt rules prohibiting or permitting the use of gender as an allowed case characteristic as determined by the study.

Rating factors shall produce premiums for identical groups which differ only by amounts attributable to plan design and do not reflect differences due to the nature of the groups assumed to select particular health benefit plans. A small employer carrier shall treat all health benefit plans issued or renewed in the same calendar month as having the same rating period.

3. For purposes of this section, a health benefit plan that contains a restricted network provision shall not be considered similar coverage to a health benefit plan that does not contain such a provision, if the restriction of benefits to network providers results in substantial differences in claims costs.

4. 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.

93 Acts, ch 80, §4  
Subsection 3 amended

#### **513B.4A Exemption from premium rate restrictions.**

A Taft-Hartley trust or a carrier with the written authorization of such a trust may make a written request to the commissioner for an exemption from the application of any provisions of section 513B.4 with respect to a health benefit plan provided to such a trust. The commissioner may grant an exemption if the commissioner finds that application of section 513B.4 with respect to the trust would have a substantial adverse effect on the participants and beneficiaries of such trust, and would require significant modifications to one or more collective bargaining arrangements under which the trust is established or maintained. An exemption granted under this section shall not apply to an individual if the individual

participates in a trust as an associate member of an employee organization.

93 Acts, ch 80, §5  
NEW section

#### **513B.5 Provisions on renewability of coverage.**

1. Except as provided in subsection 2, a health benefit plan subject to this subchapter 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.
- f. Repeated misuse of a provider network provision.

g. The commissioner finds that the continuation of the coverage is not in the best interests of the policyholders or certificate holders, or would impair the carrier's ability to meet its contractual obligations. If nonrenewal occurs as a result of findings pursuant to this paragraph, the commissioner shall assist affected small employers in finding replacement coverage.

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 one hundred eighty 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.

3. A small employer carrier may replace an existing health benefit plan with a new health benefit plan. The premium rate for the new plan shall be developed pursuant to section 513B.4 and must reflect the claim experience of the previously existing plan.

4. A small employer carrier shall not discontinue

the sale or active marketing of a particular class of plan or plans, unless the carrier withdraws from all marketing in this state directed at the small employer or has obtained specific approval from the commissioner to do so. The commissioner may approve the discontinuance upon a demonstrated finding that the continued sale or active marketing of a particular class of plan or plans will endanger the solvency of the carrier or does not advance the purposes of this section.

93 Acts, ch 80, §6  
NEW subsections 3 and 4

### 513B.10 Availability of coverage.

1. *a.* Except as provided in section 513B.5, subsection 4, a small employer carrier, as a condition of transacting business in this state with small employers, shall actively offer to small employers at least two health benefit plans. One health benefit plan offered by each small employer carrier shall be a basic health benefit plan and one plan shall be a standard health benefit plan.

*b.* (1) A small employer carrier shall issue a basic health benefit plan to a small employer that applies for a plan if the small employer is eligible for the plan pursuant to those provisions set forth in section 513B.32, subsection 1, and agrees to make the required premium payments and to satisfy the other reasonable provisions of the health benefit plan not inconsistent with this subchapter.

(2) A small employer carrier shall issue a standard health benefit plan to a small employer that applies for the plan and agrees to make the required premium payments and satisfy the other reasonable provisions of the health benefit plan not inconsistent with this subchapter.

(3) A small employer carrier establishing more than one class of business shall, in each class of business established, maintain and offer at least one basic health benefit plan to a small employer, if the employer is determined to be eligible for the basic health benefit plan pursuant to the provisions set forth in section 513B.32, subsection 1, and at least one standard health benefit plan. A small employer carrier may apply reasonable criteria in determining whether to accept a small employer provided all of the following apply:

(a) The criteria are not intended to discourage or prevent acceptance of small employers applying for a basic or standard health benefit plan.

(b) The criteria are not related to the health status or claims experience of the small employer.

(c) The criteria are applied consistently to all small employers applying for coverage in the class of business.

(d) The small employer carrier provides for the acceptance of all eligible small employers, as defined in section 513B.2, into one or more classes of business.

The provisions of this subparagraph do not apply to a class of business into which the small employer carrier is no longer enrolling new insureds who are small employers.

(4) The provisions of this lettered paragraph shall be effective upon a date as determined by the commissioner following the commissioner's approval of the basic health benefit plan and the standard health benefit plan.

2. *a.* A small employer carrier shall file with the commissioner, in a form and manner prescribed by the commissioner, the basic health benefit plans and the standard health benefit plans to be used by the carrier. A health benefit plan filed pursuant to this paragraph may be used by a small employer carrier beginning thirty days after it is filed unless the commissioner disapproves its use.

*b.* The commissioner at any time after providing notice and opportunity for hearing may disapprove the continued use of a basic or standard health benefit plan by a small employer carrier on the grounds that the plan does not meet the requirements of this subchapter.

3. A health benefit plan providing coverage for small employers shall satisfy all of the following:

*a.* The plan shall not deny, exclude, or limit benefits for a covered individual for losses incurred more than twelve months following the effective date of the individual's coverage due to a preexisting condition. A health benefit plan shall not define a preexisting condition more restrictively than the following:

(1) A condition that would cause an ordinarily prudent person to seek medical advice, diagnosis, care, or treatment during the six months immediately preceding the effective date of coverage.

(2) A condition for which medical advice, diagnosis, care, or treatment was recommended or received during the six months immediately preceding the effective date of coverage.

(3) A pregnancy existing on the effective date of coverage.

*b.* A small employer carrier shall waive any time period applicable to a preexisting condition exclusion or limitation period with respect to particular services in a health benefit plan for the period of time an individual was previously covered by qualifying previous coverage that provided benefits with respect to such service, provided that the qualifying previous coverage was continuous to a date not more than ninety days prior to the effective date of the new coverage. The period of continuous coverage shall not include any waiting period prior to the effective date of the new coverage applied by the employer or the carrier. This paragraph does not preclude application of any waiting period applicable to all new enrollees under the health benefit plan.

*c.* The plan may exclude coverage for late enrollees for the greater of eighteen months or an eighteen-month preexisting condition period, provided that if both a period of exclusion from coverage and a preexisting condition exclusion are applicable to a late enrollee, the combined period shall not exceed eighteen months from the date the individual enrolls for coverage under the health benefit plan.

*d.* (1) Except as provided in subparagraph (3), requirements used by a small employer carrier in de-

termining whether to provide coverage to a small employer, including requirements for minimum participation of eligible employees and minimum employer contributions, shall be applied uniformly among all small employers with the same number of eligible employees applying for coverage or receiving coverage from the small employer carrier.

(2) A small employer carrier may vary application of minimum participation requirements and minimum employer contribution requirements only by the size of the small employer group.

(3) Except as provided in this subparagraph, a small employer carrier shall not consider employees or dependents who have qualifying existing coverage in determining whether the applicable percentage of participation is met under the applicable minimum participation requirements. However, with respect to a small employer with ten or fewer eligible employees, a small employer carrier may consider employees or dependents who have coverage under another health benefit plan sponsored by the small employer when applying minimum participation requirements.

(4) A small employer carrier shall not increase any requirement for minimum employee participation or any requirement for minimum employer contribution applicable to a small employer at any time after the small employer has been accepted for coverage. For any plan issued prior to July 1, 1992, a carrier may, upon approval of the commissioner, increase a minimum employee participation requirement or a minimum employer contribution requirement consistent with chapter 509.

e. (1) If a small employer carrier offers coverage to a small employer, the small employer carrier shall offer coverage to all eligible employees of the small employer and the employees' dependents. A small employer carrier shall not offer coverage to only certain individuals in a small employer group or to only part of the group, except as permitted with regard to late enrollees.

(2) A small employer carrier shall not modify a basic or standard health benefit plan with respect to a small employer or any eligible employee or dependent through riders, endorsements, or other means, to restrict or exclude coverage for certain diseases or medical conditions otherwise covered by the health benefit plan.

(3) A small employer carrier may modify a small employer's health benefit plan, other than a basic or standard health benefit plan, provided the modifications apply to all eligible employees and dependents of that small employer.

4. a. A small employer carrier shall not be required to offer coverage or accept applications pursuant to this section where any of the following apply:

(1) To a small employer, where the small employer is not physically located in the carrier's established geographic service area.

(2) To an employee, when the employee does not work or reside within the carrier's established geographic service area.

(3) Within an area where the small employer carrier reasonably anticipates and demonstrates to the satisfaction of the commissioner that it will not have the capacity within the carrier's established geographic service area to deliver service adequately to the members of such groups because of the carrier's obligations to existing group policyholders and enrollees.

b. A small employer carrier not required to offer coverage or accept applications pursuant to paragraph "a", subparagraph (3), shall not offer coverage in the applicable area to new employer groups with more than twenty-five eligible employees or to any small employer groups until the later of one hundred eighty days following such refusal or the date on which the carrier notifies the commissioner that it has regained capacity to deliver services to small employer groups.

5. A small employer carrier shall not be required to offer coverage to small employers pursuant to subsection 1 for any period of time where the commissioner determines that the acceptance of the offers by small employers in accordance with subsection 1 would place the small employer carrier in a financially impaired condition.

93 Acts, ch 80, §7-9, 20  
Subsection 1 amended  
Subsection 3, paragraph b amended  
Subsection 3, paragraph e, NEW subparagraph (3)

#### **513B.11 Notice of intent to operate as a risk-assuming carrier or reinsuring carrier.**

1. a. Upon the approval of a plan of operation by the commissioner under section 513B.13, subsection 4, a small employer carrier authorized to transact the business of insurance in this state shall notify the commissioner of the carrier's intention to operate as a risk-assuming carrier or a reinsuring carrier. The notification shall be made as deemed appropriate by the commissioner. A small employer carrier seeking to operate as a risk-assuming carrier shall make an application pursuant to section 513B.12.

b. The notification of the commissioner concerning the carrier's intention pursuant to paragraph "a" is binding for a five-year period from the date notification is given, except that the initial notification given by carriers after July 1, 1992, is binding for a two-year period. The commissioner may permit a carrier to modify the carrier's decision at any time for good cause.

c. The commissioner shall establish an application process for small employer carriers seeking to change their status pursuant to this subsection. If a small employer carrier has been acquired by another such carrier, the commissioner may waive or modify the time periods established in paragraph "b".

2. A reinsuring carrier that applies and is approved to operate as a risk-assuming carrier shall not be permitted to continue to reinsure any health benefit plan with the program. The carrier shall pay a prorated assessment based upon business issued as a reinsuring carrier for any portion of the year that the business was reinsured.

93 Acts, ch 80, §10  
Subsection 1, paragraphs a and c amended

**513B.13 Small employer carrier reinsurance program.**

1. A nonprofit corporation is established to be known as the Iowa small employer health reinsurance program.

2. A reinsuring carrier is subject to this program.

3. *a.* The program shall operate subject to the supervision and control of a board. Subject to the provisions of paragraph "b", the board shall consist of nine members appointed by the commissioner, and the commissioner or the commissioner's designee, who shall serve as an ex officio member and as chairperson of the board.

*b.* In appointing the members of the board, the commissioner shall include representatives of small employers and small employer carriers and such other individuals as determined to be qualified by the commissioner. At least five of the members of the board shall be representatives of carriers and shall be selected from individuals nominated by small employer carriers in this state pursuant to procedures and guidelines provided by rule of the commissioner.

*c.* The initial board members shall be appointed as follows:

(1) Three members shall be appointed for a term of two years.

(2) Three members shall be appointed for a term of four years.

(3) Three members shall be appointed for a term of six years.

*d.* Subsequent members shall be appointed for terms of three years. A board member's term shall continue until the member's successor is appointed.

*e.* A vacancy in the board shall be filled by the commissioner for the remainder of the term. A member of the board may be removed by the commissioner for cause.

4. The board, within one hundred eighty days after the initial appointments, shall submit a plan of operation to the commissioner. The commissioner, after notice and hearing, may approve the plan of operation if the commissioner determines that the plan is suitable to assure the fair, reasonable, and equitable administration of the program, and provides for the sharing of program gains and losses on an equitable and proportionate basis in accordance with the provisions of this section. The plan of operation is effective upon written approval of the commissioner. After the initial plan of operation is submitted and approved by the commissioner, the board may submit to the commissioner any amendments to the plan necessary or suitable to assure the fair, reasonable, and equitable administration of the program.

5. If the board fails to submit a plan of operation within one hundred eighty days after the board's appointment, the commissioner, after notice and hearing, shall establish and adopt a temporary plan of operation. The commissioner shall amend or rescind a plan adopted pursuant to this subsection at the time a plan is submitted by the board and approved by the commissioner.

6. The plan of operation shall do all of the following:

*a.* Establish procedures for the handling and accounting of program assets and moneys, and for an annual fiscal reporting to the commissioner.

*b.* Establish procedures for selecting an administering carrier and setting forth the powers and duties of the administering carrier.

*c.* Establish procedures for reinsuring risks in accordance with the provisions of this section.

*d.* Establish procedures for collecting assessments from reinsuring carriers to fund claims and administrative expenses incurred or estimated to be incurred by the program.

*e.* Establish a methodology for applying the dollar thresholds contained in this section for carriers that pay or reimburse health care providers through capitation or a salary.

*f.* Provide for any additional matters necessary to implement and administer the program.

7. The same general powers and authority granted under the laws of this state to insurance companies and health maintenance organizations licensed to transact business in this state may be exercised by the board under the program, except the power to issue health benefit plans directly to either groups or individuals. Additionally, the board is granted the specific authority to do all or any of the following:

*a.* Enter into contracts as necessary or proper to administer the provisions and purposes of this subchapter, including the authority, with the approval of the commissioner, to enter into contracts with similar programs in other states for the joint performance of common functions or with persons or other organizations for the performance of administrative functions.

*b.* Sue or be sued, including taking any legal action necessary or proper to recover any assessments and penalties for, on behalf of, or against the program or any reinsuring carriers.

*c.* Take any legal action necessary to avoid the payment of improper claims made against the program.

*d.* Define the health benefit plans for which reinsurance will be provided, and issue reinsurance policies, pursuant to this subchapter.

*e.* Establish rules, conditions, and procedures for reinsuring risks under the program.

*f.* Establish and implement actuarial functions as appropriate for the operation of the program.

*g.* Assess reinsuring carriers in accordance with the provisions of subsection 11, and make advance interim assessments as may be reasonable and necessary for organizational and interim operating expenses. Any interim assessments shall be credited as offsets against any regular assessments due following the close of the calendar year.

*h.* Appoint appropriate legal, actuarial, and other committees as necessary to provide technical assistance in the operation of the program, policy and other contract design, and any other function within the authority of the program.

*i.* Borrow money to effect the purposes of the program. Any notes or other evidence of indebted-

ness of the program not in default are legal investments for carriers and may be carried as admitted assets.

8. A reinsuring carrier may reinsure with the program as provided in this section.

a. With respect to a basic health benefit plan or a standard health benefit plan, the program shall reinsure the level of coverage provided and, with respect to other plans, the program shall reinsure up to the level of coverage provided in a basic or standard health benefit plan.

b. A small employer carrier may reinsure an entire employer group within sixty days of the commencement of the group's coverage under a health benefit plan.

c. A reinsuring carrier may reinsure an eligible employee or dependent within a period of sixty days following the commencement of the coverage with the small employer. A newly eligible employee or dependent of a reinsured small employer may be reinsured within sixty days of the commencement of such person's coverage.

d. (1) The program shall not reimburse a reinsuring carrier with respect to the claims of a reinsured employee or dependent until the small employer carrier has incurred an initial level of claims for such employee or dependent of five thousand dollars in a calendar year for benefits covered by the program. In addition, the reinsuring carrier is responsible for ten percent of the next fifty thousand dollars of incurred claims during a calendar year and the program shall reinsure the remainder. A reinsuring carrier's liability under this subparagraph shall not exceed a maximum limit of ten thousand dollars in any one calendar year with respect to any reinsured individual.

(2) The board annually shall adjust the initial level of claims and the maximum limit to be retained by the small employer carrier to reflect increases in costs and utilization within the standard market for health benefit plans within the state. The adjustment shall not be less than the annual change in the medical component of the "consumer price index for all urban consumers" of the United States department of labor, bureau of labor statistics, unless the board proposes and the commissioner approves a lower adjustment factor.

e. A small employer carrier may terminate reinsurance for one or more of the reinsured employees or dependents of small employer on any plan anniversary date.

f. Premium rates charged for reinsurance by the program to a health maintenance organization that is federally qualified under 42 U.S.C. § 300c(c)(2)(A), and is thereby subject to requirements that limit the amount of risk that may be ceded to the program that are more restrictive than those specified in paragraph "d", shall be reduced to reflect that portion of the risk above the amount set forth in paragraph "d" that may not be ceded to the program, if any.

9. a. The board, as part of the plan of operation,

shall establish a methodology for determining premium rates to be charged by the program for reinsuring small employers and individuals pursuant to this section. The methodology shall include a system for classification of small employers that reflects the types of case characteristics commonly used by small employer carriers in the state. The methodology shall provide for the development of base reinsurance premium rates, which shall be multiplied by the factors set forth in paragraph "b" to determine the premium rates for the program. The base reinsurance premium rates shall be established by the board, subject to the approval of the commissioner, and shall be set at levels which reasonably approximate gross premiums charged to small employers by small employer carriers for health benefit plans with benefits similar to the standard health benefit plan.

b. Premiums for the program shall be as follows:

(1) An entire small employer group may be reinsured for a rate that is one and one-half times the base reinsurance premium rate for the group established pursuant to this subsection.

(2) An eligible employee or dependent may be reinsured for a rate that is five times the base reinsurance premium rate for the individual established pursuant to this subsection.

c. The board periodically shall review the methodology established under paragraph "a", including the system of classification and any rating factors, to assure that it reasonably reflects the claims experience of the program. The board may propose changes to the methodology which shall be subject to the approval of the commissioner.

10. If a health benefit plan for a small employer is entirely or partially reinsured with the program, the premium charged to the small employer for any rating period for the coverage issued shall meet the requirements relating to premium rates set forth in section 513B.4.

11. a. Prior to March 1 of each year, the board shall determine and report to the commissioner the program net loss for the previous calendar year, including administrative expenses and incurred losses for the year, taking into account investment income and other appropriate gains and losses.

b. Any net loss for the year shall be recouped by assessments of reinsuring carriers.

(1) The board shall establish, as part of the plan of operation, a formula by which to make assessments against reinsuring carriers. The assessment formula shall be based on both of the following:

(a) Each reinsuring carrier's share of the total premiums earned in the preceding calendar year from health benefit plans delivered or issued for delivery to small employers in this state by reinsuring carriers.

(b) Each reinsuring carrier's share of the premiums earned in the preceding calendar year from newly issued health benefit plans delivered or issued for delivery during such calendar year to small employers in this state by reinsuring carriers.

(2) The formula established pursuant to sub-

paragraph (1) shall not result in any reinsuring carrier having an assessment share that is less than fifty percent nor more than one hundred fifty percent of an amount which is based on the proportion of the reinsuring carrier's total premiums earned in the preceding calendar year from health benefit plans delivered or issued for delivery to small employers in this state by reinsuring carriers to total premiums earned in the preceding calendar year from health benefit plans delivered or issued for delivery to small employers in this state by all reinsuring carriers.

(3) The board, with approval of the commissioner, may change the assessment formula established pursuant to subparagraph (1) from time to time as appropriate. The board may provide for the shares of the assessment base attributable to premiums from all health benefit plans and to premiums from newly issued health benefit plans to vary during a transition period.

(4) Subject to the approval of the commissioner, the board shall make an adjustment to the assessment formula for reinsuring carriers that are approved health maintenance organizations which are federally qualified under 42 U.S.C. §300 et seq., to the extent, if any, that restrictions are placed on them that are not imposed on other small employer carriers.

(5) Premiums and benefits paid by a reinsuring carrier that are less than an amount determined by the board to justify the cost of collection shall not be considered for purposes of determining assessments.

c. (1) Prior to March 1 of each year, the board shall determine and file with the commissioner an estimate of the assessments needed to fund the losses incurred by the program in the previous calendar year.

(2) If the board determines that the assessments needed to fund the losses incurred by the program in the previous calendar year will exceed the amount specified in subparagraph (3), the board shall evaluate the operation of the program and report its findings, including any recommendations for changes to the plan of operation, to the commissioner within ninety days following the end of the calendar year in which the losses were incurred. The evaluation shall include: an estimate of future assessments, the administrative costs of the program, the appropriateness of the premiums charged, and the level of insurer retention under the program and the costs of coverage for small employers. If the board fails to file the report with the commissioner within ninety days following the end of the applicable calendar year, the commissioner may evaluate the operations of the program and implement such amendments to the plan of operation the commissioner deems necessary to reduce future losses and assessments.

(3) For any calendar year, the amount specified in this subparagraph is five percent of total premiums earned in the previous year from health benefit plans delivered or issued for delivery to small employers in this state by reinsuring carriers.

(4) If assessments in each of two consecutive cal-

endar years exceed by ten percent the amount specified in subparagraph (3), the commissioner may relieve carriers from any or all of the regulations of this subchapter or take such other actions as the commissioner deems equitable and necessary to spread the risk of loss and assure portability of coverages and continuity of benefits so as to reduce assessments to ten percent or less of that amount specified in subparagraph (3).

d. If assessments exceed net losses of the program, the excess shall be held in an interest-bearing account and used by the board to offset future losses or to reduce program premiums. As used in this paragraph, "future losses" includes reserves for incurred but not reported claims.

e. Each reinsuring carrier's proportion of the assessment shall be determined annually by the board based on annual statements and other reports deemed necessary by the board and filed by the reinsuring carriers with the board.

f. The plan of operation shall provide for the imposition of an interest penalty for late payment of assessments.

g. A reinsuring carrier may seek from the commissioner a deferment from all or part of an assessment imposed by the board. The commissioner may defer all or part of the assessment of a reinsuring carrier if the commissioner determines that the payment of the assessment would place the reinsuring carrier in a financially impaired condition. If all or part of an assessment against a reinsuring carrier is deferred, the amount deferred shall be assessed against the other participating carriers in a manner consistent with the basis for assessment set forth in this subsection. The reinsuring carrier receiving such deferment shall remain liable to the program for the amount deferred and shall be prohibited from reinsuring any individuals or groups in the program until such time as it pays such assessments.

12. The participation in the program as reinsuring carriers, the establishment of rates, forms, or procedures, or any other joint or collective action required by this subchapter shall not be the basis of any legal action, criminal or civil liability, or penalty against the program or any of its reinsuring carriers either jointly or separately.

13. The board, as part of the plan of operation, shall develop standards setting forth the manner and levels of compensation to be paid to producers for the sale of basic and standard health benefit plans. In establishing such standards, the board shall take into consideration all of the following:

a. The need to assure the broad availability of coverages.

b. The objectives of the program.

c. The time and effort expended in placing the coverage.

d. The need to provide ongoing service to the small employer.

e. The levels of compensation currently used in the industry.

f. The overall costs of coverage to small employers selecting these plans.

14. The program is exempt from any and all state or local taxes.

93 Acts, ch 80, §11, 12  
Subsection 3, paragraph b amended  
Subsection 6 amended

#### 513B.16 Applicability of certain state laws.

The provisions of subchapter II of this chapter shall not apply to basic health benefit plans and standard health benefit plans as provided for in subchapter I of this chapter, except for section 513B.39.

93 Acts, ch 80, §13  
Section amended

#### 513B.17 Discretion of the commissioner.

1. 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.

2. The commissioner may suspend or modify the normal work week requirement of thirty or more hours under the definition of eligible employee upon a finding by the commissioner that the suspension would enhance the availability of health insurance to employees of small employers.

3. The commissioner may adopt, by rule or order, transition provisions to facilitate the orderly and coordinated implementation of 1992 Iowa Acts, chapter 1167.

4. The commissioner may, with the concurrence of the board of the Iowa small employer health reinsurance program established in section 513B.13, extend the applicability of the provisions of this subchapter to employers employing up to fifty full-time equivalent employees upon a finding that the market for health insurance coverage for employer groups employing between twenty-five and fifty employees is constricted and not competitive, or upon a finding that the purpose of this subchapter will be furthered by such extension. The extension of the applicability of this subchapter may exclude section 513B.13 relating to reinsurance. Upon the extension of the applicability to employers employing up to fifty full-time equivalent employees the definition of "small employer" is deemed to include employers of up to fifty full-time equivalent employees.

93 Acts, ch 80, §14  
NEW subsection 4

#### 513B.17A Restoration of terminated coverage.

The commissioner may adopt rules to require small employer carriers, as a condition of transacting business with small employers in this state after July 1, 1993, to reissue a health benefit plan to any small employer whose health benefit plan is terminated or not renewed by a carrier after January 1, 1993, unless the carrier's termination is pursuant to section

513B.5. The commissioner may prescribe such terms for the reissuance of coverage as the commissioner finds are reasonable and necessary to provide continuity of coverage to such employers.

93 Acts, ch 80, §15  
NEW section

#### 513B.19 through 513B.30 Reserved.

### SUBCHAPTER II

#### BASIC BENEFIT COVERAGE

Legislative intent, 91 Acts, ch 244, §10

#### 513B.31 Definitions.

As used in this subchapter, 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 subchapter, 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 expense 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.

93 Acts, ch 80, §16, 20  
Section transferred from §514H 1 per directive in 93 Acts, ch 80, §20  
Unnumbered paragraph 1 amended

### 513B.32 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 subchapter.

For purposes of this subchapter, 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 513B.37.

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.

93 Acts, ch 80, §20

Section transferred from §514H 2 per directive in 93 Acts, ch 80, §20

### 513B.33 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 513B.32 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.

93 Acts, ch 80, §20

Section transferred from §514H 3 per directive in 93 Acts, ch 80, §20

#### **513B.34 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.

93 Acts, ch 80, §20

Section transferred from §514H 4 per directive in 93 Acts, ch 80, §20

#### **513B.35 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.

93 Acts, ch 80, §20

Section transferred from §514H 5 per directive in 93 Acts, ch 80, §20

#### **513B.36 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 subchapter.

93 Acts, ch 80, §20

Section transferred from §514H 6 per directive in 93 Acts, ch 80, §20

#### **513B.37 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.

93 Acts, ch 80, §20

Section transferred from §514H 7 per directive in 93 Acts, ch 80, §20

#### **513B.38 Commissioner's authority — well-child care.**

1. Upon the commissioner's determination under section 513B.37, subsection 1, paragraph "b",

to include well-child care in basic benefit coverage policies, the commissioner shall do all of the following:

a. With all due diligence adopt by rule requirements for the general provision of coverage for benefits for routine well-child care.

b. Apply the requirement for coverage to all appropriate entities providing group or employee health care benefits under the jurisdiction of the commissioner.

2. In determining the requirements under subsection 1 the commissioner shall consider all of the following:

a. The costs versus corresponding benefits of such coverage.

b. Normally anticipated health problems and recommended routine preventive care.

c. Continuity of coverage for any congenital defects and birth abnormalities, injuries, or illnesses arising within the well-child coverage period.

3. Well-child care coverage as provided for in this section applies to an individual under seven years of age.

93 Acts, ch 34, §1, 20

Section transferred from §514H 7A per directive in 93 Acts, ch 80, §20  
Section amended

### **513B.39 Presumed exclusion of mandated benefits.**

A mandated benefit or direct pay requirement otherwise imposed by state law, but excluded under section 513B.32, 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.

93 Acts, ch 80, §20

Section transferred from §514H 8 per directive in 93 Acts, ch 80, §20

### **513B.40 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 cost-effective, and its exclusion is not in the best interests of affordable health care coverage.

93 Acts, ch 80, §17, 20

Section transferred from §514H 9 per directive in 93 Acts, ch 80, §20  
Section amended

### **513B.41 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 513B.43. 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 513B.43 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 subchapter, in order to facilitate administration of the participation limits imposed by section 513B.43.

93 Acts, ch 80, §20

Section transferred from §514H 10 per directive in 93 Acts, ch 80, §20

### **513B.42 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.

93 Acts, ch 80, §20

Section transferred from §514H 11 per directive in 93 Acts, ch 80, §20

### **513B.43 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 513B.41, 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 before contracting with an insurance carrier for basic benefit insurance approved pursuant to section 513B.41.

b. The employer, on at least fifty percent of the employer's working days during the preceding year, employed not less than two and not more than twenty-five 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 either of the following:

a. A basic benefit plan approved by the commissioner.

b. A major medical policy approved by the commissioner providing coverage to an eligible individual either on a group or individual basis.

The policy shall also satisfy 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.

93 Acts, ch 80, §18, 20  
Section transferred from §514H 12 per directive in 93 Acts, ch 80, §20  
Subsection 2, paragraph b amended

## CHAPTER 514B

### HEALTH MAINTENANCE ORGANIZATIONS

#### 514B.32 Construction.

1. Except as otherwise provided in this chapter, laws regulating the insurance business in this state and the operations of corporations authorized under chapter 514 shall not be applicable to any health maintenance organization granted a certificate of authority under this chapter with respect to its health maintenance organization activities authorized and regulated pursuant to this chapter.

2. Solicitation of enrollees by a health maintenance organization granted a certificate of authority or its representatives does not violate any provision of law prohibiting solicitation or advertising by health professionals. Upon a prospective enrollee's

request, a list of locations of services and a list of providers who have current agreements with the health maintenance organization shall be made available.

3. Any health maintenance organization authorized under this chapter is not practicing medicine and shall not be subject to the limitations provided in section 135B.26 on types of contracts entered into between doctors and hospitals.

4. A health maintenance organization authorized under this chapter shall be considered a person for purposes of chapter 507B.

93 Acts, ch 88, §16  
NEW subsection 4

## CHAPTER 514H

### BASIC BENEFIT HEALTH COVERAGE

Transferred to §513B 31 through 513B 43 in Code Supplement 1993  
pursuant to directive in 93 Acts, ch 80, §20

## CHAPTER 515

### INSURANCE OTHER THAN LIFE

#### 515.81A Cancellation of commercial lines policies or contracts.

1. A commercial line policy or contract of insurance, except a policy or contract for crop hail or multiperil crop insurance, which has not been previously renewed may be canceled by the insurer if it has been in effect for less than sixty days at the time notice of cancellation is mailed or delivered.

2. A commercial line policy or contract of insurance, except a policy or contract for crop hail or multiperil crop insurance, which has been renewed or which has been in effect for more than sixty days shall not be canceled unless at least one of the following conditions occurs:

- a. Nonpayment of premium.
- b. Misrepresentation or fraud made by or with the knowledge of the insured in obtaining the policy or contract, when renewing the policy or contract, or in presenting a claim under the policy or contract.
- c. Actions by the insured which substantially change or increase the risk insured.
- d. Determination by the commissioner that the continuation of the policy will jeopardize the insurer's solvency or will constitute a violation of the law of this or any other state.

e. The insured has acted in a manner which the insured knew or should have known was in violation or breach of a policy or contract term or condition.

3. A commercial line policy or contract of insurance, except a policy or contract for crop hail or multiperil crop insurance, may be canceled at any time if the insurer loses reinsurance coverage which provides coverage to the insurer for a significant portion of the underlying risk insured and if the commissioner determines that cancellation because of loss of reinsurance coverage is justified. In determining whether a cancellation because of loss of reinsurance coverage is justified, the commissioner shall consider all of the following factors:

- a. The volatility of the premiums charged for reinsurance in the market.
- b. The number of reinsurers in the market.
- c. The variance in the premiums for reinsurance offered by the reinsurers in the market.
- d. The attempt by the insurer to obtain alternate reinsurance.

e. Any other factors deemed necessary by the commissioner.

4. A commercial line policy or contract of insurance, except a policy or contract for crop hail or multiperil crop insurance, shall not be canceled except by notice to the insured as provided in this subsection. A notice of cancellation shall include the reason for cancellation of the policy or contract. A notice of cancellation is not effective unless mailed or delivered to the named insured and a loss payee at least ten days prior to the effective date of cancellation, or if the cancellation is because of loss of reinsurance, at least thirty days prior to the effective date of cancellation. A post office department certificate of mailing to the named insured at the address shown in the policy or contract is proof of receipt of the mailing; however, such a certificate of mailing is not required if cancellation is for nonpayment of premium.

93 Acts, ch 88, §17  
Section amended

#### 515.130 Rebates prohibited.

An insurance company or an employee of the insurance company, or an agent, shall not pay, allow, or give, or offer to pay, allow, or give, directly or indirectly, as an inducement to purchase or acquire insurance or after insurance has been effected, any rebate, discount, abatement, credit, or reduction of the premium named in a policy of insurance, or any special favor or advantage in the dividends or other benefits to accrue on the policy, or any valuable consideration or inducement, not specified in the policy, except to the extent provided for in an applicable filing. An insured named in a policy, or an employee of the insured, shall not knowingly receive or accept, directly or indirectly, any rebate, discount, abatement, credit, or reduction of premium, or any such special favor or advantage or valuable consideration or inducement.

This section shall not be construed to prohibit the payment of commissions or other compensation to duly licensed agents, or to prohibit any insurer from allowing or returning to its participating policyholders, members, or subscribers, dividends, savings, or unabsorbed premium deposits. As used in this section, "insurance" includes suretyship and "policy" includes bond.

93 Acts, ch 88, §18  
NEW section

### 515.147 Business with nonadmitted insurers.

This chapter does not prevent a licensed resident or nonresident agent of this state, qualified to write excess and surplus lines insurance, from procuring insurance in certain nonadmitted insurers if such insurance is restricted to the type and kind of insurance authorized by this chapter, excluding insurance authorized under section 515.48, subsection 5, paragraph "a", and the agent makes oath to the commissioner of insurance in the form prescribed by the commissioner that the agent has made diligent effort to place the insurance in authorized insurers and has either exhausted the capacity of all authorized insurers or has been unable to obtain the desired insurance in insurers licensed to transact business in this

state. The procuring of a contract of insurance in a nonadmitted insurer makes the insurer liable for, and the agent shall pay, the taxes on the premiums as if the insurer were duly authorized to transact business in the state. A sworn report of all business transacted by agents of this state in nonadmitted insurers shall be made to the commissioner of insurance on or before March 1 of each year for the preceding calendar year, on the form required by the commissioner of insurance. The report shall be accompanied by a remittance to cover the taxes on the premiums. An agent who makes the oath, pays the taxes on the premiums, and files the report has not written such contracts of insurance unlawfully, and is not personally liable for the contracts.

93 Acts, ch 88, §19  
Section amended

## CHAPTER 515A

### WORKERS' COMPENSATION LIABILITY INSURANCE

Sunset provision repealed, 93 Acts, ch 88, §34  
Commissioner to monitor residual and assigned risks  
markets and effect on voluntary market, 93 Acts, ch 88, §33

#### 515A.4 Rate filings.

1. Every insurer shall file with the commissioner, except as to inland marine risks which by general custom of the business are not written according to manual rates or rating plans, every manual, minimum, class rate, rating schedule or rating plan and every other rating rule, and every modification of any of the foregoing which it proposes to use. Every such filing shall state the proposed effective date thereof, and shall indicate the character and extent of the coverage contemplated.

When a filing is not accompanied by the information upon which the insurer supports such filing, and the commissioner does not have sufficient information to determine whether such filing meets the requirements of this chapter, the commissioner shall require such insurer to furnish the information upon which it supports such filing and in such event the waiting period shall commence as of the date such information is furnished. The information furnished in support of a filing may include the experience or judgment of the insurer or rating organization making the filing, its interpretation of any statistical data it relies upon, the experience of other insurers or rating organizations, or any other relevant factors. A filing and any supporting information shall be open to public inspection upon filing. Specific inland marine rates on risks specially rated, made by a rating organization, shall be filed with the commissioner.

2. An insurer may satisfy its obligation to make such filings by becoming a member of, or a subscriber

to, a licensed rating organization which makes such filings, and by authorizing the commissioner to accept such filings on its behalf; provided that nothing contained in this chapter shall be construed as requiring any insurer to become a member of or a subscriber to any rating organization.

3. The commissioner shall review filings as soon as reasonably possible after they have been made in order to determine whether they meet the requirements of this chapter.

4. Subject to the exception specified in subsection 5 of this section, each filing shall be on file for a waiting period of thirty days before it becomes effective, which period may be extended by the commissioner for an additional period not to exceed fifteen days if the commissioner gives written notice within the waiting period to the insurer or rating organization which made the filing that the commissioner needs additional time for the consideration of the filing. Upon written application by the insurer or rating organization, the commissioner may authorize a filing which the commissioner has reviewed to become effective before the expiration of the waiting period or any extension of the period. A filing shall be deemed to meet the requirements of this chapter unless disapproved by the commissioner within thirty days of receipt by the commissioner.

5. Specific inland marine rates on risks specially rated by a rating organization, or any specific filing with respect to a surety or guaranty bond required by law or by court or executive order, rule or regula-

tion of a public body and not covered by a previous filing, shall become effective when filed and shall be deemed to meet the requirements of this chapter until such time as the commissioner reviews the filing and so long thereafter as the filing remains in effect.

6. Under such rules and regulations as the commissioner shall adopt the commissioner may, by written order, suspend or modify the requirement of filing as to any kind of insurance, subdivision or combination thereof, or as to classes of risks, the rates for which cannot practicably be filed before they are used. Such order, rules and regulations shall be made known to insurers and rating organizations affected thereby. The commissioner may make such examination as the commissioner may deem advisable to ascertain whether any rates affected by such order meet the standards set forth in paragraph "b" of subsection 1 of section 515A.3.

7. Upon the written application of the insured, stating the insured's reasons therefor, filed with and approved by the commissioner a rate in excess of

that provided by a filing otherwise applicable may be used on any specific risk.

8. No insurer shall make or issue a contract or policy except in accordance with the filings which are in effect for said insurer as provided in this chapter or in accordance with subsections 6 or 7 of this section. This subsection shall not apply to contracts or policies for inland marine risks as to which filings are not required.

9. If a hearing is requested pursuant to section 515A.6, subsection 7, a filing shall not take effect until thirty days after formal approval is given by the commissioner.

93 Acts, ch 88, §20  
NEW subsection 9

#### 515A.16 Premiums.

An agent shall not knowingly charge, demand, or receive a premium for any policy of insurance except in accordance with the provisions of this chapter.

93 Acts, ch 88, §21  
Section amended

## 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 a first party claim 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.

(7) That would otherwise be a covered claim, but is an obligation to or on behalf of a person who has a net worth, on the date of the occurrence giving rise to the claim, greater than that allowed by the guaranty fund law of the state of residence of the claimant, and which state has denied coverage to that claimant on that basis.

(8) That is an obligation owed to or on behalf of an affiliate of, as defined in section 521A.1, an insolvent insurer.

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 in-

solvency 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.

93 Acts, ch 88, §22  
Subsection 3 amended

**515B.17 Timely filing of claims.**

Notwithstanding any other provision of this chapter, a covered claim shall not include any claim filed with the association after the final date set by the court for the filing of claims against the insolvent insurer or its receiver.

93 Acts, ch 88, §23  
Section amended

**CHAPTER 515C**

**MORTGAGE GUARANTY INSURANCE**

**515C.7 Rate-making provisions.**

Mortgage guaranty insurance shall be subject to the provisions of chapter 515F, for the purposes of

rate making.

93 Acts, ch 88, §24  
Section amended

**CHAPTER 515E**

**RISK RETENTION GROUPS AND PURCHASING GROUPS**

**515E.10 Commissioner’s administrative and procedural authority.**

The commissioner may make use of any of the powers established under the laws of this state to enforce the laws of this state so long as those powers are not specifically preempted by the federal Act, including but not limited to, the commissioner’s authority to investigate, issue subpoenas, conduct depositions and hearings, issue orders, impose

penalties, and seek injunctive relief. With regard to an investigation, administrative proceeding, or litigation, the commissioner may rely on the procedural law and rules of the state.

A risk retention group or purchasing group operating under this chapter shall be considered a person for purposes of chapter 507B.

93 Acts, ch 88, §25  
NEW unnumbered paragraph 2

## CHAPTER 521A

### INSURANCE HOLDING COMPANY SYSTEMS

#### 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 ex-

ecutive 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 guarantees 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.

c. The commissioner may retain any attorneys, actuaries, accountants, and other experts not otherwise a part of the commissioner's staff as may be reasonably necessary to assist the commissioner in reviewing the proposed merger or acquisition of

control, the reasonable cost of which shall be paid by the acquiring party.

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.

93 Acts, ch 88, §26  
Subsection 4, NEW paragraph c

### 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 material transaction with an affiliate and 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 three percent of a nonlife insurer's admitted assets or twenty-five percent of the surplus as regards policyholders with respect to nonlife insurers, and equal to or exceeding three percent of the insurer's admitted assets with respect to life insurers, each 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 or modifications to such agreements in which the reinsurance premium or a change in the insurer's liabilities equals or exceeds five percent of the insurer's surplus as regards policyholders, as of the next preceding December 31, including those agreements which may require as consideration the transfer of assets from an insurer to a nonaffiliate, if an agreement or understanding exists between the insurer and nonaffiliate that any portion of such assets will be transferred to one or more affiliates of the insurer.

(2) All management agreements, service contracts, and all other cost-sharing arrangements involving at least one-half of one percent of the insurer's surplus as of the next preceding December 31.

(3) 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.

k. The quality of the company's earnings and the extent to which the reported earnings include extraordinary items.

3. *Dividends and other distributions.*

a. A domestic insurer may declare and pay dividends to its shareholders only from earned surplus.

For the purposes of this paragraph, "earned surplus" means surplus as regards policyholders less paid-in and contributed surplus, and may include a

fair revaluation of assets by the board of directors that is reasonable under the circumstances. Assets revalued by the board of directors cannot be included in earned surplus until thirty days after the commissioner has received notice of the revaluation and has approved the revaluation. The commissioner shall approve or disapprove the revaluation within thirty days after receiving notice of the revaluation unless for good cause the commissioner extends the approval period for an additional thirty days.

b. A domestic insurer shall not pay any extraordinary dividend or make any other extraordinary distribution to its shareholders until thirty days after the commissioner has received notice of the declaration of the dividend or distribution and has not disapproved such payment within the period, or until the time the commissioner has approved the payment within the thirty-day period.

For purposes of this paragraph, 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 the following:

(1) Ten percent of insurer's surplus as regards policyholders as of the thirty-first day of December next preceding.

(2) 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 thirty-first day of December next preceding.

An extraordinary dividend or distribution does not include pro rata distributions of any class of the insurer's own securities.

c. A domestic insurer subject to registration under section 521A.4 shall report to the commissioner all dividends to shareholders within five business days following the declaration of the dividends and not less than fourteen days prior to the payment of the dividends. This report shall also include a schedule setting forth all dividends or other distributions made within the previous twelve months.

d. Notwithstanding any other provision of law, a domestic insurer may declare an extraordinary dividend or distribution which is conditional upon the commissioner's approval of the dividend or distribution. Such declaration does not confer any rights upon shareholders until the commissioner has approved the payment of the dividend or distribution or the commissioner has not disapproved the payment within the thirty-day period as provided in paragraph "b".

92 Acts, ch 1117, §40, 43, 93 Acts, ch 88, §27-30  
See Code editor's note  
Subsection 1, paragraph a, subparagraph (5) amended  
Subsection 1, paragraphs b and c amended  
Subsection 2, NEW paragraph k  
Subsection 3 stricken and rewritten

### 521A.7 Confidential treatment.

All information, documents and copies thereof obtained by or disclosed to the commissioner or any other person in the course of an examination or in-

vestigation made pursuant to section 521A.6 and all information reported pursuant to sections 521A.4 and 521A.5, shall be given confidential treatment and shall not be subject to subpoena and shall not be made public by the commissioner or any other person, except to insurance departments of other states, without the prior written consent of the insurer to which it pertains unless the commissioner, after giving the insurer and its affiliates who would be affect-

ed thereby, notice and opportunity to be heard, determines that the interests of policyholders, shareholders or the public will be served by the publication thereof, in which event the commissioner may publish all or any part thereof in such manner as the commissioner may deem appropriate.

93 Acts, ch 88, §31  
Section amended

## CHAPTER 522

### LICENSING OF INSURANCE AGENTS

#### 522.2 Term of license.

A license is valid for three years.

93 Acts, ch 88, §32  
Section amended

## CHAPTER 523C

### RESIDENTIAL SERVICE CONTRACTS

#### 523C.2 License required.

A person shall not issue a residential service contract or undertake or arrange to perform services pursuant to a residential service contract unless the person is a corporation or other form of organization approved by the commissioner by rule and is a licensed service company.

93 Acts, ch 60, §7  
Section amended

#### 523C.8 Rebates and commissions.

A service company shall not pay a commission or any other consideration to any person as an inducement or compensation for the issuance, purchase, or acquisition of a residential service contract. However, this section does not prohibit payment of an override commission or marketing fee to an employee or commission sales agent who is a marketing or sales representative of the service company or its parent company, subsidiary, or affiliate on the sale or marketing of a residential service contract, provided the employee or commission sales agent is not a real estate licensee sharing in or entitled to share in, or affiliated with, a company or organization which is entitled to share in any real estate commission generated by the underlying real property transaction. This section also does not prohibit fees, payments, or reimbursements for bona fide inspections, if an inspection of the property to be the subject of

a residential service contract is required by a service company and if the inspection fee is reasonably related to the services performed.

93 Acts, ch 60, §8  
Section amended

#### 523C.8A Issuance of residential service contract without consideration prohibited.

1. Except as provided in subsection 2, furnishing a residential service contract to any person without charge for the applicable contract fees constitutes a violation of this chapter. A residential service contract providing for listing period coverage shall not be issued or delivered unless it provides for consideration for such coverage. The consideration may consist of a bona fide promise to pay the applicable residential service contract fees at the close of the sale. However, if a contract is subsequently cancelled as a result of the failure to close such a sale, including such failure due to cancellation, expiration, or other termination of any real estate listing agreement on the residence, the residential service contract holder shall pay to the service company, at the time of cancellation of the residential service contract, the lesser of the actual costs of such service or a pro rata portion of the applicable annual residential service contract fees based on the number of days the residential service contract remained in effect, together with administrative costs incurred by the service company as a result of the cancellation.

2. *a.* Notwithstanding subsection 1, a service company may offer a residential service contract providing for listing period coverage for consideration which consists of both of the following:

(1) The contract holder's bona fide promise to pay, upon the close of sale, the applicable residential service contract fees for coverage of the residence for at least one year from the close of sale.

(2) Actual payment of the costs of any and all services performed under the residential service contract during the term of the listing period coverage by the contract holder to the service contractor.

*b.* Upon the close of sale and actual payment of the contract fees referred to in paragraph "a", subparagraph (1), the service company shall reimburse the listing period coverage contract holder for all legitimate service costs incurred and paid under the residential service contract during the term of the listing period coverage with offset only for any deductible or service call fees remaining due and payable with respect to service performed under the residential service contract during the term of the listing period coverage.

3. For purposes of this section:

*a.* "Close of sale" means the time an interest in, or title to, a home to which the interest or title attaches is sold or transferred.

*b.* "Listing period coverage" means coverage provided prior to the close of sale.

93 Acts, ch 60, §9  
NEW section

**523C.17 Lending institutions, service companies, and insurance companies.**

A bank, savings and loan association, insurance company, or other lending institution shall not require the purchase of a residential service contract as a condition of a loan. A service company or an insurer, either directly or indirectly, as a part of any real property transaction in which a residential service contract will be issued, purchased, or acquired, shall not require that a residential service contract be issued, purchased, or acquired in conjunction with or as a condition precedent to the issuance, purchase, or acquisition, by any person, of a policy of insurance. A lending institution shall not sell a residential service contract to a borrower unless the borrower signs an affidavit acknowledging that the purchase is not required. Violation of this section is punishable as provided in section 523C.13.

93 Acts, ch 60, §10  
Section amended

**523C.20 Consent to service of process.**

If a person engages in conduct subject to regulation under this chapter, the conduct shall constitute the appointment of the commissioner of insurance as the person's attorney to receive service of any lawful process in a noncriminal proceeding against the person, a successor, or personal representative, which grows out of that conduct, with the same force and validity as if served personally.

93 Acts, ch 60, §11  
NEW section

**CHAPTER 523D**

**RETIREMENT FACILITIES**

**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 pursuant to contracts effective for the life of the resident or a period in excess of one year in consideration for an entrance fee, 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. However, the requirements of this subsection may be waived by the commissioner by rule or order upon a showing of good cause.

For purposes of this subsection, "good cause" includes, but is not limited to, evidence of the following:

a. Secured financing adequate in an amount and term to complete the project described in the filing required by this section.

b. Cash reserves adequate in an amount to operate the facility for twenty-four months based upon reasonable projections of income and expenses.

c. Creation of an escrow account in which a resident's entrance fee or purchase price will be deposited, if the terms of the escrow agreement provide reasonable protection from loss until at least fifty percent of the proposed number of independent living units in the initial stage or phase have been reserved.

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 ac-

count 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.

## CHAPTER 524

### BANKS

Limited suspension of banking laws until July 1, 1994, 90 Acts, ch 1274,  
91 Acts, ch 220, §7, 92 Acts, ch 1161, §7, 93 Acts, ch 28, §2

#### 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 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 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 representative, 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, beginning on July 1, 1991, 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.

93 Acts, ch 131, §22  
Restrictions on use of moneys deposited in state general fund, see § 8 60  
Availability of general fund for payment of expenses, see 91 Acts, ch 264,  
§ 905, 93 Acts, ch 131, § 28  
Unnumbered paragraph 6 amended

#### 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. If, 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 resignation, termination of employment, or separation of such director, including a separation caused by the closing of the state bank at which the person serves as a director, does not affect the jurisdiction and authority of the superintendent to cause notice to be served and proceed under this subsection against the director, if the notice is served before the end of the six-year period beginning on the date the director ceases to be a director with the 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.

93 Acts, ch 28, §1

1993 amendment to subsection 2 retroactive to July 1, 1987, 93 Acts, ch 28, § 3

Subsection 2, unnumbered paragraph 1 amended

## CHAPTER 527

### ELECTRONIC TRANSFER OF FUNDS

#### 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 established 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 finan-

cial 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 deems the informational statement or any amendment to that statement or amendment to be complete and finds no grounds for denying establishment of a satellite terminal, the administrator may notify the person filing the informational statement that the administrator has express-

ly approved the establishment and operation of the satellite terminal as described in the informational statement or amendment and according to the agreements attached to the statement or amendment. Operation of the satellite terminal may commence immediately upon a person receiving such express approval from the administrator. 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 20, 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 registration 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, 1994, 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.

93 Acts, ch 36, §1, 93 Acts, ch 37, §1  
Subsections 7 and 13 amended

## CHAPTER 533

### CREDIT UNIONS

#### **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 encum-

bers 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, beginning on July 1, 1991, 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.

93 Acts, ch 131, §23

Restrictions on use of moneys deposited in state general fund, see § 8 60

Availability of general fund for payment of expenses, see 91 Acts, ch 264, § 905, 93 Acts, ch 131, § 28

Unnumbered paragraph 6 amended

## CHAPTER 535

### MONEY AND INTEREST

#### 535.2 Rate of interest.

1. Except as provided in subsection 2 hereof, the rate of interest shall be five cents on the hundred by the year in the following cases, unless the parties shall agree in writing for the payment of interest at a rate not exceeding the rate permitted by subsection 3:

- a. Money due by express contract.
- b. Money after the same becomes due.
- c. Money loaned.
- d. Money received to the use of another and retained beyond a reasonable time, without the owner's consent, express or implied.
- e. Money due on the settlement of accounts from the day the balance is ascertained.

f. Money due upon open accounts after six months from the date of the last item.

g. Money due, or to become due, where there is a contract to pay interest, and no rate is stipulated.

2. a. The following persons may agree in writing to pay any rate of interest, and a person so agreeing in writing shall not plead or interpose the claim or defense of usury in any action or proceeding, and the person agreeing to receive the interest is not subject to any penalty or forfeiture for agreeing to receive or for receiving the interest:

(1) A person borrowing money for the purpose of acquiring real property or refinancing a contract for deed.

(2) A person borrowing money or obtaining credit in an amount which exceeds twenty-five thousand dollars, exclusive of interest, for the purpose of constructing improvements on real property, whether or not the real property is owned by the person.

(3) A vendee under a contract for deed to real property.

(4) A domestic or foreign corporation, and a real estate investment trust as defined in section 856 of the Internal Revenue Code, and a person purchasing securities as defined in chapter 502 on credit from a broker or dealer registered or licensed under chapter 502 or under the Securities Exchange Act of 1934, 15 U.S.C., ch. 78A, as amended.

(5) A person borrowing money or obtaining credit for business or agricultural purposes, or a person borrowing money or obtaining credit in an amount which exceeds twenty-five thousand dollars for personal, family, or household purposes. As used in this paragraph, "agricultural purpose" means as defined in section 535.13, and "business purpose" includes but is not limited to a commercial, service, or industrial enterprise carried on for profit and an investment activity.

b. In determining exemptions under this subsection, the rules of construction stated in this paragraph apply:

(1) The purpose for which money is borrowed is the purpose to which a majority of the loan proceeds are applied or are designated in the agreement to be applied.

(2) Loan proceeds used to refinance or pay a prior loan owed by the same borrower are applied for the same purposes and in the same proportion as the original principal of the loan that is refinanced or paid.

(3) If the lender releases the original borrower from all personal liability with respect to the loan, loan proceeds used to pay a prior loan by a different borrower are applied for the new borrower's purposes in agreeing to pay the prior loan.

(4) If the lender releases the original borrower from all personal liability with respect to the loan, the assumption of a loan by a new borrower is treated as if the new borrower had obtained a new loan and had used all of the proceeds to pay the loan assumed.

(5) This paragraph does not modify or limit section 535.8, subsection 2, paragraph "c" or "e".

(6) With respect to any transaction referred to in paragraph "a" of this subsection, this subsection supersedes any interest-rate or finance-charge limitations contained in the Code, including but not limited to this chapter and chapters 321, 322, 524, 533, 534, 536A, and 537.

3. a. The maximum lawful rate of interest which may be provided for in any written agreement for the payment of interest entered into during any calendar month commencing on or after April 13, 1979, shall be two percentage points above the monthly average ten-year constant maturity interest rate of United States government notes and bonds as published by

the board of governors of the federal reserve system for the calendar month second preceding the month during which the maximum rate based thereon will be effective, rounded to the nearest one-fourth of one percent per year.

On or before the twentieth day of each month the superintendent of banking shall determine the maximum lawful rate of interest for the following calendar month as prescribed herein, and shall cause this rate to be published, as a notice in the Iowa administrative bulletin or as a legal notice in a newspaper of general circulation published in Polk county, prior to the first day of the following calendar month. This maximum lawful rate of interest shall be effective on the first day of the calendar month following publication. The determination of the maximum lawful rate of interest by the superintendent of banking shall be exempt from the provisions of chapter 17A.

b. Any rate of interest specified in any written agreement providing for the payment of interest shall, if such rate was lawful at the time the agreement was made, remain lawful during the entire term of the agreement, including any extensions or renewals thereof, for all money due or to become due thereunder including future advances, if any.

c. Any written agreement for the payment of interest made pursuant to a prior written agreement by a lender to lend money in the future, either to the other party to such prior written agreement or a third party beneficiary of such prior agreement, may provide for payment of interest at the lawful rate of interest at the time of the execution of the prior agreement regardless of the time at which the subsequent agreement is executed.

d. Any contract, note or other written agreement providing for the payment of a rate of interest permitted by this subsection which contains any provisions providing for an increase in the rate of interest prescribed therein shall, if such increase could be to a rate which would have been unlawful at the time the agreement was made, also provide for a reduction in the rate of interest prescribed therein, to be determined in the same manner and with the same frequency as any increase so provided for.

4. a. Notwithstanding the provisions of subsection 3, with respect to any agreement which was executed prior to August 3, 1978, and which contained a provision for the adjustment of the rate of interest specified in that agreement, the maximum lawful rate of interest which may be imposed under that agreement shall be nine cents on the hundred by the year, and any excess charge shall be a violation of section 535.4.

b. Notwithstanding the limitation contained in paragraph "a" of this subsection, with respect to a written agreement for the repayment of money loaned, which was executed prior to August 3, 1978 and which provided for the payment of over fifty percent of the initial principal amount of the loan as a single payment due at the end of the term of the agreement, the interest rate may be adjusted after June 3, 1980 according to the terms of the agreement

to any rate of interest permitted by the laws of this state as of the date an adjustment in interest is to be made. This paragraph does not authorize adjustment of interest in any manner other than that expressly permitted by the terms of the written agreement, and nothing contained in this paragraph authorizes the collection of additional interest with respect to any portion of a loan which was repaid prior to the effective date of an interest rate adjustment.

c. Notwithstanding paragraph "a", when a written agreement providing for the repayment of money loaned, and requiring the payment of over fifty percent of the initial principal amount of the loan as a single payment due at the end of the term of the agreement is extended, renewed, or otherwise amended by the parties on or after August 3, 1978, the parties may agree to the payment of interest from the effective date of the extension, renewal, or amendment, at a rate and in a manner that is lawful for a new agreement made on that date.

5. This section shall not apply to any loan which is subject to the provisions of section 636.46.

6. a. Notwithstanding the provisions of Acts of the Sixty-eighth General Assembly, chapter 1156, with respect to any agreement which was executed on or after August 3, 1978 and prior to July 1, 1979, and which contained a provision for the adjustment of the rate of interest specified in the agreement, the maximum lawful rate of interest which may be imposed under that agreement shall be that rate which is two and one-half percentage points above the rate initially to be paid under the agreement, provided

that the greatest interest rate adjustment which may be made at any one time shall be one-half of one percent and an interest rate adjustment may not be made until at least one year has passed since the last interest rate adjustment, and any excess charge shall be a violation of section 535.4.

b. Notwithstanding the limitation contained in paragraph "a" of this subsection, with respect to a written agreement for the repayment of money loaned which was executed on or after August 3, 1978, and prior to July 1, 1979, and which provided for the payment of over fifty percent of the initial principal amount of the loan as a single payment due at the end of the term of the agreement, the interest rate may be adjusted after June 3, 1980, according to the terms of the agreement to any rate of interest permitted by the laws of this state as of the date an adjustment in interest is to be made. This paragraph does not authorize adjustment of interest in any manner other than that expressly permitted by the terms of the written agreement, and nothing contained in this paragraph authorizes the collection of additional interest with respect to any portion of a loan which was repaid prior to the effective date of an interest rate adjustment.

7. This section does not apply to a charge imposed for late payment of rent. However, in the case of a residential lease, a late payment fee shall not exceed three dollars a day for the first five days the rent is late and one dollar a day for the next twenty-five days.

93 Acts, ch 154, §5  
NEW subsection 7

## CHAPTER 535C

### LOAN BROKERS

#### 535C.2 Definitions.

1. "Advance fee" means consideration of any type including a payment, fee, pay-per-call charge, or deposit, which is assessed or collected prior to the closing of a loan or the issuing of a credit card.

2. "Borrower" means a person who seeks the services of a loan broker.

3. "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.

4. "Loan broker" or "broker" means a person who promises to obtain a loan or credit card or assist in obtaining a loan for another from a third person, or who promises to consider making a loan or offering to issue a credit card 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 governmental body or employee acting in an official capacity.

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 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 or registered under chapter 535B.

*k.* A regulated loan company licensed under chapter 536.

*l.* An industrial loan company licensed under chapter 536A.

5. "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 or credit card for a borrower.

*b.* Assist the borrower in obtaining a loan or credit card.

*c.* Consider making a loan or issuing a credit card to the borrower.

6. "Records" means books, papers, documents, accounts, agreements, memoranda, electronic records of accounts, or correspondence relating to a matter regulated under this chapter.

7. "Successful procurement of a loan" means the receipt by a borrower of the loan proceeds.

93 Acts, ch 60, §13, 14

Former subsections 1, 3 and 5 stricken and remaining subsections renumbered

Subsections 1, 4 and 5 amended

#### **535C.2A Prohibition on advance fees.**

A loan broker shall not directly or indirectly solicit, receive, or accept from a borrower an advance fee as consideration for providing services as a loan broker. A loan broker's fee may only be assessed or collected from a borrower after the successful procurement of a loan or issuance of a credit card.

93 Acts, ch 60, §15

NEW section

#### **535C.3 Disclosure statement required.**

Repealed by 93 Acts, ch 60, § 27.

#### **535C.3A Financial statement.**

Repealed by 93 Acts, ch 60, § 27.

**535C.4 Surety bond or trust account required.** Repealed by 93 Acts, ch 60, § 27.

**535C.5 Filing with the administrator — penalty.** Repealed by 93 Acts, ch 60, § 27.

#### **535C.6 Penalty.**

A loan broker who violates a provision of this chapter is guilty of a serious misdemeanor.

93 Acts, ch 60, §16

Section amended

#### **535C.9 Rules.**

The attorney general may adopt rules according to chapter 17A as necessary or appropriate to implement the purposes of this chapter.

93 Acts, ch 60, §17

Section amended

#### **535C.10 Remedies.**

1. If a broker materially violates the loan brokerage agreement, the borrower may, upon written notice, void the agreement. In addition, the borrower may recover all moneys paid the broker, a penalty of twice the amount of the fee sought by the broker, other damages, and reasonable attorney's fees. A material violation includes, but is not limited to, any of the following:

*a.* Making false or misleading statements relative to the agreement.

*b.* Failure to comply with the agreement or the obligations arising from the agreement.

*c.* Failure to either grant the borrower a loan or issue a credit card or diligently attempt to obtain a loan or credit card for the borrower.

*d.* Failure to comply with the requirements of this chapter.

*e.* Soliciting or obtaining, directly or indirectly, an advance fee.

2. A violation of this chapter is a violation of the Iowa consumer fraud Act, section 714.16.

3. Remedies under this chapter are in addition to other remedies available in law or equity.

93 Acts, ch 60, §18

Subsection 1 amended

#### **535C.11 Applicability.**

This chapter does not apply to activities or arrangements expressly approved or regulated by the department of commerce.

93 Acts, ch 60, §19

Section amended

#### **535C.11A Exemption — burden of proof.**

In a civil proceeding pursuant to this chapter, a person claiming to be excluded from the definition of "loan broker" or "broker" has the burden of proof in substantiating the claim.

93 Acts, ch 60, §20

NEW section

#### **535C.12 Records.**

1. A loan broker shall maintain accurate records 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.

93 Acts, ch 60, §21

Section amended

**535C.13 Administrative actions.** Repealed by 93 Acts, ch 60, § 27.

**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 a governmental entity of the state or its political subdivisions.

93 Acts, ch 60, §22  
Section amended

**535C.16 Scope of chapter.** Repealed by 93 Acts, ch 60, § 27.

## CHAPTER 536A

### INDUSTRIAL LOANS

**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, certificates 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 is subject to the provisions of chapter 502 and rules adopted by the superintendent of banking pursuant to chapter 17A, 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 five years are exempt from sections 502.201 and 502.602.

93 Acts, ch 96, §1  
Section amended

## CHAPTER 537

### CONSUMER CREDIT CODE

**537.2502 Delinquency charges.**

1. With respect to a precomputed consumer credit transaction, the parties may contract for a delinquency charge on any installment not paid in full within ten days after its due date, as originally scheduled or as deferred, in an amount not exceeding the greater of either of the following:

a. Five percent of the unpaid amount of the installment, or a maximum of twenty dollars.

b. The deferral charge that would be permitted to defer the unpaid amount of the installment for the period that it is delinquent.

2. A delinquency charge under subsection 1, paragraph "a", may be collected only once on an installment however long it remains in default. No delinquency charge may be collected with respect to a deferred installment unless the installment is not paid in full within ten days after its deferred due

date. A delinquency charge may be collected at the time it accrues or at any time afterward.

3. No delinquency charge may be collected under subsection 1, paragraph "a", on an installment which is paid in full within ten days after its scheduled or deferred installment due date even though an earlier maturing installment or a delinquency or deferral charge on an earlier installment may not have been paid in full. For purposes of this subsection payments are applied first to current installments and then to delinquent installments.

4. With respect to open-end credit obtained pursuant to a credit card issued by the creditor which entitles the cardholder to purchase or lease goods or services from at least one hundred persons not related to the card issuer, the parties may contract for a delinquency charge on any payment not paid in full within ten days after its due date, as originally sched-

uled or as deferred, in an amount not to exceed ten dollars.

5. A delinquency charge under subsection 4 may be collected only once on a payment however long it remains in default. No delinquency charge may be collected with respect to a deferred payment unless the payment is not paid in full within ten days after its deferred due date. A delinquency charge may be collected at the time it accrues or at any time afterward.

6. No delinquency charge may be collected under subsection 4 on a payment which is paid in full within ten days after its scheduled or deferred due date even though an earlier maturing payment or a delinquency or deferred charge on an earlier payment has not been paid in full. For purposes of this subsection, payments are applied first to amounts due for the current billing cycle and then to delinquent payments.

7. If the differential treatment of subsection 4 based on the number of persons honoring a credit

card is found to be unconstitutional, the parties may contract for the delinquency charge as described in subsection 4 in any consumer credit transaction pursuant to open-end credit, and the other conditions provided in this section relating to delinquency charges remain in effect.

93 Acts, ch 124, §1  
Subsection 1, paragraph a amended

#### **537.3501 Door-to-door sales.**

In a consumer credit sale or a sale in which the goods or services are paid for in whole or in part by a lender credit card or a consumer loan in which the lender is subject to defenses arising from the sale under section 537.3405, a consumer has, in addition to all the rights and remedies provided by chapter 555A, a cause of action under section 537.5201, subsection 1, and the administrator has all powers granted under article 6, part 1, to enforce the provisions of chapter 555A.

Section not amended  
Reference to transferred chapter corrected editorially

## CHAPTER 538A

### CREDIT SERVICES ORGANIZATIONS

#### **538A.2 Credit services organization defined — exemptions.**

1. A credit services organization is a person who, with respect to the extension of credit by others and in return for the payment of money or other valuable consideration, provides, or represents that the person can or will provide, any of the following services:

a. Improving a buyer's credit record, history, or rating.

b. Providing advice or assistance to a buyer with regard to paragraph "a".

2. The following are exempt from this chapter:

a. A person authorized to make loans or extensions of credit under the laws of this state or the United States who is subject to regulation and supervision of this state or the United States, or a lender approved by the United States secretary of housing and urban development for participation in a mortgage insurance program under the National Housing Act, 12 U.S.C. § 1701 et seq.

b. A bank or savings and loan association whose deposits or accounts are eligible for insurance by the

federal deposit insurance corporation or the federal savings and loan insurance corporation, or successor deposit insurance entities, or a subsidiary of a bank or savings and loan association.

c. A credit union doing business in this state.

d. A nonprofit organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code, as defined in section 422.3.

e. A person licensed as a real estate broker or salesperson, under section 543B.20, acting within the course and scope of that license.

f. A person licensed to practice as an attorney in this state acting within the course and scope of the person's practice as an attorney.

g. A broker-dealer registered with the securities and exchange commission or the commodity futures trading commission acting within the course and scope of the regulations of the commission that person is registered with.

h. A consumer reporting agency.

93 Acts, ch 60, §23  
Subsection 1 amended



## CHAPTER 541A

### INDIVIDUAL DEVELOPMENT ACCOUNTS

#### 541A.1 Definitions.

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

1. "Account holder" means an individual who is the owner of an individual development account.

2. "Administrator" means the executive branch agency selected by the governor to administer individual development accounts.

3. "Charitable contributor" means a nonprofit association described in section 501(c)(3) of the Internal Revenue Code which makes a deposit to an individual development account and which is exempt from taxation under section 501(a) of the Internal Revenue Code.

4. "Federal poverty level" means the first poverty income guidelines published in the calendar year by the United States department of health and human services.

5. "Financial institution" means a financial institution approved by the administrator as an investment mechanism for individual development accounts.

6. "Individual contributor" means an individual who makes a deposit to an individual development account and is not the account holder or a charitable contributor.

7. "Individual development account" means a financial instrument which is certified to have the characteristics described in section 541A.2 by the operating organization.

8. "Operating organization" means an agency selected by the administrator for involvement in operating individual development accounts directed to a specific target population.

9. "Reserve pool" means the state human investment reserve pool under the authority of the administrator created in section 541A.4.

10. "Source of principal" means any of the sources of a deposit to an individual development account under section 541A.2, subsection 2.

93 Acts, ch 97, §16  
NEW section

#### 541A.2 Individual development accounts.

A financial instrument known as an individual development account is established. An individual development account shall have all of the following characteristics:

1. The account is kept in the name of an individual account holder.

2. Deposits made to an individual development account shall be made in any of the following manners and are subject to the indicated conditions:

a. Deposits made by the account holder.

b. Deposits of a savings refund authorized under

section 541A.3, subsection 1, due the account holder because of the account holder's deposits in the account holder's account.

c. Deposits of individual development account moneys which are transferred from another individual account holder.

d. A deposit made on behalf of the account holder by an individual or a charitable contributor. This type of deposit may include but is not limited to moneys to match the account holder's deposits. A deposit made under this paragraph shall be held in trust for the account holder and shall only be used to earn income in the account or to be withdrawn by the account holder for a purpose provided in subsection 4.

3. The account earns income.

4. During a calendar year, an account holder may withdraw without penalty from the account holder's account the sum of the following:

a. With the approval of the operating organization, amounts withdrawn for any of the following approved purposes:

(1) Educational costs at an accredited institution of higher education.

(2) Training costs for an accredited or licensed training program.

(3) Purchase of a primary residence.

(4) Capitalization of a small business start-up.

Amounts withdrawn for purposes of this paragraph shall be charged to the source of principal on a prorated basis. Moneys transferred from another individual development account shall be considered to be a deposit made by the account holder for purposes of charges to the source of principal.

b. At the adult account holder's discretion any income earned by the account. An account holder who is ten or more but less than eighteen years of age may withdraw any income earned by the account with the approval of the account holder's parent or guardian and of the operating organization. If the account holder is less than ten years of age, any income earned by the account may be withdrawn by the account holder's parent or guardian with the approval of the operating organization.

c. At the account holder's discretion, if the account holder is at least fifty-nine and one-half years of age, any amount.

5. If an account holder is less than eighteen years of age, moneys shall not be withdrawn from the holder's account unless the withdrawal is authorized under subsection 4. If an account holder is eighteen or more years of age, any amount of the adjusted account holder deposits withdrawn during a calendar year which is not authorized under subsection 4, is subject to a penalty of fifteen percent. In addition,

if at any time the cumulative amount withdrawn by the account holder over the life of the account that is not authorized under subsection 4 exceeds fifty percent of the amount of the adjusted account holder deposits, the contributions made by a charitable or individual contributor held in trust in the account holder's account shall be removed from the account and redeposited in another individual development account or the reserve pool as directed by the contributor and deposits made by the state of a savings refund authorized under section 541A.3, subsection 1, shall be withdrawn and deposited in the reserve pool. The amount of the adjusted account holder deposits is the amount remaining after subtracting from the cumulative moneys deposited by the account holder all amounts withdrawn pursuant to subsection 4, paragraph "a". At the time a charitable or individual contributor contributes moneys to an account the contributor shall indicate the contributor's directions for disposition of moneys which are removed. If the designated choice of the contributor does not exist the contributed moneys shall be withdrawn and deposited in the reserve pool.

6. Penalty amounts collected pursuant to subsection 5 shall be deposited in the reserve pool.

7. An adult account holder may transfer all or part of the assets the adult account holder has deposited in the account to any other account holder's account. However, an account holder who is less than eighteen years of age is prohibited from transferring account assets to any other account holder. Moneys contributed by a charitable or individual contributor are not subject to transfer except as authorized by the contributor. Amounts transferred in accordance with this subsection are not subject to a penalty.

8. If approved by the federal government, moneys in an individual development account and any earnings on the moneys shall not be considered by the department of human services for determining the eligibility of an individual under the family investment program under chapter 239 or the work and training program under chapter 249C.

9. In the event of an account holder's death, the account may be transferred to the ownership of a contingent beneficiary or to the individual development account of another account holder. An account holder shall name contingent beneficiaries or transferees at the time the account is established and a named beneficiary or transferee may be changed at the discretion of the account holder. If the named beneficiary or transferee is deceased or otherwise cannot accept the transfer, the moneys shall be transferred to the reserve pool.

10. The total amount of sources of principal which may be in an individual development account shall be limited to fifty thousand dollars.

93 Acts, ch 97, §17  
NEW section

### **541A.3 Individual development accounts — refund and tax provisions.**

All of the following state tax provisions shall apply to an individual development account:

1. Payment by the state of a savings refund on amounts of up to two thousand dollars per calendar year that an account holder deposits in the account holder's account. Moneys transferred to an individual development account from another account shall not be considered an account holder deposit for purposes of determining a savings refund. Payment shall be made directly to the account in the most appropriate manner as determined by the administrator. The state savings refund shall be the indicated percentage of the amount deposited:

a. For an account holder with a household income, as defined in section 425.17, subsection 6, which is less than one hundred fifty percent of the federal poverty level, twenty percent.

b. For an account holder with a household income which is one hundred fifty percent or more but less than one hundred sixty percent of the federal poverty level, eighteen percent.

c. For an account holder with a household income which is one hundred sixty percent or more but less than one hundred seventy percent of the federal poverty level, sixteen percent.

d. For an account holder with a household income which is one hundred seventy percent or more but less than one hundred eighty percent of the federal poverty level, fourteen percent.

e. For an account holder with a household income which is one hundred eighty percent or more but less than one hundred ninety percent of the federal poverty level, twelve percent.

f. For an account holder with a household income which is one hundred ninety percent or more but less than two hundred percent of the federal poverty level, ten percent.

g. For an account holder with a household income which is two hundred percent or more of the federal poverty level, zero percent.

2. Income earned by an individual development account is not subject to tax until withdrawn.

3. Amounts transferred between individual development accounts are not subject to state tax.

4. The administrator shall work with the United States secretary of the treasury and the state's congressional delegation as necessary to secure an exemption from federal taxation for individual development accounts and the earnings on those accounts. The administrator shall report annually to the governor and the general assembly concerning the status of federal approval.

5. The administrator shall coordinate the filing of claims for savings refunds authorized under subsection 1, between account holders, operating organizations, and the department of revenue and finance. Claims approved by the administrator may be paid by the department of revenue and finance to each account or for an aggregate amount for distribution to the accounts in a particular financial institution, depending on the efficiency for issuing the refunds. Claims shall be initially filed with the administrator on or before a date established by the administrator.

93 Acts, ch 97, §18  
See also §422 7(28) and 450 4(6)  
NEW section

**541A.4 Individual development account — pilot phase.**

A state human investment reserve pool is created in the state treasury under the authority of the administrator. The governor shall name an executive branch agency as administrator to have authority over the reserve pool. Interest on moneys in the reserve pool shall remain in the reserve pool and notwithstanding sections 8.33 and 8.39, moneys in the reserve pool are not subject to reversion or transfer. Moneys in the reserve pool shall be used for administrative expenses of the administrator. The administrator shall perform all of the following duties or may delegate the performance of the duties to a suitable entity in administering the individual development accounts:

1. For the five-year pilot phase period beginning March 1, 1994, and ending February 28, 1999, the total number of individual development accounts shall be limited to ten thousand accounts, with not more than five thousand accounts in the first calendar year of the period, and to individuals with a household income which does not exceed two hundred percent of the federal poverty level. The administrator shall ensure that the family income status of account holders at the time an account is opened proportionately reflects the distribution of the household income status of the state's population up to two hundred percent of the federal poverty level.

2. Issue a request for proposals for operating organizations to be involved with the operation of individual development accounts on behalf of a specific target population. The administrator shall determine the review criteria used to select operating organizations. The initial review criteria used to evaluate organizations' proposed projects and requirements associated with operating organizations shall include but are not limited to all of the following:

*a.* Provision of a safe and secure investment mechanism for the individual development accounts utilizing a financial institution approved by the administrator.

*b.* The proposed project has a strong relation-

ship to goals established by other initiatives deemed a priority by the administrator.

*c.* The proposed project links the making of an account holder's contributions to an individual development account with other services or outcomes identified by the operating organization in the proposal. The proposed project includes mechanisms for the operating organization to monitor and enforce the identified outcomes and services.

*d.* The operating organization is capable of performing the project as proposed. Minimum capabilities shall include an ability to provide financial counseling, familiarity and ability to work with the proposed target population, and a strong record of successful management.

*e.* The operating organization proposes to provide a significant amount of matching funds for individual development accounts.

*f.* The proposal includes a monitoring and evaluation plan for certifying the proposed project's outcomes.

*g.* The responsibilities of an operating organization shall include but are not limited to all of the following:

(1) Certifying that a financial instrument is an individual development account based upon its having the characteristics described in section 541A.2.

(2) Certifying the income status and the amount of contributions to an individual development account by an account holder during a tax year which are eligible for a savings refund authorized under section 541A.3, subsection 1.

(3) Calculating the adjusted contribution principal amounts for the account holder, state, and individual and charitable contributors as required for purposes of section 541A.2, subsections 4 and 5.

3. Utilizing guidelines established in law for this purpose, the administrator shall contract for an independent evaluation of the implementation of the individual development accounts. The evaluation shall consider the following: implementation and process used for the implementation, program impact, and financial effectiveness.

93 Acts, ch 97, §19  
NEW section

## CHAPTER 542C

### PUBLIC ACCOUNTANTS

#### 542C.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 542C.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.

*“Practice of public accounting”* means the performance or the offering to perform, by a person holding oneself out to the public as a certified public accountant or accounting practitioner, one or more kinds of services involving the use of accounting or auditing skills, including the issuance of reports on financial statements, or of one or more kinds of management advisory, financial advisory, or consulting services, or the preparation of tax returns or the furnishing of advice on tax matters.

93 Acts, ch 19, §1

NEW unnumbered paragraph at end of section

#### 542C.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 or limited liability companies 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 limited liability companies and governing the affiliation of corporations and limited liability companies with other organizations.

Regulations adopted by the board shall not be in conflict with the Iowa professional corporation Act, provided in chapter 496C, or the limited liability company Act, provided in chapter 490A.

93 Acts, ch 19, §2  
Subsection 7 amended

#### 542C.6 Peer review required.

1. *Definitions.* As used in this section:

a. "*Applicant*" means an entity holding a permit to practice as a corporation, limited liability company, or partnership of certified public accountants issued pursuant to section 542C.20, subsection 3, or a person certified as a certified public accountant pursuant to section 542C.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, and 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.

93 Acts, ch 19, §3

Subsection 1, paragraph a amended

#### **542C.18 Partnerships, corporations, and limited liability companies.**

A partnership engaged in this state in the practice of public accounting shall register with the board as a partnership of certified public accountants or accounting practitioners and shall meet the following requirements:

1. At least one general partner shall be a certified public accountant or accounting practitioner in good standing of this state and have a permit to practice.

2. Each partner shall be a certified public accountant or accounting practitioner, or similar title, in good standing of some state.

3. Each resident manager in charge of an office of a firm in this state, and each partner personally engaged within this state in the practice of public accounting as a member of the partnership, shall be a certified public accountant or accounting practitioner in good standing of this state and have a permit to practice.

A corporation organized for the practice of public accounting shall register with the board as a corporation of certified public accountants or accounting practitioners. A limited liability company organized for the practice of public accounting shall register with the board as a limited liability company of certified public accountants or accounting practitioners.

Application for registration as a partnership, corporation, or limited liability company shall be made upon the affidavit of a general partner of the partnership, officer of the corporation, or manager of the limited liability company who is a certified public accountant or accounting practitioner of this state having a current permit to practice.

The board shall in every case determine whether the applicant is eligible for registration.

A partnership, corporation, or limited liability company which is so registered, and which holds a permit issued under section 542C.20, may use the words "certified public accountant" or the abbreviation "CPA" or "accounting practitioner" or the abbreviation "AP" in connection with its partnership, corporation, or limited liability company name.

Notification shall be given the board, within ninety days after the admission or withdrawal of a partner who holds a permit to practice under section 542C.20, from any partnership so registered.

93 Acts, ch 19, §4

Unnumbered paragraphs 2, 3, 4 and 5 amended

#### **542C.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, corporation, or limited liability company of certified public accountants, or by an accounting practitioner or partnership of accounting practitioners, or by a person registered under section 542C.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 member, principal, shareholder, or a staff employee holding a current permit under section 542C.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 542C.5, or a license as an accounting practitioner issued under section 542C.7 or 542C.8, and a permit issued under section 542C.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.

93 Acts, ch 19, §5  
Unnumbered paragraphs 1 and 2 amended

#### **542C.20 Permit to practice.**

1. The certificate of certified public accountant granted by the board under section 542C.5 and the license to practice as an accounting practitioner under section 542C.7 or 542C.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 542C.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 542C.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 542C.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. All offices of a holder of a certificate of certified public accountant shall be maintained and registered as required under section 542C.19.

3. Permits to engage in the practice of public accounting in this state shall also be issued by the board to persons, partnerships, corporations, or limited liability companies registered under sections 542C.17 and 542C.18 if all offices of the registrant are maintained and registered as required under section 542C.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, corporation, or limited liability company permit to practice. All permits shall expire as determined by the board.

5. A person, firm, corporation, or limited liability company 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.

92 Acts, ch 1180, §4, 5, 93 Acts, ch 19, §6

1992 amendment to subsection 2 effective July 1, 1993, 92 Acts, ch 1180, §5  
Subsection 2, paragraph d stricken and former paragraph e relettered as d  
Subsections 3, 4 and 5 amended

#### **542C.22 Revocation, suspension, and refusal to renew registration and permit of partnership, corporation, or limited liability company.**

After notice and hearing as provided in section 542C.23, the board shall revoke the registration and permit to practice of a partnership, corporation, or limited liability company if at any time it does not possess the qualifications prescribed by the section of this chapter under which it qualified for registration.

After notice and hearing as provided in section 542C.23, the board may revoke or suspend the registration of a partnership, corporation, or limited liability company, or may revoke, suspend, or refuse to renew its permit to practice or may censure the holder of any such permit for any of the following additional causes:

1. The revocation or suspension of the certificate, registration, or license or the revocation or suspension or refusal to renew the permit to practice of any member, partner, officer, or shareholder.

2. The cancellation, revocation, suspension, or

refusal to renew the authority of the partnership, corporation, or limited liability company, or any member, partner, officer, or shareholder thereof to practice public accounting in any other state for any cause other than failure to pay appropriate fees in such other state.

93 Acts, ch 19, §7  
Section amended

#### 542C.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 the 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 certified 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.

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. A limited liability company may be represented before the board by counsel, or by a member 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. Judicial review of the board's action may be sought in accordance with chapter 17A.

93 Acts, ch 19, §8  
Subsection 4 amended

#### 542C.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 542C.5. However, a foreign accountant who has registered under the provisions of section 542C.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. A partnership, corporation, or limited liability company shall not 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, corporation, or limited liability company is composed of certified public accountants unless it is registered as a partnership, corporation, or limited liability company under section 542C.18, holds a current permit issued under section 542C.20, and all offices of such partnership, corporation, or limited liability company in this state for the practice of public accounting are maintained and are registered as required under section 542C.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 542C.5.

4. A partnership, corporation, or limited liability company 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, corporation, or limited liability company is composed of certified public accountants, unless the partnership, corporation, or limited liability company is registered as a partnership, corporation, or limited liability company of certified public accountants under section 542C.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 542C.7 or 542C.8.

6. A partnership, corporation, or limited liability



company shall not 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, corporation, or limited liability company is composed of licensed accounting practitioners except as a partnership, corporation, or limited liability company under section 542C.18 holding a permit issued under section 542C.20, and all offices of the partnership, corporation, or limited liability company in this state are maintained and are registered as required under section 542C.19.

7. A person, partnership, corporation, or limited liability company shall not 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 542C.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 542C.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 542C.20, and all of the person’s offices in this state for the practice of public accounting are maintained and registered under section 542C.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. A person shall not sign or affix a partnership, corporation, or limited liability company 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, except the name of a partnership, corporation, or limited liability company holding a current permit issued under section 542C.20 and with all of its offices in this state for the practice of certified public accounting maintained and registered as required under section 542C.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, corporation, or limited liability company 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, corporation, or limited liability company registered under section 542C.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.

93 Acts, ch 19, §9  
Subsections 2, 4, 6, 7, 9 and 10 amended

#### **542C.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, corporation, or limited liability company composed of certified public accountants or accounting practitioners, holding a permit to practice issued under section 542C.20, or a foreign accountant registered under section 542C.17; however, the employee or assistant shall not issue any accounting or financial statement over the employee’s or assistant’s name.

93 Acts, ch 19, §10  
Section amended

#### **542C.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.

A statement, record, schedule, working paper, or memorandum shall not 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 or limited liability company.

93 Acts, ch 19, §11  
Unnumbered paragraph 2 amended

## CHAPTER 543B

### REAL ESTATE BROKERS AND SALESPERSONS

#### 543B.9 Rules.

The real estate commission may adopt rules to carry out and administer the provisions of this chapter. The commission may carry on a program of education of real estate practices and matters relating to real estate. The commission shall adopt rules necessary to carry out the provisions of chapter 558A relating to the disclosure of information before the transfer of real estate.

93 Acts, ch 30, §1  
1993 amendment takes effect July 1, 1994, adoption of rules for chapter 558A, 93 Acts, ch 30, §11  
Section amended

#### 543B.46 Trust accounts.

1. Each real estate broker shall maintain a common trust account in a bank, a savings and loan association, savings bank, or credit union for the deposit of all down payments, earnest money deposits, or other trust funds received by the broker or the broker's salespersons on behalf of the broker's principal, except that a broker acting as a salesperson shall deposit these funds in the common trust account of the broker for whom the broker acts as salesperson. The account shall be an interest-bearing account. The interest on the account shall be transferred quarterly to the treasurer of state and deposited in the title guaranty fund and used for public purposes and the benefit of the public pursuant to section 16.91 unless there is a written agreement between the buyer and seller to the contrary. The broker shall not benefit from interest received on funds of others in the broker's possession.

2. Each broker shall notify the real estate commission of the name of each bank or savings and loan association in which a trust account is maintained and also the name of the account on forms provided therefor.

3. Each broker shall authorize the real estate commission to examine each trust account and shall

obtain the certification of the bank or savings and loan association attesting to each trust account and consenting to the examination and audit of each account by a duly authorized representative of the commission. The certification and consent shall be furnished on forms prescribed by the commission. This does not apply to an individual farm account maintained in the name of the owner or owners for the purpose of conducting ongoing farm business whether it is conducted by the farm owner or by an agent or farm manager when the account is part of a farm management agreement between the owner and agent or manager.

4. Each broker shall only deposit trust funds received on real estate or business opportunity transactions as defined in section 543B.6 in said common trust account and shall not commingle the broker's personal funds or other funds in said trust account with the exception that a broker may deposit and keep a sum not to exceed one hundred dollars in said account from the broker's personal funds, which sum shall be specifically identified and deposited to cover bank service charges relating to said trust account.

5. A broker may maintain more than one trust account provided the commission is advised of said account as specified in subsections 2 and 3 above.

6. The commission shall verify on a test basis, a random sampling of the brokers, corporations, and partnerships for their trust account compliance. The commission may upon reasonable cause, or as a part of or after an investigation, request or order a special report.

7. The examination of a trust account shall be conducted by the commission or the commission's authorized representative.

8. The commission shall adopt rules to ensure implementation of this section.

93 Acts, ch 30, §2, 93 Acts, ch 175, §19  
See Code editor's note to §6A 10  
1993 amendment to subsection 6 by 93 Acts, ch 30, §2, is effective July 1, 1994, 93 Acts, ch 30, §11  
Subsections 6 and 7 amended

## CHAPTER 544A

### REGISTERED ARCHITECTS

#### 544A.2 Officers.

At a time to be determined by the board, the board shall elect from its members officers to serve for a term not to exceed one year. The division shall pro-

vide staff assistance.

93 Acts, ch 5, §1  
Section amended

## CHAPTER 546

### DEPARTMENT OF COMMERCE

#### 546.2 Department of commerce.

1. A department of commerce is created to coordinate and administer the various regulatory, service, and licensing functions of the state relating to the conducting of business or commerce in the state.

2. The chief administrative officer of the department is the director. The director shall be appointed annually by the governor from among those individuals who serve as heads of the divisions within the department. The appointment shall rotate among the division heads such that the division head of any one division shall not be appointed to be the director for a second year until such time as each division head has served as the director. A division head appointed to be the director shall fulfill the responsibilities and duties of the director in addition to the individual's responsibilities and duties as the head of a division. However, the administrator of the alcoholic beverages division shall serve as director until June 30, 1995.

3. The department is administratively organized into the following divisions:

- a. Banking.
- b. Credit union.
- c. Savings and loan.
- d. Utilities.
- e. Insurance.
- f. Alcoholic beverages.
- g. Professional licensing and regulation.

4. The director shall have the following responsibilities:

a. To establish general operating policies for the department to provide general uniformity among the divisions while providing for necessary flexibility.

b. To assemble a department structure and strategic plan that will provide optimal decentralization of responsibilities and authorities with sufficient coordination for appropriate growth and development.

c. To coordinate personnel services and shared administrative support services to assure maximum support and assistance to the divisions.

d. To coordinate the development of an annual budget which quantifies the operational plans of the divisions.

e. To identify and, with the chief administrative officers of each division, facilitate the opportunities for consolidation and efficiencies within the department.

f. To maintain monitoring and control systems, procedures, and policies which will permit each level of responsibility to quickly and precisely measure its results with its plan and standards.

5. The chief administrative officer of each division shall have the following responsibilities:

a. To make rules pursuant to chapter 17A except to the extent that rulemaking authority is vested in a policymaking commission.

b. To hire, allocate, develop, and supervise employees of the division necessary to perform duties assigned to the division by law.

c. To supervise and direct personnel and other resources to accomplish duties assigned to the division by law.

d. To establish fees assessed to the regulated industry except to the extent this power is vested in a policymaking commission.

6. Each division is responsible for policymaking and enforcement duties assigned to the division under the law. Except as provided in section 546.10, subsection 3:

a. Each division shall adopt rules pursuant to chapter 17A to implement its duties.

b. Decisions by the divisions are final agency actions pursuant to chapter 17A.

93 Acts, ch 175, §20  
Subsection 2 amended

#### 546.8 Insurance division.

The insurance division shall regulate and supervise the conducting of the business of insurance in the state. The division shall enforce and implement

Title XIII, subtitle 1, insurance and related regulation, chapters 505 through 523G, and chapters 502 and 535C, and shall perform other duties assigned to the division by law. The division is headed by the commissioner of insurance who shall be appointed pursuant to section 505.2.

93 Acts, ch 60, §24  
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 542B.
- b. The accountancy examining board created pursuant to chapter 542C.
- c. The real estate commission created pursuant to chapter 543B.
- d. The architectural examining board created pursuant to chapter 544A.
- e. The landscape architectural examining board created pursuant to chapter 544B.

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 542B, 542C, 543B, 543D, 544A, and 544B 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 542B.12, 542C.3, 543B.14, 543D.6, 544A.11, and 544B.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, beginning on July 1, 1991, 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.

93 Acts, ch 131, §24  
Restrictions on use of moneys deposited in state general fund, see § 8 60  
Availability of general fund for payment of expenses, see 91 Acts, ch 264,  
§ 905, 93 Acts, ch 131, § 28  
Subsection 6, unnumbered paragraph 2 amended

**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 de-

partment 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, 546.9, and 546.10 directing the utilities division, banking division, credit union division, alcoholic beverages division, and 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, beginning on July 1, 1991, all expenses for administrative services shall be paid from appropriations made from the general fund of the state for these expenses.

93 Acts, ch 131, §25

Restrictions on use of moneys deposited in state general fund, see § 8 60  
Unnumbered paragraph 2 amended

## CHAPTER 552A

### BUYING CLUB MEMBERSHIPS

#### 552A.1 Definitions.

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

1. "*Buying club*" means a corporation, partnership, unincorporated association, or other business enterprise which sells or offers for sale to the public generally memberships or certificates of membership.

2. "*Contract*" means the agreement by which a person acquires a membership in a buying club.

3. "*Membership*" means certificates, memberships, shares, bonds, contracts, stocks, or agreements of any kind or character issued upon any plan offered generally to the public entitling the holder to purchase merchandise, materials, equipment, or service, either from the issuer or another person designated by the issuer, either under a franchise or otherwise, whether it be at a discount, at cost plus a percentage, at cost plus a fixed amount, at a fixed price, or on any other similar basis.

93 Acts, ch 60, §1  
NEW section

#### 552A.2 Exemptions.

This chapter does not apply to any of the following:

1. Building and loan associations, state or national banks, insurance companies and associations, and mutual or cooperative telephone companies organized under chapter 491 which have been determined to be exempt from taxation under section 501(c)(12) of the Internal Revenue Code.

2. Corporations and cooperative associations subject to regulation under chapter 497, 498, or 499.

3. The sale of membership camping contracts by persons or entities registered or exempt under chapter 557B.

4. The sale of physical exercise club contracts by persons or entities registered under chapter 552.

5. Corporations, partnerships, unincorporated associations, or other business enterprises which sell

or offer for sale memberships to an individual or to a family unit for consideration of no more than fifty dollars for a one-year period. Consideration for this purpose includes but is not limited to the amount of any required purchase under the terms of the contract.

6. The sale of goods or services by corporations, partnerships, unincorporated associations, or other business enterprises which sell products to direct sellers as defined by section 3508 of the Internal Revenue Code, where the initial contract establishing the relationship with the direct seller is terminable at will by either party, and where the corporation, partnership, unincorporated association, or other business enterprise offers to repurchase the products at reasonable commercial terms.

For purposes of this subsection, "*reasonable commercial terms*" includes the repurchase of all unencumbered products which are in an unused, commercially resalable condition within one year from the direct seller's date of purchase. The repurchase shall be at a price not less than ninety percent of the original net cost to the direct seller of the products being returned. "*Original net cost*" means the amount actually paid by the direct seller for the products, less any consideration received by the direct seller for the purchase of the products being returned. Products which are no longer marketed by a program shall be deemed resalable if the products are otherwise in an unused, commercially resalable condition and are returned to the seller within one year from the direct seller's date of purchase, provided, however, that products which are no longer marketed by a program shall not be deemed resalable if the products are sold to direct sellers as nonreturnable, discontinued, seasonal, or special promotion items and the nonreturnable nature of the product was clearly disclosed to the direct seller prior to purchase.

93 Acts, ch 60, §2  
NEW section

**552A.3 Right of cancellation — requirement of writing.**

The requirements of sections 555A.1 through 555A.5, relating to door-to-door sales, shall apply to sales of buying club memberships, irrespective of the place or manner of sale or the purpose for which they are purchased. In addition to the requirements of chapter 555A, a contract shall not be enforceable against a person acquiring a membership in a buying club unless the contract is in writing and signed by the purchaser.

93 Acts, ch 60, §3  
NEW section

**552A.4 Limitation on membership period.**

A contract shall not be valid for a term longer than eighteen months from the date on which the contract is signed. However, a buying club may allow a member to convert the contract into a contract for a period longer than eighteen months after the member has been a member of the club for at least one

year. The duration of the contract shall be clearly and conspicuously disclosed in the contract in bold-face type of a minimum size of fourteen points.

93 Acts, ch 60, §4  
NEW section

**552A.5 Remedies.**

1. A violation of this chapter is a violation of section 714.16, subsection 2, paragraph "a".

2. The rights, obligations, and remedies provided in this chapter shall be in addition to any other rights, obligations, or remedies provided by law or in equity.

3. In addition to the remedies otherwise provided by law, any person injured by a violation of this chapter may bring a civil action and recover damages, together with costs, including reasonable attorney's fees, and receive other equitable relief as determined by the court.

93 Acts, ch 60, §5  
NEW section

## CHAPTER 554

### UNIFORM COMMERCIAL CODE

**554.9310 Priority of certain liens arising by operation of law.**

When a person in the ordinary course of the person's business furnishes services or materials with respect to goods subject to a security interest, a lien upon goods in the possession of such person given by statute or rule of law for such materials or services takes priority over a perfected security interest unless the lien is statutory and the statute expressly provides otherwise.

A perfected security interest in collateral takes priority over any lien that is given equal precedence with ordinary taxes under chapter 260E or 260F, or its successor provisions, except for a lien under chapter 260E or 260F upon the collateral described in a financing statement or a job training agreement satisfying the requirements for a financing statement under section 554.9402, subsection 1, which is perfected by filing the financing statement or the job training agreement with the secretary of state prior to the perfection of a conflicting security interest, and a subordinate lien under chapter 260E or 260F may be divested or discharged by judicial sale, as provided in Part 5 of this Article 9 or by other available legal remedy notwithstanding any provision to the contrary contained in chapter 260E or 260F, or its successor provisions. Nothing in this section shall abrogate the collection of, or any lien for, unpaid property taxes which have attached to real estate

pursuant to chapter 445, including taxes levied against tangible property that is assessed and taxed as real property pursuant to chapter 427A, or the collection of, or any lien for, unpaid taxes for which notice of lien has been properly recorded or filed pursuant to section 422.26.

93 Acts, ch 180, §88  
NEW unnumbered paragraph 2

**554.9402 Formal requisites of financing statement — amendments — mortgage as financing statement.**

1. A financing statement is sufficient if it gives the names of the debtor and the secured party, is signed by the debtor, gives an address of the secured party from which information concerning the security interest may be obtained, gives a mailing address of the debtor and contains a statement indicating the types, or describing the items, of collateral. A financing statement may be filed before a security agreement is made or a security interest otherwise attaches. When the financing statement covers crops growing or to be grown, the statement must also contain a description of the real estate concerned. When the financing statement covers timber to be cut or covers minerals or the like (including oil and gas) or accounts subject to section 554.9103, subsection 5, or when the financing statement is filed as a fixture filing (section 554.9313) and the collateral is goods

which are or are to become fixtures, the statement must also comply with subsection 5. A copy of the security agreement is sufficient as a financing statement if it contains the above information and is signed by the debtor. A copy of a jobs training agreement entered into under chapter 260E or 260F between an employer and a community college is sufficient as a financing statement if it contains the information required by this section and is signed by the employer. A carbon, photographic or other reproduction of a security agreement or a financing statement is sufficient as a financing statement if the security agreement so provides or if the original has been filed in this state. The secretary of state must accept for filing a copy of a signature required by this section. The secretary of state may adopt rules for the electronic filing of a financing statement.

2. A financing statement which otherwise complies with subsection 1 is sufficient when it is signed by the secured party instead of the debtor if it is filed to perfect a security interest in

a. collateral already subject to a security interest in another jurisdiction when it is brought into this state, or when the debtor's location is changed to this state. Such a financing statement must state that the collateral was brought into this state or that the debtor's location was changed to this state under such circumstances; or

b. proceeds under section 554.9306 if the security interest in the original collateral was perfected. Such a financing statement must describe the original collateral; or

c. collateral as to which the filing has lapsed; or

d. collateral acquired after a change of name, identity or corporate structure of the debtor (subsection 7).

3. A form substantially as follows is sufficient to comply with subsection 1:

Name of debtor (or assignor) .....  
Address .....  
Name of secured party (or assignee) .....  
Address .....

(1) This financing statement covers the following types (or items) of property:

(Describe) .....

(2) (If collateral is crops) The above described crops are growing or are to be grown on:

(Describe Real Estate) .....

(3) (If applicable) The above goods are to become fixtures on

Where appropriate either add or substitute "The above timber is standing on ....." or "The above minerals or the like (including oil and gas) are located on ....." or "The above accounts will be financed at the wellhead or minehead of the well or mine located on ....." or any or all of these

(Describe Real Estate) .....

and this financing statement is to be filed for record in the real estate records. (If the debtor does not have an interest of record) The name of a record

owner is .....

(4) (If products of collateral are claimed) Products of the collateral are also covered.

(use whichever is applicable) .....

Signature of Debtor (or Assignor) .....

Signature of Secured Party (or Assignee) .....

4. Except as provided in this subsection, a financing statement may be amended by filing a writing signed by both the debtor and the secured party. However, an amendment is sufficient when it is signed only by the secured party if it is filed to show a change of the name of the secured party, the address of the secured party, or both. An amendment showing only a change of the name of the secured party, the address of the secured party, or both, shall be filed without fee. The secretary of state may adopt rules for the change of a secured party's name or address on multiple financing statements by use of a single amendment, including a reasonable fee for processing of the amendment. An amendment does not extend the period of effectiveness of a financing statement. If any amendment adds collateral, it is effective as to the added collateral only from the filing date of the amendment. In this Article, unless the context otherwise requires, the term "financing statement" means the original financing statement and any amendments.

5. A financing statement covering timber to be cut or covering minerals or the like (including oil and gas) or accounts subject to section 554.9103, subsection 5, or a financing statement filed as a fixture filing (section 554.9313) where the debtor is not a transmitting utility, must show that it covers this type of collateral, must recite that it is to be filed for record in the real estate records, and the financing statement must contain a description of the real estate sufficient if it were contained in a mortgage of the real estate to give constructive notice of the mortgage under the law of this state. If the debtor does not have an interest of record in the real estate, the financing statement must show the name of a record owner.

6. A mortgage is effective as a financing statement filed as a fixture filing or a filing covering timber to be cut, or minerals or the like (including oil and gas), or accounts subject to section 554.9103, subsection 5, or any or all of these, from the date of its recording if (a) the goods are described in the mortgage by item or type, (b) the goods are or are to become fixtures or timber to be cut, or minerals or the like (including oil and gas), or accounts subject to section 554.9103, subsection 5, or any or all of these, which are related to the real estate described in the mortgage, (c) the mortgage complies with the requirements for a financing statement in this section other than a recital that it is to be filed in the real estate records, and (d) the mortgage is duly recorded. No fee with reference to the financing statement is required other than the regular recording and satisfaction fees with respect to the mortgage.

7. A financing statement sufficiently shows the name of the debtor if it gives the individual, partnership or corporate name of the debtor, whether or not it adds other trade names or the names of partners. Where the debtor so changes the debtor's name or in the case of an organization its name, identity or corporate structure that a filed financing statement becomes seriously misleading, the filing is not effective to perfect a security interest in collateral acquired by the debtor more than four months after the change, unless a new appropriate financing statement is filed before the expiration of that time. A filed financing statement remains effective with respect to collateral transferred by the debtor even though the secured party knows of the transfer.

8. A financing statement substantially complying with the requirements of this section is effective even though it contains minor errors which are not seriously misleading. The change of the mailing address of the debtor from a rural route address to a street address as a result of the implementation of an E911 emergency telephone system which occurs during the period that the financing statement is effective shall not be considered seriously misleading.

93 Acts, ch 43, §1, 93 Acts, ch 126, §31, 93 Acts, ch 180, §89

1993 amendment to subsection 8 applies to all financing statements, 93 Acts, ch 43, §2

Subsections 1, 4, and 8 amended

**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. However, if the original financing statement is filed electronically in the office of the secretary of state, the fee shall be eight dollars 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.

93 Acts, ch 126, §32  
Subsection 5, paragraph a amended

**554.9405 Assignment of security interest — duties of filing officer — fees.**

1. A financing statement may disclose an assignment of a security interest in the collateral described in the financing statement by indication in the financing statement of the name and address of the assignee or by an assignment itself or a copy thereof on the face or back of the statement. On presentation to the filing officer of such a financing statement the filing officer shall mark the same as provided in section 554.9403, subsection 4. The uniform fee for filing, indexing and furnishing filing data for a financing statement so indicating an assignment on a form conforming to standards prescribed by the secretary of state shall be 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.

4. The filing fee for an assignment filed electronically in the office of the secretary of state is eight dollars if the statement is in the standard form, and otherwise ten dollars.

93 Acts, ch 126, §33  
NEW subsection 4

**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 statement. 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.

The filing fee for a release of collateral filed electronically in the office of the secretary of state is eight dollars if the statement is in the standard form, and otherwise ten dollars.

93 Acts, ch 126, §34  
NEW unnumbered paragraph 2

**554.9501 Default — procedure when security agreement covers both real and personal property.**

1. When a debtor is in default under a security agreement, a secured party has the rights and remedies provided in this Part and except as limited by subsection 3 those provided in the security agreement. The secured party may reduce the secured party's claim to judgment, foreclose or otherwise enforce the security interest by any available judicial procedure. If the collateral is documents the secured party may proceed either as to the documents or as to the goods covered thereby. A secured party in possession has the rights, remedies and duties provided in section 554.9207. The rights and remedies referred to in this subsection are cumulative.

2. After default, the debtor has the rights and

remedies provided in this Part, those provided in the security agreement and those provided in section 554.9207.

3. To the extent that they give rights to the debtor and impose duties on the secured party, the rules stated in the subsections referred to below may not be waived or varied except as provided with respect to compulsory disposition of collateral (section 554.9504, subsection 3 and section 554.9505) and with respect to redemption of collateral (section 554.9506) but the parties may by agreement determine the standards by which the fulfillment of these rights and duties is to be measured if such standards are not manifestly unreasonable:

a. subsection 2 of section 554.9502 and subsection 2 of section 554.9504 insofar as they require accounting for surplus proceeds of collateral;

b. subsection 3 of section 554.9504 and subsection 1 of section 554.9505 which deal with disposition of collateral;

c. subsection 2 of section 554.9505 which deals with acceptance of collateral as discharge of obligation;

d. section 554.9506 which deals with redemption of collateral; and

e. subsection 1 of section 554.9507 which deals with the secured party's liability for failure to comply with this Part.

4. If the security agreement covers both real and personal property, the secured party may proceed

under this Part as to the personal property or may proceed as to both the real and the personal property in accordance with the secured party's rights and remedies in respect of the real property in which case the provisions of this Part do not apply.

5. When a secured party has reduced the secured party's claim to judgment the lien of any levy which may be made upon the secured party's collateral by virtue of any execution based upon the judgment shall relate back to the date of the perfection of the security interest in such collateral. A judicial sale, pursuant to such execution, is a foreclosure of the security interest by judicial procedure within the meaning of this section, and the secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this Article.

6. A creditor, as defined in section 654A.1, shall not initiate a proceeding under this chapter against a borrower subject to section 654A.4 to enforce a secured interest in agricultural property, as defined in section 654A.1, which is subject to chapter 654A and which is subject to a secured debt of twenty thousand dollars or more unless the person receives a mediation release under section 654A.11, or unless the court determines after notice and hearing that the time delay required for the mediation would cause the person to suffer irreparable harm.

Subsection 6 repealed July 1, 1995, 90 Acts, ch 1143, § 28, 30, 32, 93 Acts, ch 29, § 4, 93 Acts, ch 171, § 23

Footnote updated, section not amended

## CHAPTER 555B

### DISPOSAL OF ABANDONED MOBILE HOMES AND PERSONAL PROPERTY

#### 555B.1 Definitions.

Unless the context otherwise requires, in this chapter:

1. "*Abandoned*" means abandoned as provided in section 562B.27, subsection 1.

2. "*Claimant*" includes but is not limited to any government subdivision with authority to levy a tax on abandoned personal property.

3. "*Demolisher*" means demolisher as defined in section 321.89.

4. "*Junkyard*" means junkyard as defined in section 306C.1.

5. "*Personal property*" includes personal property of the mobile home owner in the abandoned mobile home, on the mobile home lot, in the immediate vicinity of the abandoned mobile home and the mobile home lot, and in any storage area provided by the real property owner for the use of the mobile home owner.

6. "*Real property owner*" means the owner or other lawful possessor of real property upon which a mobile home is located.

93 Acts, ch 154, §6, 7

NEW subsection 1 and former subsections 1-5 renumbered as 2-6

Subsection 2 amended

#### 555B.2 Removal — notice to sheriff.

1. A real property owner may remove or cause to be removed a mobile home and other personal property which is unlawfully parked, placed, or abandoned on that real property, and may cause the mobile home and personal property to be placed in storage until the owner of the personal property pays a fair and reasonable charge for removal, storage, or other expense incurred, including reasonable attorneys' fees, or until a judgment of abandonment is entered pursuant to section 555B.8 provided that there is no lien on the mobile home or personal property

other than a tax lien pursuant to chapter 435. For purposes of this chapter, a lien other than a tax lien exists only if the real property owner receives notice of a lien on the standardized registration form completed by a tenant pursuant to section 562B.27, subsection 3, or a lien has been filed in state or county records on a date before the mobile home is considered to be abandoned. The real property owner or the real property owner's agent is not liable for damages caused to the mobile home and personal property by the removal or storage unless the damage is caused willfully or by gross negligence.

2. The real property owner shall notify the sheriff of the county where the real property is located of the removal of the mobile home and other personal property.

a. If the mobile home owner can be determined, and if the real property owner so requests, the sheriff shall notify the mobile home owner of the removal by restricted certified mail. If the mobile home owner cannot be determined, and the real property owner so requests, the sheriff shall give notice by one publication in one newspaper of general circulation in the county where the mobile home and personal property were unlawfully parked, placed, or abandoned. If the mobile home and personal property have not been claimed by the owner within six months after notice is given, the mobile home and personal property shall be sold by the sheriff at a public or private sale. After deducting costs of the sale the net proceeds shall be applied to the cost of removal, storage, notice, attorney fees, and any other expenses incurred for preserving the mobile home and personal property, including any rent owed by the mobile home owner to the real property owner in connection with the presence of the mobile home on the real property. The remaining net proceeds, if any, shall be paid to the county treasurer to satisfy any tax lien on the mobile home. The remainder, if any, shall be retained by the county treasurer.

b. If the real property owner removes the mobile home and personal property but does not request that the sheriff notify the mobile home owner, the real property owner shall proceed with an action for abandonment as provided in sections 555B.3 through 555B.9.

93 Acts, ch 154, §8, 9  
Subsection 1 amended  
Subsection 2, paragraph a amended

### 555B.3 Action for abandonment — jurisdiction.

A real property owner not requesting notification by the sheriff as provided in section 555B.2 may bring an action alleging abandonment in the court within the county where the real property is located provided that there is no lien on the mobile home or personal property other than a tax lien pursuant to chapter 435. The action shall be tried as an equitable action. Unless commenced as a small claim, the petition shall be presented to a district judge. Upon receipt of the petition, either the court or the clerk of the district court shall set a date for a hearing not

later than fourteen days from the date of the receipt of the petition.

93 Acts, ch 154, §10  
Section amended

### 555B.4 Notice.

1. Personal service pursuant to rule of civil procedure 56.1 shall be made upon the mobile home owner not less than ten days before the hearing. If personal service cannot be completed in time to give the mobile home owner the minimum notice required by this section, the court may set a new hearing date.

2. If personal service cannot be made on the mobile home owner because the mobile home owner is avoiding service or cannot be found, service may be made by mailing a copy of the petition and notice of hearing to the mobile home owner's last known address and publishing the notice in one newspaper of general circulation in the county where the petition is filed. If the mobile home owner's address is not known to the real property owner, service may be made pursuant to rule of civil procedure 62 except that service is complete seven days after the initial publication. The court shall set a new hearing date if necessary to allow the ten-day minimum notice required under subsection 1 of this section.

3. If a tax lien exists on the mobile home or personal property at the time an action for abandonment is initiated, the real property owner shall notify the county treasurer of each county in which a tax lien appears by restricted certified mail sent not less than ten days before the hearing. The notice shall describe the mobile home and shall state the date and time at which the hearing is scheduled, and the county treasurer's right to assert a claim to the mobile home at the hearing. The notice shall also state that failure to assert a claim to the mobile home is deemed a waiver of all right, title, claim, and interest in the mobile home and is deemed consent to the sale or disposal of the mobile home.

93 Acts, ch 154, §11  
Subsection 3 amended

### 555B.10 Limitation on liability.

1. A real property owner who disposes of a mobile home or personal property in accordance with this chapter is not liable for damages by reason of the removal, sale, or disposal of the mobile home and personal property unless the damage is caused willfully or by gross negligence. Upon a motion to the district court and a showing that the real property owner is not proceeding in accordance with this chapter, the court may enjoin the real property owner from proceeding further and a determination for the proper disposition of the mobile home and personal property shall be made. If disposition of the mobile home or personal property has not occurred in accordance with this chapter, the owner thereof has a right to recover from the real property owner, any loss caused by failure to comply with this chapter. The burden of proof shall be upon the mobile home or personal property owner to show that the

real property owner has not complied with this chapter in disposing of a mobile home or personal property.

2. The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the real property owner is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the real property owner sells the mobile home and personal property in the usual manner in any recognized market or if the real property owner

sells at the price current in the market at the time of the real property owner's sale or if the real property owner has otherwise sold in conformity with reasonable commercial practices among dealers in the type of mobile home or personal property sold, the real property owner has sold in a commercially reasonable manner. A disposition approved in any judicial proceeding shall be deemed conclusively to be commercially reasonable.

93 Acts, ch 154, §12  
Subsection 1 amended

## CHAPTER 556

### DISPOSITION OF UNCLAIMED PROPERTY

#### 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 three years and the owner within three 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 three-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 three dividends, distributions, or other sums are paid during the three-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 three dividends, distributions, or other sums are not paid during the presumptive period, the period continues to run until there have been three dividends, distributions, or other sums that have not been claimed by the owner.

3. The running of the three-year period of abandonment ceases immediately upon the occurrence of

a communication referred to in subsection 1. If any future dividend, distribution, or other sum payable to the owner as a result of the interest is subsequently not claimed by the owner, a new period of abandonment commences and relates back to the time a subsequent dividend, distribution, or other sum became due and payable.

4. At the time an interest is presumed abandoned under this section, any dividend, distribution, or other sum then held for or owing to the owner as a result of the interest, and not previously abandoned, is presumed abandoned.

5. This section does not apply to any stock or other intangible ownership 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 three 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.

93 Acts, ch 178, §33, 34

\*Three probably intended, corrective legislation pending  
Subsection 1, unnumbered paragraph 1 amended  
Subsections 2, 3 and 5 amended

#### 556.18 Deposit of funds.

1. All funds received under this chapter, including the proceeds from the sale of abandoned proper-

ty 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 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.

93 Acts, ch 131, §26, 27  
 Subsection 1 amended  
 Subsection 3 stricken

**556.25 Interest and penalties.**

1. A person who fails to pay or deliver property within the time prescribed by this chapter shall pay the treasurer of state interest at the annual rate of ten percent on the property or value of the property from the date the property should have been paid or delivered but in no event prior to July 1, 1984.

2. A person who willfully fails to pay or deliver property to the treasurer of state as required under this chapter shall pay a civil penalty equal to twenty-five percent of the value of the property that should have been paid or delivered.

3. The interest or penalty or any part of the interest or penalty as imposed in subsection 1 or 2 may be waived or remitted by the treasurer of state if the person's failure to pay abandoned funds or deliver property is satisfactorily explained to the treasurer of state and if the failure has resulted from a mistake by the person in understanding or applying the law or the facts which require that person to pay abandoned funds or deliver property as provided in this chapter.

93 Acts, ch 178, §35, 36  
 Subsection 1 amended  
 NEW subsection 3

**CHAPTER 557B**

**MEMBERSHIP CAMPGROUNDS**

**557B.14 Remedies.**

1. A violation of this chapter or the commission of any act declared to be unlawful under this chapter constitutes a violation of section 714.16, subsection 2, paragraph "a", and the attorney general has all the powers enumerated in that section to enforce the provisions of this chapter.

2. In addition, the attorney general may seek civil penalties of not more than ten thousand dollars for each violation of or the commission of any act declared to be unlawful under this chapter. Each day of continued violation constitutes a separate offense.

3. Any person who fails to pay the filing fees required by this chapter and continues to sell membership camping contracts is liable civilly in an action brought by the attorney general for a penalty in an amount equal to treble the unpaid fees.

4. The provisions of this chapter are cumulative and nonexclusive and do not affect any other available remedy at law or equity, except as otherwise provided in sections 502.202, 537.3310, and 552A.2.

93 Acts, ch 60, §25  
 Section amended

CHAPTER 558

CONVEYANCES

558.1 "Instruments affecting real estate" defined — revocation.

All instruments containing a power to convey, or in any manner relating to real estate, including 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 a jobs training agreement entered into under chapter 260E or 260F between an employer and community college which contains a description of the real estate affected, shall be held to be instruments affecting the same; and no such instrument, when acknowledged or certified and recorded as in this chapter prescribed, can be revoked as to third parties by any act of the parties by whom it was executed, until the instrument containing such revocation is acknowledged and filed for record in the same office in which the instrument containing such power is recorded, except that uniform commercial code financing statements and financing statement changes need not be thus acknowledged.

93 Acts, ch 180, §90
Section amended

558.41 Recording.

An instrument affecting real estate is of no validity against subsequent purchasers for a valuable consideration, without notice, or against the state or any of its political subdivisions during and after condemnation proceedings against the real estate, unless the instrument is filed and recorded in the county in which the real estate is located, as provided in this chapter.

An interest in real estate evidenced by an instrument so filed shall have priority over any lien that is given equal precedence with ordinary taxes under chapter 260E or 260F, or its successor provisions, except for a lien under chapter 260E or 260F upon the real estate described in an instrument or job training agreement filed in the office of the recorder of the county in which the real estate is located prior to the filing of a conflicting instrument affecting the real estate, and a subordinate lien under chapter 260E or 260F may be divested or discharged by judicial sale or by other available legal remedy notwithstanding any provision to the contrary contained in chapter 260E or 260F, or its successor provisions. Nothing in this section shall abrogate the collection of, or any lien for, unpaid property taxes which have attached to real estate pursuant to chapter 445, including taxes levied against tangible property that is assessed and taxed as real property pursuant to chapter 427A, or the collection of, or any lien for, unpaid taxes for which notice of lien has been properly recorded pursuant to section 422.26.

93 Acts, ch 33, §1, 93 Acts, ch 180, §91
1993 amendment to unnumbered paragraph 1 applies to condemnation proceedings beginning on or after July 1, 1993, 93 Acts, ch 33, §2
Unnumbered paragraph 1 amended
NEW unnumbered paragraph 2

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 recorded with the county recorder 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

93 Acts, ch 109, §14
Unnumbered paragraph 2 amended

## CHAPTER 558A

### REAL ESTATE DISCLOSURES

Chapter effective July 1, 1994, real estate commission directed to begin adoption of rules, 93 Acts, ch 30, §11

#### 558A.1 Definitions.

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

1. "Broker" means a real estate broker licensed pursuant to chapter 543B.

2. "Commission" means the real estate commission created pursuant to section 543B.8.

3. "Salesperson" means a salesperson licensed pursuant to chapter 543B.

4. "Transfer" means the transfer or conveyance by sale, exchange, real estate contract, or any other method by which real estate and improvements are purchased, if the property includes at least one but not more than four dwelling units. However, a transfer does not include any of the following:

a. A transfer made pursuant to a court order, including but not limited to a transfer under chapter 633, the execution of a judgment, the foreclosure of a real estate mortgage pursuant to chapter 654, the forfeiture of a real estate contract under chapter 656, a transfer by a trustee in bankruptcy, a transfer by eminent domain, or a transfer resulting from a decree for specific performance.

b. A transfer to a mortgagee by a mortgagor or successor in interest who is in default, or a transfer by a mortgagee who has acquired real property at a sale conducted pursuant to chapter 654, a transfer back to a mortgagor exercising a right of first refusal pursuant to section 654.16A, a nonjudicial voluntary foreclosure procedure under section 654.18 or chapter 655A, or a deed in lieu of foreclosure under section 654.19.

c. A transfer by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust.

d. A transfer between joint tenants or tenants in common.

e. A transfer made to a spouse, or to a person in the lineal line of consanguinity of a person making the transfer.

f. A transfer between spouses resulting from a decree of dissolution of marriage, a decree of legal separation, or a property settlement agreement which is incidental to the decree, including a decree ordered pursuant to chapter 598.

g. A transfer to or from the state, a political subdivision of the state, another state, or the United States.

h. A transfer by quitclaim deed.

5. "Transferee" means a person who is acquiring real property as provided in an instrument containing the power to transfer real estate, including an instrument described in section 558.1.

6. "Transferor" means a person who is transferring real property as provided in an instrument containing the power to transfer real estate, including an instrument described in section 558.1.

93 Acts, ch 30, §3  
Effective July 1, 1994, 93 Acts, ch 30, §11  
NEW section

#### 558A.2 Procedures.

1. A person interested in transferring real property, or a broker or salesperson acting on behalf of the person, shall deliver a written disclosure statement to a person interested in being transferred the real property. The disclosure statement must be delivered prior to either the transferor making a written offer for the transfer of the real property, or accepting a written offer for the transfer of the real property.

2. The disclosure statement shall be made by personal delivery or by certified or registered mail to the transferee. The delivery may be made to the spouse of the transferee, unless otherwise provided by the parties. If the disclosure statement is not timely delivered, the transferee may withdraw the offer or revoke the acceptance without liability, within three days following personal delivery of the statement or five days following delivery by mail.

3. The disclosure statement may be filed with the county recorder with instruments affecting the transfer of real estate. However, the failure to file the statement shall not cause a defect in the title to the property.

93 Acts, ch 30, §4  
Effective July 1, 1994, 93 Acts, ch 30, §11  
NEW section

#### 558A.3 Good faith and amendments.

1. All information required by this section and rules adopted by the commission shall be disclosed

in good faith. If at the time the disclosure is required to be made, information required to be disclosed is not known or available to the transferor, and a reasonable effort has been made to ascertain the information, an approximation of the information may be used. The information shall be identified as an approximation. The approximation shall be based on the best information available at the time.

2. A disclosure statement shall be amended, if information disclosed in the statement is or becomes inaccurate or misleading, or is supplemented. The amended statement shall be subject to the same procedures as the original disclosure statement as provided in this chapter. However, the statement is not required to be amended if either of the following applies:

*a* The information disclosed in conformance with this chapter is subsequently rendered inaccurate as a result of an act, occurrence, or agreement subsequent to the delivery of the disclosure statement.

*b* The information is based on information of a public agency, including the state, a political subdivision of the state, or the United States. The information shall be deemed to be accurate and complete, unless the transferor or the broker or salesperson has actual knowledge of an error, inaccuracy, or omission, or fails to exercise ordinary care in obtaining the information.

93 Acts, ch 30, §5  
Effective July 1, 1994, 93 Acts, ch 30, §11  
NEW section

#### 558A.4 Required information.

1. The disclosure statement shall include information relating to the condition and important characteristics of the property and structures located on the property, including significant defects in the structural integrity of the structure, as provided in rules which shall be adopted by the real estate commission pursuant to section 543B.9. The rules may require the disclosure to include information relating to the property's zoning classification; the condition of plumbing, heating, or electrical systems; or the presence of pests.

2. The disclosure statement may include a report or written opinion prepared by a person qualified to make judgment based on education or experience, as provided by rules adopted by the commission, including but not limited to a land surveyor licensed pursuant to chapter 542B, a geologist, a structural pest control operator licensed pursuant to section 206.6, or a building contractor. The report or opinion on a matter within the scope of the person's practice, profession, or expertise shall satisfy the requirements of this section or rules adopted by the commission regarding that matter required to be disclosed. If the report or opinion is in response to a request made for purposes of satisfying the disclosure statement, the report or opinion shall indicate which part of the disclosure statement the report or opinion satisfies.

93 Acts, ch 30, §6  
Effective July 1, 1994, 93 Acts, ch 30, §11  
NEW section

#### 558A.5 Agency.

1. A person other than a broker or salesperson acting in the capacity of an agent in the transfer of real property shall not be deemed to be an agent of the transferor or transferee for purposes of this chapter, unless the person is granted powers of attorney or is empowered as an agent, as expressly provided in writing, and is subject to any other applicable requirements as provided by law.

2. A broker or salesperson representing the transferor shall deliver the disclosure statement to the transferee as required in section 558A.2, unless the transferor or transferee has instructed the broker or salesperson otherwise in writing.

93 Acts, ch 30, §7  
Effective July 1, 1994, 93 Acts, ch 30, §11  
NEW section

#### 558A.6 Liability under the chapter.

A person who violates this chapter shall be liable to a transferee for the amount of actual damages suffered by the transferee, but subject to the following limitations:

1. The transferor, or a broker or salesperson, shall not be liable under this chapter for the error, inaccuracy, or omission in information required in a disclosure statement, unless that person has actual knowledge of the inaccuracy, or fails to exercise ordinary care in obtaining the information.

2. The person submitting a report or opinion within the scope of the person's practice, profession, or expertise, as provided in section 558A.4, for purposes of satisfying the disclosure statement, shall not be liable under this chapter for any matter other than a matter within the person's practice, profession, or expertise, and which is required by the disclosure statement, unless the person failed to use care ordinary in the person's profession, practice, or area of expertise in preparing the information.

93 Acts, ch 30, §8  
Effective July 1, 1994, 93 Acts, ch 30, §11  
NEW section

#### 558A.7 Chapter is not limiting.

The duties imposed upon persons under this chapter or under rules adopted by the real estate commission shall not limit or abridge any duty, requirement, obligation, or liability for disclosure created by another provision of law, or under a contract between parties.

93 Acts, ch 30, §9  
Effective July 1, 1994, 93 Acts, ch 30, §11  
NEW section

#### 558A.8 Validity of a transfer.

A transfer under this chapter shall not be invalidated solely because of a failure of a person to comply with a provision of this chapter.

93 Acts, ch 30, §10  
Effective July 1, 1994, 93 Acts, ch 30, §11  
NEW section



## CHAPTER 562A

## UNIFORM RESIDENTIAL LANDLORD AND TENANT LAW

**562A.12 Rental deposits.**

1. A landlord shall not demand or receive as a security deposit an amount or value in excess of two months' rent.

2. All rental deposits shall be held by the landlord for the tenant, who is a party to the agreement, in a bank or savings and loan association or credit union which is insured by an agency of the federal government. Rental deposits shall not be commingled with the personal funds of the landlord. Notwithstanding the provisions of chapter 543B, all rental deposits may be held in a trust account, which may be a common trust account and which may be an interest bearing account. Any interest earned on a rental deposit during the first five years of a tenancy shall be the property of the landlord.

3. A landlord shall, within thirty days from the date of termination of the tenancy and receipt of the tenant's mailing address or delivery instructions, return the rental deposit to the tenant or furnish to the tenant a written statement showing the specific reason for withholding of the rental deposit or any portion thereof. If the rental deposit or any portion of the rental deposit is withheld for the restoration of the dwelling unit, the statement shall specify the nature of the damages. The landlord may withhold from the rental deposit only such amounts as are reasonably necessary for the following reasons:

a. To remedy a tenant's default in the payment of rent or of other funds due to the landlord pursuant to the rental agreement.

b. To restore the dwelling unit to its condition at the commencement of the tenancy, ordinary wear and tear excepted.

c. To recover expenses incurred in acquiring possession of the premises from a tenant who does not act in good faith in failing to surrender and vacate the premises upon noncompliance with the rental agreement and notification of such noncompliance pursuant to this chapter.

In an action concerning the rental deposit, the burden of proving, by a preponderance of the evidence, the reason for withholding all or any portion of the rental deposit shall be on the landlord.

4. A landlord who fails to provide a written statement within thirty days of termination of the tenancy and receipt of the tenant's mailing address or delivery instructions shall forfeit all rights to withhold any portion of the rental deposit. If no mailing address or instructions are provided to the landlord within one year from the termination of the tenancy the rental deposit shall revert to the landlord and the tenant will be deemed to have forfeited all rights to the rental deposit.

5. Upon termination of a landlord's interest in the dwelling unit, the landlord or an agent of the landlord shall, within a reasonable time, transfer the rental deposit, or any remainder after any lawful deductions to the landlord's successor in interest and notify the tenant of the transfer and of the transferee's name and address or return the deposit, or any remainder after any lawful deductions to the tenant.

Upon the termination of the landlord's interest in the dwelling unit and compliance with the provisions of this subsection, the landlord shall be relieved of any further liability with respect to the rental deposit.

6. Upon termination of the landlord's interest in the dwelling unit, the landlord's successor in interest shall have all the rights and obligations of the landlord with respect to the rental deposits, except that if the tenant does not object to the stated amount within twenty days after written notice to the tenant of the amount of rental deposit being transferred or assumed, the obligations of the landlord's successor to return the deposit shall be limited to the amount contained in the notice. The notice shall contain a stamped envelope addressed to landlord's successor and may be given by mail or by personal service.

7. The bad faith retention of a deposit by a landlord, or any portion of the rental deposit, in violation of this section shall subject the landlord to punitive damages not to exceed two hundred dollars in addition to actual damages.

8. The court may, in any action on a rental agreement, award reasonable attorney fees to the prevailing party.

93 Acts, ch 154, §13  
Subsection 1 amended

## CHAPTER 562B

### MOBILE HOME PARKS RESIDENTIAL LANDLORD AND TENANT LAW

#### 562B.13 Rental deposits.

1. A landlord shall not demand or receive as a security deposit an amount or value in excess of two months' rent.

2. All rental deposits shall be held by the landlord for the tenant, who is a party to the agreement, in a bank, credit union or savings and loan association which is insured by an agency of the federal government. Rental deposits shall not be commingled with the personal funds of the landlord. All rental deposits may be held in a trust account, which may be a common trust account and which may be an interest bearing account. Any interest earned on a rental deposit shall be the property of the landlord.

3. A landlord shall, within thirty days from the date of termination of the tenancy and receipt of the tenant's mailing address or delivery instructions, return the rental deposit to the tenant or furnish to the tenant a written statement showing the specific reason for withholding of the rental deposit or any portion thereof. If the rental deposit or any portion of the rental deposit is withheld for the restoration of the mobile home space, the statement shall specify the nature of the damages. The landlord may withhold from the rental deposit only such amounts as are reasonably necessary for the following reasons:

a. To remedy a tenant's default in the payment of rent or of other funds due to the landlord pursuant to the rental agreement.

b. To restore the mobile home space to its condition at the commencement of the tenancy, ordinary wear and tear excepted.

c. To remove, store, and dispose of a mobile home if it is abandoned as defined in section 562B.27.

4. In an action concerning the rental deposit, the burden of proving, by a preponderance of the evidence, the reason for withholding all or any portion of the rental deposit shall be on the landlord.

5. A landlord who fails to provide a written statement within thirty days of termination of the tenancy and receipt of the tenant's mailing address or delivery instructions shall forfeit all rights to withhold any portion of the rental deposit. If no mailing address or instructions are provided to the landlord within one year from the termination of the tenancy the rental deposit shall revert to the landlord and the tenant will be deemed to have forfeited all rights to the rental deposit.

6. Upon termination of a landlord's interest in the mobile home park, the landlord or the landlord's agent shall, within a reasonable time, transfer the rental deposit, or any remainder after any lawful deductions to the landlord's successor in interest and

notify the tenant of the transfer and of the transferee's name and address or return the deposit, or any remainder after any lawful deductions to the tenant.

Upon the termination of the landlord's interest in the mobile home park and compliance with the provisions of this subsection, the landlord shall be relieved of any further liability with respect to the rental deposit.

7. Upon termination of the landlord's interest in the mobile home park, the landlord's successor in interest shall have all the rights and obligations of the landlord with respect to the rental deposits, except that if the tenant does not object to the stated amount within twenty days after written notice to the tenant of the amount of rental deposit being transferred or assumed, the obligations of the landlord's successor to return the deposit shall be limited to the amount contained in the notice. The notice shall contain a stamped envelope addressed to the landlord's successor and may be given by mail or by personal service.

8. The bad faith retention of a deposit by a landlord, or any portion of the rental deposit, in violation of this section shall subject the landlord to punitive damages not to exceed two hundred dollars in addition to actual damages.

93 Acts, ch 154, §14  
Subsection 1 amended

#### 562B.25 Noncompliance with rental agreement by tenant — failure to pay rent.

1. Except as provided in this chapter, if there is a material noncompliance by the tenant with the rental agreement, the landlord may deliver a written notice to the tenant specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than thirty days after receipt of the notice if the breach is not remedied in fourteen days. If there is a noncompliance by the tenant with section 562B.18 materially affecting health and safety, the landlord may deliver a written notice to the tenant specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than thirty days after receipt of the notice if the breach is not remedied in fourteen days. However, if the breach is remediable by repair or the payment of damages or otherwise, and the tenant adequately remedies the breach prior to the date specified in the notice, the rental agreement will not terminate. If substantially the same act or omission, which constituted a prior noncompliance of which notice was given, recurs within six months, the landlord may terminate the rental agreement upon at least four-

teen days' written notice specifying the breach and the date of termination of the rental agreement.

2. If rent is unpaid when due and the tenant fails to pay rent within three days after written notice by the landlord of nonpayment and of the landlord's intention to terminate the rental agreement if the rent is not paid within that period of time, the landlord may terminate the rental agreement.

3. Except as otherwise provided in this chapter, the landlord may recover damages, obtain injunctive relief or recover possession of the mobile home space pursuant to an action in forcible detainer for any material noncompliance by the tenant with the rental agreement or with section 562B.18.

4. The remedy provided in subsection 3 of this section is in addition to any right of the landlord arising under subsection 1 of this section.

93 Acts, ch 154, §15  
Subsection 1 amended

**562B.27 Remedies for abandonment — required registration.**

1. A tenant is considered to have abandoned a mobile home when the tenant has been absent from the mobile home without reasonable explanation for thirty days or more during which time there is either a default of rent three days after rent is due, or the rental agreement is terminated pursuant to section 562B.25. A tenant's return to the mobile home does not change its status as abandoned unless the tenant pays to the landlord all costs incurred for the mobile home space, including costs of removal, storage, notice, attorneys' fees, and all rent and utilities due and owing.

2. When a mobile home is abandoned on a mobile home space:

a. If a tenant abandons a mobile home on a mobile home space, the landlord shall notify the mobile

home owner or other claimant of the mobile home and communicate to that person that the person is liable for any costs incurred for the mobile home space, including rent and utilities due and owing. However, the person is only liable for costs incurred ninety days before the landlord's communication. After the landlord's communication, costs for which liability is incurred shall then become the responsibility of the mobile home owner or other claimant of the mobile home. The mobile home shall not be removed from the mobile home space without a signed written agreement from the landlord showing clearance for removal, and that all debts are paid in full, or an agreement reached with the mobile home owner or other claimant and the landlord.

b. If there is no lien on the mobile home other than a lien for taxes, the landlord may follow the procedure in chapter 555B to dispose of the mobile home.

c. An action pursuant to chapter 555B may be combined with an action for possession under chapter 648 or an action for damages under section 562B.30.

3. A required standardized registration form shall be filled out by each tenant upon the rental of a mobile home space, showing the mobile home make, year, serial number, and also showing if the mobile home is paid for, if there is a lien on the mobile home, and if so the lienholder, and the name of the legal owner of the mobile home. The registration forms shall be kept on file with the landlord as long as the mobile home is on the mobile home space within the mobile home park. The tenant shall give notice to the landlord within ten days of any new lien, change of existing lien, or settlement of lien.

93 Acts, ch 154, §16, 17  
Subsection 1 amended  
Subsection 2, paragraph b amended

## CHAPTER 598

### DISSOLUTION OF MARRIAGE

**598.16 Conciliation — domestic relations divisions.**

A majority of the judges in any judicial district, with the cooperation of any county board of supervisors in the district, may establish a domestic relations division of the district court of the county where the board is located. The division shall offer counseling and related services to persons before the court.

Upon the application of the petitioner in the petition or by the respondent in the responsive pleading thereto or, within twenty days of appointment, of an

attorney appointed under section 598.12, the court shall require the parties to participate in conciliation efforts for a period of sixty days from the issuance of an order setting forth the conciliation procedure and the conciliator.

At any time upon its own motion or upon the application of a party the court may require the parties to participate in conciliation efforts for sixty days or less following the issuance of such an order.

Every order for conciliation shall require the conciliator to file a written report by a date certain which shall state the conciliation procedures un-

dertaken and such other matters as may have been required by the court. The report shall be a part of the record unless otherwise ordered by the court. Such conciliation procedure may include, but is not limited to, referrals to the domestic relations division of the court, if established, public or private marriage counselors, family service agencies, community health centers, physicians and clergy.

The costs of conciliation procedures shall be paid in full or in part by the parties and taxed as court costs; however, if the court determines that the parties will be unable to pay the costs without prejudicing their financial ability to provide themselves and any minor children with economic necessities, the costs may be paid in full or in part by the county.

Persons providing counseling and other services pursuant to this section are not court employees, but are subject to court supervision.

93 Acts, ch 54, §11  
Unnumbered paragraph 1 amended

### 598.21 Orders for disposition and support.

1. Upon every judgment of annulment, dissolution or separate maintenance the court shall divide the property of the parties and transfer the title of the property accordingly. The court may protect and promote the best interests of children of the parties by setting aside a portion of the property of the parties in a separate fund or conservatorship for the support, maintenance, education and general welfare of the minor children. The court shall divide all property, except inherited property or gifts received by one party, equitably between the parties after considering all of the following:

- a. The length of the marriage.
- b. The property brought to the marriage by each party.
- c. The contribution of each party to the marriage, giving appropriate economic value to each party's contribution in homemaking and child care services.
- d. The age and physical and emotional health of the parties.
- e. The contribution by one party to the education, training or increased earning power of the other.
- f. The earning capacity of each party, including educational background, training, employment skills, work experience, length of absence from the job market, custodial responsibilities for children and the time and expense necessary to acquire sufficient education or training to enable the party to become self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage.
- g. The desirability of awarding the family home or the right to live in the family home for a reasonable period to the party having custody of the children, or if the parties have joint legal custody, to the party having physical care of the children.
- h. The amount and duration of an order granting support payments to either party pursuant to subsection 3 and whether the property division should be in lieu of such payments.

i. Other economic circumstances of each party, including pension benefits, vested or unvested, and future interests.

- j. The tax consequences to each party.
- k. Any written agreement made by the parties concerning property distribution.
- l. The provisions of an antenuptial agreement.
- m. Other factors the court may determine to be relevant in an individual case.

2. Property inherited by either party or gifts received by either party prior to or during the course of the marriage is the property of that party and is not subject to a property division under this section except upon a finding that refusal to divide the property is inequitable to the other party or to the children of the marriage.

3. Upon every judgment of annulment, dissolution or separate maintenance, the court may grant an order requiring support payments to either party for a limited or indefinite length of time after considering all of the following:

- a. The length of the marriage.
- b. The age and physical and emotional health of the parties.
- c. The distribution of property made pursuant to subsection 1.
- d. The educational level of each party at the time of marriage and at the time the action is commenced.
- e. The earning capacity of the party seeking maintenance, including educational background, training, employment skills, work experience, length of absence from the job market, responsibilities for children under either an award of custody or physical care, and the time and expense necessary to acquire sufficient education or training to enable the party to find appropriate employment.
- f. The feasibility of the party seeking maintenance becoming self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage, and the length of time necessary to achieve this goal.
- g. The tax consequences to each party.
- h. Any mutual agreement made by the parties concerning financial or service contributions by one party with the expectation of future reciprocation or compensation by the other party.
- i. The provisions of an antenuptial agreement.
- j. Other factors the court may determine to be relevant in an individual case.

4. The supreme court shall maintain uniform child support guidelines and criteria and review the guidelines and criteria at least once every four years, pursuant to the federal Family Support Act of 1988, Pub. L. No. 100-485. The initial review shall be performed within four years of October 12, 1989, and subsequently within the four-year period of the most recent review. It is the intent of the general assembly that, to the extent possible within the requirements of federal law, the court and the child support recovery unit consider the individual facts of each judgment or case in the application of the guidelines and determine the support obligation, accordingly. It is

also the intent of the general assembly that in the supreme court's review of the guidelines, the supreme court shall do both of the following: emphasize the ability of a court to apply the guidelines in a just and appropriate manner based upon the individual facts of a judgment or case; and in determining monthly child support payments, consider other children for whom either parent is legally responsible for support and other child support obligations actually paid by either party pursuant to a court or administrative order.

a. Upon every judgment of annulment, dissolution, or separate maintenance, the court may order either parent or both parents to pay an amount reasonable and necessary for supporting a child. In establishing the amount of support, consideration shall be given to the responsibility of both parents to support and provide for the welfare of the minor child and of a child's need, whenever practicable, for a close relationship with both parents. There shall be a rebuttable presumption that the amount of child support which would result from the application of the guidelines prescribed by the supreme court is the correct amount of child support to be awarded. A variation from the guidelines shall not be considered by a court without a record or written finding, based on stated reasons, that the guidelines would be unjust or inappropriate as determined under the criteria prescribed by the supreme court.

The court shall order as child medical support a health benefit plan as defined in chapter 252E if available to either parent at a reasonable cost. A health benefit plan is considered reasonable in cost if it is employment-related or other group health insurance, regardless of the service delivery mechanism. The premium cost of the health benefit plan may be considered by the court as a reason for varying from the child support guidelines. If a health benefit plan is not available at a reasonable cost, the court may order any other provisions for medical support as defined in chapter 252E.

b. The guidelines prescribed by the supreme court shall be used by the department of human services in determining child support payments under sections 252C.2 and 252C.4. A variation from the guidelines shall not be considered by the department without a record or written finding, based on stated reasons, that the guidelines would be unjust or inappropriate as determined under criteria prescribed by the supreme court.

c. The guidelines prescribed by the supreme court shall incorporate provisions for medical support as defined in chapter 252E to be effective on or before January 1, 1991.

d. For purposes of calculating a support obligation under this section, the income of the parent from whom support is sought shall be used as the noncustodial parent income for purposes of application of the guidelines, regardless of the legal custody of the child.

5. The court may protect and promote the best interests of a minor child by setting aside a portion

of the child support which either party is ordered to pay in a separate fund or conservatorship for the support, education and welfare of the child.

6. The court may provide for joint custody of the children by the parties pursuant to section 598.41. All orders relating to custody of a child are subject to chapter 598A.

7. Orders made pursuant to this section need mention only those factors relevant to the particular case for which the orders are made but shall contain the names, birth dates, addresses, and counties of residence of the petitioner and respondent.

8. The court may subsequently modify orders made under this section when there is a substantial change in circumstances. In determining whether there is a substantial change in circumstances, the court shall consider the following:

a. Changes in the employment, earning capacity, income or resources of a party.

b. Receipt by a party of an inheritance, pension or other gift.

c. Changes in the medical expenses of a party.

d. Changes in the number or needs of dependents of a party.

e. Changes in the physical, mental, or emotional health of a party.

f. Changes in the residence of a party.

g. Remarriage of a party.

h. Possible support of a party by another person.

i. Changes in the physical, emotional or educational needs of a child whose support is governed by the order.

j. Contempt by a party of existing orders of court.

k. Changes in technology related to determination of paternity, subject to the following conditions and limitations:

(1) (a) For orders entered before July 1, 1990, a petition to modify must be filed by July 1, 1991, provided that the child is under the age of nineteen years at the time the petition to modify is filed.

(b) For orders entered on or after July 1, 1990, a petition to modify must be filed within five years of the date of entry of the dissolution decree or the order establishing paternity, provided that the child is under the age of nineteen years at the time the petition to modify is filed.

(2) Any modification of child support brought under this lettered paragraph can be made retroactive only to the date on which the notice of the pending petition for modification is served on the opposing party.

(3) The cost of testing related to the determination of paternity shall be paid by the person requesting the modification.

l. Other factors the court determines to be relevant in an individual case.

A modification of a support order entered under chapter 234, 252A, 252C, 600B, this chapter, or any other support chapter or proceeding between parties to the order is void unless the modification is approved by the court, after proper notice and opportu-

nity to be heard is given to all parties to the order, and entered as an order of the court. If support payments have been assigned to the department of human services pursuant to section 234.39, 239.3, or 252E.11, the department shall be considered a party to the support order. Modifications of orders pertaining to child custody shall be made pursuant to chapter 598A. If the petition for a modification of an order pertaining to child custody asks either for joint custody or that joint custody be modified to an award of sole custody, the modification, if any, shall be made pursuant to section 598.41.

Judgments for child support or child support awards entered pursuant to this chapter, chapter 234, 252A, 252C, 252F, 600B, or any other chapter of the Code which are subject to a modification proceeding may be retroactively modified only from the date the notice of the pending petition for modification is served on the opposing party.

9. Notwithstanding subsection 8, a substantial change of circumstances exists when the court order for child support varies by ten percent or more from the amount which would be due pursuant to the most current child support guidelines established pursuant to subsection 4 or the obligor has access to a health benefit plan, the current order for support does not contain provisions for medical support, and the dependents are not covered by a health benefit plan provided by the obligee, excluding coverage pursuant to chapter 249A or a comparable statute of a foreign jurisdiction.

This basis for modification is applicable to petitions filed on or after July 1, 1992, notwithstanding whether the guidelines prescribed by subsection 4 were used in establishing the current amount of support. Upon application for a modification of an order for child support for which services are being received pursuant to chapter 252B, the court shall set the amount of child support based upon the most current child support guidelines established pursuant to subsection 4, including provisions for medical support pursuant to chapter 252E. The child support recovery unit shall, in submitting an application for modification or adjustment of an order for support, employ additional criteria and procedures as provided in chapter 252H and as established by rule.

10. Notwithstanding any other provision of law to the contrary, when an application for modification or adjustment of support is submitted by the child support recovery unit, the sole issues which may be considered by the court in that action are the application of the guidelines in establishing the amount of support pursuant to section 598.21, subsection 4, and provision for medical support under chapter 252E. Issues related to custody, visitation, or other provisions unrelated to support shall be considered only under a separate application for modification.

11. If the court orders a transfer of title to real property, the clerk of court shall issue a certificate under chapter 558 relative to each parcel of real estate affected by the order and immediately deliver

the certificate for recording to the county recorder of the county in which the real estate is located. Any fees assessed shall be included as part of the court costs. The county recorder shall deliver the certificates to the county auditor as provided in section 558.58, subsection 1.

Property divisions made under this chapter are not subject to modification.

93 Acts, ch 78, §44-46, 93 Acts, ch 79, §48, 49  
1993 amendment to subsection 9 is retroactive to July 1, 1992, 93 Acts, ch 78, §50

Subsection 4, unnumbered paragraph 1 amended

Subsection 8, unnumbered paragraphs 2 and 3 amended

Subsection 9 amended

NEW subsection 10 and former subsection 10 renumbered as 11

### **598.22 Support payments — clerk of court — collection services center — defaults — security.**

Except as otherwise provided in section 598.22A, this section applies to all initial or modified orders for support entered under this chapter, chapter 234, 252A, 252C, 252F, 600B, or any other chapter of the Code. All orders or judgments entered under chapter 234, 252A, 252C, 252F, or 600B, or under this chapter or any other chapter which provide for temporary or permanent support payments shall direct the payment of those sums to the clerk of the district court or the collection services center in accordance with section 252B.14 for the use of the person for whom the payments have been awarded. Payments to persons other than the clerk of the district court and the collection services center do not satisfy the support obligations created by the orders or judgments, except as provided for trusts governed by the federal Retirement Equity Act of 1984, Pub. L. No. 98-397, for tax refunds or rebates in section 602.8102, subsection 47, or for dependent benefits paid to the child support obligee as the result of disability benefits awarded to the child support obligor under the federal Social Security Act. For trusts governed by the federal Retirement Equity Act of 1984, Pub. L. No. 98-397, the assignment of income shall require the payment of such sums to the alternate payee in accordance with the federal Act.

Upon a finding of previous failure to pay child support, the court may order the person obligated for permanent child support to make an assignment of periodic earnings or trust income to the clerk of court or the collection services center established pursuant to section 252B.13A for the use of the person for whom the assignment is ordered. The assignment of earnings ordered by the court shall not exceed the amounts set forth in 15 U.S.C. § 1673(b)(1982). The assignment is binding on the employer, trustee, or other payor of the funds two weeks after service upon that person of notice that the assignment has been made. The payor shall withhold from the earnings or trust income payable to the person obligated the amount specified in the assignment and shall transmit the payments to the clerk or the collection services center, as appropriate. However, for trusts governed by the federal Retirement Equity Act of 1984, Pub. L. No. 98-397, the

payor shall transmit the payments to the alternate payee in accordance with the federal Act. The payor may deduct from each payment a sum not exceeding two dollars as a reimbursement for costs. An employer who dismisses an employee due to the entry of an assignment order commits a simple misdemeanor.

An assignment of periodic income may also be entered under the terms and conditions of chapter 252D.

An order or judgment entered by the court for temporary or permanent support or for an assignment shall be filed with the clerk. The orders have the same force and effect as judgments when entered in the judgment docket and lien index and are records open to the public. The clerk or the collection services center, as appropriate, shall disburse the payments received pursuant to the orders or judgments within two working days of the receipt of the payments. All moneys received or disbursed under this section shall be entered in records kept by the clerk, or the collection services center, as appropriate, which shall be available to the public. The clerk or the collection services center shall not enter any moneys paid in the record book if not paid directly to the clerk or the center, as appropriate, except as provided for trusts and federal social security disability payments in this section, and for tax refunds or rebates in section 602.8102, subsection 47.

If the sums ordered to be paid in a support payment order are not paid to the clerk or the collection services center, as appropriate, at the time provided in the order or judgment, the clerk or the collection services center, as appropriate, shall certify a default to the court which may, on its own motion, proceed as provided in section 598.23.

Prompt payment of sums required to be paid under sections 598.11 and 598.21 is the essence of such orders or judgments and the court may act pursuant to section 598.23 regardless of whether the amounts in default are paid prior to the contempt hearing.

Upon entry of an order for support or upon the failure of a person to make payments pursuant to an order for support, the court may require the person to provide security, a bond, or other guarantee which the court determines is satisfactory to secure the payment of the support. Upon the person's failure to pay the support under the order, the court may declare the security, bond, or other guarantee forfeited.

For the purpose of enforcement, medical support is additional support which, upon being reduced to a dollar amount, may be collected through the same remedies available for the collection and enforcement of child support.

93 Acts, ch 79, §50

Unnumbered paragraph 1 amended

#### **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 and the support payments accrued during the months in which public funds were expended. If the support order did not direct payments to a clerk of the district court or the collection services center, and the support payments in question accrued during the months in which public funds were not expended, however, the court may enter an order for satisfaction of payments not made through the clerk of the district court or the collection services center if documentation of the financial instrument used in the payment of support is presented to the court and the parties to the order submit a written affidavit confirming that the financial instrument was used as payment for support.

93 Acts, ch 79, §51

Subsection 3 amended

#### **598.23A Contempt proceedings for provisions of support payments.**

1. If a person against whom an order or decree for support has been entered pursuant to this chapter or chapter 234, 252A, 252C, 252F, 600B, or any other support chapter, or a comparable chapter of a foreign jurisdiction, fails to make payments or provide medical support pursuant to that order or decree, the person may be cited and punished by the court for contempt under section 598.23 or this section. Failure to comply with a seek employment order entered pursuant to section 252B.21 is evidence of willful failure to pay support.

2. If a person is cited for contempt, the court may do either of the following:

a. Require the posting of a cash bond, within

seven calendar days, in an amount equivalent to the current arrearages and an additional amount which is equivalent to at least twelve months of future support obligations. If the arrearages are not paid within three months of the hearing, the bond shall be automatically forfeited to cover payment of the full portion of the arrearages and the portion of the bond representing future support obligations shall be automatically forfeited to cover future support payments as payments become due.

b. (1) Require the performance of community service work of up to twenty hours per week for six weeks for each finding of contempt. The contemnor may, at any time during the six-week period, apply to the court to be released from the community service work requirement under any of the following conditions:

(a) The contemnor provides proof to the court that the contemnor is gainfully employed and submits to an order for income withholding pursuant to chapter 252D or to a court-ordered wage assignment.

(b) The contemnor provides proof of payment of an amount equal to at least six months' child support. The payment does not relieve the contemnor's obligation for arrearages or future payments.

(c) The contemnor provides proof to the court

that, subsequent to entry of the order, the contemnor's circumstances have so changed that the contemnor is no longer able to fulfill the terms of the community service order.

(2) The contemnor shall keep a record of and provide the following information to the court at the court's request, or to the child support recovery unit established pursuant to chapter 252B, at the unit's request, when the unit is providing enforcement services pursuant to chapter 252B:

(a) The duties performed as community service during each week that the contemnor is subject to the community service requirements.

(b) The number of hours of community service performed during each week that the contemnor is subject to the community service requirements.

(c) The name, address, and telephone number of the person supervising or arranging for the performance of the community service.

(3) The performance of community service does not relieve the contemnor of any unpaid accrued or accruing support obligation.

93 Acts, ch 79, §27-29  
 Subsection 1 amended  
 Subsection 2 stricken and rewritten  
 Subsection 3 stricken

## CHAPTER 599

### MINORS

#### **599.1 Period of minority — exception for certain inmates.**

The period of minority extends to the age of eighteen years, but all minors attain their majority by marriage.

A person who is less than eighteen years old, but who is tried, convicted, and sentenced as an adult and committed to the custody of the director of the

department of corrections shall be deemed to have attained the age of majority for purposes of making decisions and giving consent to medical care, related services, and treatment during the period of the person's incarceration.

93 Acts, ch 46, §2  
 NEW unnumbered paragraph 2



## CHAPTER 600B

### PATERNITY AND OBLIGATION FOR SUPPORT

#### **600B.41 Blood and genetic tests.**

1. In a proceeding to establish paternity in law or in equity the court may on its own motion, and upon request of a party shall, require the child, mother, and alleged father to submit to blood or genetic tests.

2. If a blood or genetic test is required, the court shall direct that inherited characteristics, including but not limited to blood types, be determined by appropriate testing procedures, and shall appoint an expert qualified as an examiner of genetic markers to analyze and interpret the results and to report to the court.

3. Verified documentation of the chain of custody of the blood specimen is competent evidence to establish the chain of custody. The testimony of the court-appointed expert at trial is not required.

4. A verified expert's report shall be admitted at trial.

5. The results of the tests shall have the following effects:

a. Test results which show a statistical probability of paternity are admissible.

b. If the expert concludes that the test results show that the alleged father is not excluded and that the probability of the alleged father's paternity is ninety-five percent or higher, there shall be a rebuttable presumption that the alleged father is the father, and this evidence must be admitted.

(1) To challenge this presumption of paternity, a party must file a notice of the challenge with the court within twenty days of the filing of the expert's report with the clerk of the district court.

(2) The party challenging the presumption of the alleged father's paternity has the burden of proving that the alleged father is not the father of the child.

(3) The presumption of paternity can be rebutted only by clear and convincing evidence.

c. If the expert concludes that the test results show that the alleged father is not excluded and that the probability of the alleged father's paternity is less than ninety-five percent, test results shall be weighed along with other evidence of the alleged father's paternity. To challenge the test results, a party must file a notice of the challenge with the court within twenty days of the filing of the expert's report with the clerk of the district court.

6. If the results of the tests or the expert's analysis of inherited characteristics is disputed, the court, upon reasonable request of a party, shall order that an additional test be made by the same laboratory or

an independent laboratory at the expense of the party requesting additional testing.

7. *a.* Notwithstanding section 598.21, subsection 8, paragraph "k", the establishment of paternity by court order, including a court order based on an administrative establishment of paternity, or by affidavit may be overcome if all of the following conditions are met:

(1) Prior blood or genetic tests have not been performed to establish paternity of the child.

(2) The court finds that it is in the best interest of the child to overcome the establishment of paternity. In determining the best interest of the child, the court shall consider the possibility of establishing actual paternity of the child.

(3) The court finds that the conclusion of the expert as disclosed by the evidence based upon blood or genetic tests demonstrates that the established father is not the biological father of the child.

(4) The action to overcome paternity is filed no later than three years after the establishment of paternity.

(5) The action to overcome paternity is filed prior to the child reaching majority.

(6) Notice of the action to overcome paternity is served on any parent of the child not initiating the action and any assignee of the support judgment.

(7) A guardian ad litem is appointed for the child.

b. The court may order additional tests to be conducted by the expert or an independent expert in order to confirm a test upon which an expert concludes that the established father is not the biological father of the child.

c. If the court finds that the establishment of paternity is overcome, in accordance with all of the conditions prescribed, the established father is relieved of all future support obligations owed on behalf of the child.

d. The costs of testing, the fee of the guardian ad litem, and all court costs shall be paid by the person bringing the action to overcome paternity.

e. This subsection shall not be construed as a basis for terminating an adoption decree or for discharging the obligation of an adoptive father to an adopted child pursuant to section 600B.5.

8. All costs shall be paid by the parties or parents in proportions and at times determined by the court.

93 Acts, ch 79, §22, 23  
Subsection 7, paragraph a, unnumbered paragraph 1 and subparagraph (4) amended

## CHAPTER 602

### JUDICIAL DEPARTMENT

#### **602.2104 Procedure before commission.**

1. Charges before the commission shall be in writing but may be simple and informal. The commission shall investigate each charge as indicated by its gravity. If the charge is groundless, it shall be dismissed by the commission. If the charge appears to be substantiated but does not warrant application to the supreme court, the commission may dispose of it informally by conference with or communication to the judicial officer or employee of the judicial department involved. If the charge appears to be substantiated and if proved would warrant application to the supreme court, notice shall be given to the judicial officer and a hearing shall be held before the commission. The commission may employ investigative personnel, in addition to the executive secretary, as it deems necessary. The commission may also employ or contract for the employment of legal counsel.

2. In case of a hearing before the commission, written notice of the charge and of the time and place of hearing shall be mailed to a judicial officer or an employee of the judicial department at the person's residence at least twenty days prior to the time set for hearing. Hearing shall be held in the county where the judicial officer or employee of the judicial department resides unless the commission and the judicial officer or employee of the judicial department agree to a different location. The judicial officer shall continue to perform judicial duties during the pendency of the charge and the employee shall continue to perform the employee's assigned duties, unless otherwise ordered by the commission. The attorney general shall prosecute the charge before the commission on behalf of the state. A judicial officer or employee of the judicial department may defend and has the right to participate in person and by counsel, to cross-examine, to be confronted by the witnesses, and to present evidence in accordance with the rules of civil procedure. A complete record shall be made of the evidence by a court reporter. In accordance with its findings on the evidence, the commission shall dismiss the charge or make application to the supreme court to retire, discipline, or remove the judicial officer or to discipline or remove an employee of the judicial department.

3. The commission has subpoena power, which may be used in conducting investigations and during the hearing process. A person who disobeys the commission's subpoena or who refuses to testify or produce documents as required by a commission subpoena may be punished for contempt in the district court for the county in which the hearing is being held or the investigation is being conducted. Costs

related to investigations and to the appearance of witnesses subpoenaed by the designated prosecutor shall be paid by the commission. Commission subpoenas may be issued as follows:

a. During an investigation, subpoenas shall be issued by the commission, at the request of the person designated to conduct the investigation, to compel the appearance of persons or the production of documents before the person who is designated to conduct the investigation. The person designated to conduct the investigation shall administer the required oath.

b. During the hearing process, subpoenas shall be issued by the commission at the request of the designated prosecutor or the judicial officer or employee of the judicial department.

93 Acts, ch 85, §1, 2  
Subsection 2 amended  
NEW subsection 3

#### **602.3106 Fees.**

1. The supreme court shall set the fee for certification examinations. The fee shall be based on the annual cost of administering the examinations and upon the administrative costs of sustaining the board, which shall include but shall not be limited to the cost for per diem, expenses, and travel for board members, and office facilities, supplies, and equipment.

2. The state court administrator shall collect and account for all fees payable to the board.

93 Acts, ch 85, §3  
Subsection 1 amended

#### **602.6111 Identification numbers on documents filed with the clerk.**

1. Each petition or complaint, answer, appearance, first motion, or any document filed with the clerk of the district court which brings new parties into an action shall bear a personal identification number. The personal identification number shall be the employer identification number or the social security number of each separate party. If an individual party's driver's license lists a distinguishing number other than the party's social security number, the document filed with the clerk of the district court shall also contain the distinguishing number from the party's driver's license.

2. The clerk of the district court shall affix the identification numbers required pursuant to subsection 1 to any judgment, sentence, dismissal, or other paper finally disposing of an action.

93 Acts, ch 171, §18  
Effective July 1, 1993, for applicability, see 93 Acts, ch 171, § 25  
NEW section

**602.6203 Preparation and signing of record — alterations.** Repealed by 93 Acts, ch 70, § 15.

**602.6608 Child support referee.**

1. The chief judge may appoint and may remove for cause with due process a referee to preside over child support proceedings.

2. Qualifications for a referee appointed under this section include, at a minimum, all of the following:

a. The referee shall be an attorney currently licensed to practice law in the state.

b. The referee shall have at least five years of experience in the practice of law.

c. The referee shall have at least two years of experience in the practice of family law, including experience in the area of child support, in the state of Iowa.

3. Duties of the referee are limited to presiding over child and medical support proceedings which are delegated to the referee by the chief judge or jointly by the chief judges of the affected judicial districts if the referee is authorized to preside over proceedings in more than one judicial district.

4. The compensation of the referee shall be established by the court.

93 Acts, ch 79, §30

Legislative intent regarding funding, 93 Acts, ch 79, §56, 93 Acts, ch 172, §8  
NEW section

**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 transferred from a military district under martial law as provided in section 29A.45.

13. Carry out duties as a member of a nominations appeal commission as provided in section 44.7.

14. Maintain a bar admission list as provided in section 46.8.

15. Notify the county commissioner of registration of persons who become ineligible to register to vote because of criminal convictions, mental retardation, or legal declarations of incompetency and of persons whose citizenship rights have been restored as provided in section 48.30.

16. Reserved.

17. Reserved.

18. Reserved.

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. Reserved.

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 464A.8.

27. Docket an appeal from the fence viewer's decision or order as provided in section 359A.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 359A.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 169B.22 and 169B.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 124.412.

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 914.5 and 914.6.

47. Record support payments made pursuant to an order entered under chapter 252A, 252F, 598, or 600B, 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 452A.66 and 452A.67.

57. Carry out duties relating to the platting of land as provided in chapter 354.

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 12C.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 6B.

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 203C.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 treasurer 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 249A, 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 624.20 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 re-

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 822.3.

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 600B.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 636.

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 judg-

ments, 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 trial certificate list as provided in R.C.P. 181.1, Ia. Ct. Rules, 3d ed.

153. Reserved.

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 notice of the filing 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. Carry out other duties as provided by law.

93 Acts, ch 70, §8, 9; 93 Acts, ch 79, §52, 93 Acts, ch 110, §7, 93 Acts, ch 180, §51

Subsections 16, 17, 18 and 22 stricken

Subsection 47 amended

Subsection 82 amended

Subsection 98 amended

Subsection 164 stricken and former subsection 165 renumbered as 164

**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, including those fines which are imposed through commercial vehicle violation citations issued by motor vehicle division personnel.

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.

93 Acts, ch 47, §18  
Subsection 4 amended

**602.8107 Collection of fines, penalties, fees, court costs, surcharges, interest, and restitution.**

1. Fines, penalties, court costs, fees, interest, restitution for court-appointed attorney fees, and surcharges shall be paid to the clerk of the district court. All amounts collected shall be distributed pursuant to sections 602.8106 and 602.8108 or as otherwise provided by this Code. The clerk may accept payment of an obligation or a portion thereof by credit card. The clerk may charge a fee to reflect the additional cost of processing the payment by credit card.

2. Payments received under this section shall be applied in the following priority order:

a. Fines or penalties plus any interest due on unsatisfied judgments and criminal penalty surcharges plus interest due on unsatisfied amounts.

b. Victim restitution.

c. Court costs.

d. Court-appointed attorney fees or public defender expenses.

3. A fine, penalty, court cost, fee, or surcharge is deemed delinquent if it is not paid within six months after the date it is assessed. An amount which was ordered by the court to be paid on a date fixed in the future pursuant to section 909.3 is deemed delinquent if it is not received by the clerk within six months after the fixed future date set out in the court order. If an amount was ordered to be paid by installments, and an installment is not received within thirty days after the date it is due, the entire amount of the judgment is deemed delinquent.

4. All fines, penalties, court costs, fees, surcharges, and restitution for court-appointed attorney fees or for expenses of a public defender which are delinquent may be collected by the county attorney or the county attorney's designee. Thirty-five percent of the amounts collected by the county attorney or the person procured or designated by the county attorney shall be deposited in the general fund of the county if the county attorney has filed the notice required in section 331.756, subsection 5, unless the county attorney has discontinued collection efforts on a particular delinquent amount and has transferred collection responsibilities to the department of revenue and finance. The remainder shall be paid to the clerk for distribution under section 602.8108.

This subsection does not apply to amounts collected for victim restitution, the victim compensation fund, criminal penalty surcharge, or amounts collected as a result of procedures initiated under section 421.17, subsection 25.

The county attorney shall file with the clerk of the district court a notice of the satisfaction of each obligation to the full extent of the moneys collected in satisfaction of the obligation. The clerk of the district court shall record the notice and enter a satisfaction for the amounts collected.

5. If a county attorney has not filed a notice of commitment to collect delinquent obligations pursuant to section 331.756, subsection 5, or has transferred collection responsibility for a particular delinquent amount to the department, the department of revenue and finance or its designee may collect delinquent fines, penalties, court costs, surcharges, restitution for court-appointed attorney fees, or expenses of a public defender. From the amounts collected, the department shall pay for the services of its designee and the remainder shall be deposited in the general fund of the state.

This subsection does not apply to amounts collected for victim restitution, the new victim restitution fund,\* criminal penalty surcharge, or amounts collected as a result of procedures initiated under section 421.17, subsection 25.

The department of revenue and finance or its collection designee shall file with the clerk of the district court a notice of the satisfaction of each obligation to the full extent of the moneys collected in satisfaction of the obligation. The clerk of the district court shall record the notice and enter a satisfaction for the amounts collected.

93 Acts, ch 110, §8  
\*Victim compensation fund probably intended, corrective legislation pending  
NEW section

**602.10123 Proceedings.**

The proceedings to remove or suspend an attorney may be commenced by the direction of the court or on the petition of any individual. In the former case, the court must direct some attorney to draw up the accusation; in the latter, the accusation must be drawn up and sworn to by the person making it.

93 Acts, ch 85, §4  
Section amended



**602.10125 Attorney general — appropriateness of procedure — order for appearance.**

If an action is commenced on the petition of an individual, the court shall notify and refer the matter to the attorney general. The attorney general, within thirty days of the referral, shall submit a report to the court concerning the appropriateness of bringing the action under this chapter. The court shall not proceed with consideration of the merits of the complaint until the report from the attorney general is received. If the court deems the accusation sufficient to justify further action, the court shall determine

whether the complaint is more appropriately pursued under this chapter rather than the procedures established under supreme court rule 118. If the court finds that proceeding under this chapter is more appropriate, it shall cause an order to be entered requiring the accused to appear and answer in the court where the accusation has been filed on the day fixed in the order, and shall cause a copy of the accusation and order to be served upon the accused personally.

93 Acts, ch 85, §5  
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 received 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 sub-

section 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 or sexual exploitation by a counselor or therapist.* An action for damages for injury suffered as a result of sexual abuse, as defined in section 709.1, by a counselor or therapist, as defined in section 709.15, or as a result of sexual exploitation by a counselor or therapist, shall be brought within five years of the date the victim was last treated by the counselor or therapist.

13. *Public bonds or obligations.* Those founded on the cancellation, transfer, redemption, or replacement of public bonds or obligations by an issuer, trustee, transfer agent, registrar, depository, paying agent, or other agent of the public bonds or obligations, within eleven years of the cancellation, transfer, redemption, or replacement of the public bonds or obligations.

93 Acts, ch 89, §3  
NEW subsection 13

#### 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, 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 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.

93 Acts, ch 14, §1  
Extension for claims relating to conveyances between July 1, 1982, and June 30, 1984, 93 Acts, ch 14, §2  
Subsection 2 amended

## CHAPTER 622

### EVIDENCE

#### 622.69 Witness fees.

Witnesses shall receive ten dollars for each full day's attendance, and five dollars for each attendance less than a full day, and mileage expenses at the rate specified in section 70A.9 for each mile actually traveled.

Witness fees to be received by an inmate, while in

the custody of the department of corrections, shall be applied either toward payment of any restitution owed by the inmate or to the crime victim compensation program established in chapter 912.

93 Acts, ch 46, §3  
NEW unnumbered paragraph 2

## CHAPTER 622B

### DEAF AND HARD-OF-HEARING PERSONS — INTERPRETERS

#### 622B.1 Definitions — rules.

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

a. “*Administrative agency*” means any department, board, commission, or agency of the state or any political subdivision of the state.

b. “*Deaf person*” means an individual who uses sign language as the person’s primary mode of communication and who may use interpreters to facilitate communication.

c. “*Hard-of-hearing person*” means an individual who is unable to hear and distinguish sounds within normal conversational range and who needs to use speechreading, assistive listening devices, or oral interpreters to facilitate communication.

d. “*Interpreter*” means an oral interpreter or sign language interpreter.

e. “*Oral interpreter*” means an interpreter who is fluent in transliterating, paraphrasing, and voicing.

f. “*Sign language interpreter*” means an interpreter who is able to interpret from sign language to English and English to sign language.

2. The supreme court, after consultation with the department of human rights, shall adopt rules governing the qualifications and compensation of interpreters appearing in a proceeding before a court, grand jury, or administrative agency under this chapter. However, an administrative agency which is subject to chapter 17A may adopt rules differing from those of the supreme court governing the qualifications and compensation of interpreters appearing in proceedings before that agency.

93 Acts, ch 75, §7  
Subsection 1 stricken and rewritten

#### 622B.2 Interpreter appointed.

If a deaf or hard-of-hearing person is a party to, a witness at, or a participant in a proceeding before a grand jury, court, or administrative agency of this state, the court or administrative agency shall appoint an interpreter without expense to the deaf or hard-of-hearing person to interpret or translate the proceedings to the deaf or hard-of-hearing person and to interpret or translate the person’s testimony unless the deaf or hard-of-hearing person waives the right to an interpreter.

93 Acts, ch 75, §8  
Section amended

#### 622B.3 Notice of need.

When a deaf or hard-of-hearing person is entitled to an interpreter, the deaf or hard-of-hearing person shall notify the presiding official within three days after receiving notice of the proceeding, stating the disability and requesting the services of an interpret-

er. If the deaf or hard-of-hearing person receives notification of an appearance less than five days prior to the proceeding, that person shall notify the presiding official requesting an interpreter as soon as practicable or may apply for a continuance until an interpreter is appointed.

93 Acts, ch 75, §9  
Section amended

#### 622B.4 List.

The division of deaf services of the department of human rights shall prepare and continually update a listing of qualified and available interpreters. The courts and administrative agencies shall maintain a directory of qualified interpreters for deaf and hard-of-hearing persons as furnished by the department of human rights. The division of deaf services shall maintain information on the qualifications of interpreters, which information is confidential except to a court, administrative agency, or interested parties to an action using the services of an interpreter.

93 Acts, ch 75, §10  
Section amended

#### 622B.5 Oath.

Before participating in a proceeding, an interpreter shall take an oath that the interpreter will make a true interpretation in an understandable manner to the person for whom the interpreter is appointed and that the interpreter will interpret or translate the statements of the deaf or hard-of-hearing person to the best of the interpreter’s skills and judgment.

93 Acts, ch 75, §11  
Section amended

#### 622B.6 Privileged.

Communication between a deaf or hard-of-hearing person and a third party which is privileged under chapter 622 in which the interpreter participates as an interpreter shall be privileged to the interpreter.

93 Acts, ch 75, §12  
Section amended

#### 622B.7 Fee.

An interpreter appointed under this chapter is entitled to a reasonable fee and expenses as determined by the rules applying to that proceeding. This schedule shall be furnished to all courts and administrative agencies and maintained by them. If the interpreter is appointed by the court, the fee and expenses shall be paid by the county and if the interpreter is appointed by an administrative agency, the fee and expenses shall be paid out of funds available to the administrative agency.

93 Acts, ch 75, §13  
Section amended

## CHAPTER 624

### TRIAL AND JUDGMENT

**624.21 Complete record.** Repealed by 93 Acts, ch 70, § 15.

## CHAPTER 626

### EXECUTION

**626.29 Distress warrant by director of revenue and finance, director of inspections and appeals, or job service commissioner.**

In the service of a distress warrant issued by the director of revenue and finance for the collection of income tax, sales tax, motor vehicle fuel tax, freight line and equipment car tax, hotel and motel tax, or use tax, in the service of a distress warrant issued by the director of inspections and appeals for the collection of overpayment debts owed to the department of human services, or in the service of a distress warrant issued by the job service commissioner of the department of employment services for the collection of employment security contributions, the property of the taxpayer or the employer in the possession of another, or debts due the taxpayer or the employer, may be reached by garnishment.

93 Acts, ch 53, §3  
Section amended

**626.30 Expiration or return of distress warrant.**

Proceedings by garnishment under a distress warrant issued by the Iowa director of revenue and finance or the director of inspections and appeals shall not be affected by its expiration or its return.

93 Acts, ch 53, §4  
Section amended

**626.31 Return of garnishment — action docketed — distress action.**

Where parties have been garnished under a distress warrant issued by the director of revenue and finance or the director of inspections and appeals, the officer shall make return thereof to the court in the county where the garnishee lives, if the garnishee lives in Iowa, otherwise in the county where the taxpayer resides, if the taxpayer lives in Iowa; and if neither the garnishee nor the taxpayer lives in Iowa, then to the district court in Polk county, Iowa; the officer shall make return in the same manner as a return is made on a garnishment made under a writ of execution so far as they relate to garnishments, and the clerk of the district court shall docket an action thereon without fee the same as if a judgment had been recovered against the taxpayer in the county where the return is made, an execution issued thereon, and garnishment made thereunder, and thereafter the proceedings shall conform to proceedings in garnishment under attachments as nearly as may be.

93 Acts, ch 53, §5  
Section amended

**626.109 Public property — state.**

A judgment against a department, agency, division, or official of the state does not create or constitute a lien against public property held by the state.

93 Acts, ch 87, §13  
See also §627.18  
Retroactive applicability to all judgments, 93 Acts, ch 87, §14  
NEW section

## CHAPTER 631

### SMALL CLAIMS

#### 631.1 Small claims.

1. The following actions or claims are small claims and shall be commenced, heard and determined as provided in this chapter:

A civil action for a money judgment where the amount in controversy is two thousand dollars or less, exclusive of interest and costs.

2. The district court sitting in small claims shall have concurrent jurisdiction of an action for forcible entry and detainer which is based on those grounds set forth in section 648.1, subsections 1, 2, 3 and 5. When commenced under this chapter, the action shall be a small claim for the purposes of this chapter.

3. The district court sitting in small claims has concurrent jurisdiction of an action of replevin if the value of the property claimed is two thousand dollars or less. When commenced under this chapter, the action is a small claim for the purposes of this chapter.

4. The district court sitting in small claims has concurrent jurisdiction of motions and orders relating to executions against personal property, including garnishments, where the value of the property or garnisheed money involved is two thousand dollars or less.

5. The district court sitting in small claims has concurrent jurisdiction of an action for abandonment of a mobile home or personal property pursuant to section 555B.3, if no money judgment in excess of two thousand dollars is sought. If commenced under this chapter, the action is a small claim for the purposes of this chapter.

93 Acts, ch 154, §18  
NEW subsection 5

#### 631.4 Service — time for appearance.

The manner of service of original notice and the times for appearance shall be as provided in this section.

1. *Actions for money judgment or replevin.* In an action for money judgment or an action of replevin the clerk shall cause service to be obtained as follows, and the defendant is required to appear within the period of time specified:

a. If the defendant is a resident of this state, or if the defendant is a nonresident of this state and is subject to the jurisdiction of the court under rule of civil procedure 56.2, the plaintiff may elect service under this paragraph, and upon receipt of the prescribed costs the clerk shall mail to the defendant by certified mail, restricted delivery, return receipt to the clerk requested, a copy of the original notice together with a conforming copy of an answer form. The defendant is required to appear within twenty days following the date service is made.

b. If the defendant is a resident of this state, or if the defendant is a nonresident of this state and is subject to the jurisdiction of the court under rule of civil procedure 56.2, the plaintiff may elect service under this paragraph, and upon receipt of the prescribed costs the clerk shall cause a copy of the original notice and a conforming copy of an answer form to be delivered to a peace officer or other person for personal service as provided in rule of civil procedure 52, 56.1 or 56.2. The defendant is required to appear within twenty days following the date service is made.

c. If the defendant is a nonresident of this state and is subject to the jurisdiction of the court under rule of civil procedure 56.2, the plaintiff may elect service in any other manner that is approved by the court as provided in that rule, and the defendant is required to appear within sixty days after the date of service.

d. If the defendant is a nonresident of this state and is subject to the jurisdiction of the court under section 617.3, the plaintiff may elect that service be made as provided in that section. The clerk shall collect the prescribed fees and costs, and shall cause duplicate copies of the original notice to be filed with the secretary of state and shall cause a copy of the original notice and a conforming copy of an answer form to be mailed to the defendant in the manner prescribed in section 617.3. The defendant is required to appear within sixty days from the date of filing with the secretary of state.

#### 2. *Actions for forcible entry or detention.*

a. In an action for the forcible entry or detention of real property, the clerk shall set a date, time and place for hearing, and shall cause service as provided in this subsection.

b. Original notice shall be served personally upon each defendant as provided in rule 56.1 of the rules of civil procedure, which service shall be made at least five days prior to the date set for hearing. Upon receipt of the prescribed costs the clerk shall cause the original notice to be delivered to a peace officer or other person for service upon each defendant.

c. If personal service cannot be made upon each defendant, as provided in rule of civil procedure 56.1, the plaintiff may elect to post, after at least three attempts to perfect service upon each defendant, one or more copies of the original notice upon the real property being detained by each defendant at least five days prior to the date set for hearing. In such instances, the plaintiff shall also mail, by certified mail and first class mail, to each defendant, at the place held out by each defendant as the place for receipt of such communications or, in the absence of such designation, at each defendant's last known place of

residence, a copy of the original notice at least five days prior to the date set for hearing. Under this paragraph, service shall be deemed complete upon each defendant by the filing with the clerk of the district court of one or more affidavits indicating that a copy of the original notice was both posted and mailed to each defendant as provided in this paragraph.

3. *Actions for abandonment of mobile homes or personal property pursuant to chapter 555B.*

a. In an action for abandonment of a mobile home or personal property, the clerk shall set a date, time, and place for hearing, and shall cause service to be made as provided in this subsection.

b. Original notice shall be served personally on each defendant as provided in section 555B.4.

93 Acts, ch 154, §19, 20  
Subsection 2, NEW paragraph c  
NEW subsection 3

### 631.5 Appearance — default.

This section applies to all small claims except actions for forcible entry or detention of real property and actions for abandonment of mobile homes or personal property pursuant to chapter 555B.

1. *Appearance.* A defendant may appear in person or by attorney, and by the denial of a claim a defendant does not waive any defenses.

2. *Hearing set.* If all defendants either have entered a timely appearance or have defaulted, the clerk shall assign a contested claim to the small claims calendar for hearing at a place and time certain. The time of hearing shall be not less than five days nor more than twenty days after the latest timely appearance, unless otherwise ordered by the court. The clerk shall transmit the original notice and all

other papers relating to the case to the judicial officer to whom the case is assigned, and copies of all papers so transmitted shall be retained in the clerk's office.

3. *Partial service.* If the plaintiff has joined more than one defendant, and less than all defendants are served with notice as determined by subsection 4, the plaintiff may elect to proceed against all defendants served or may elect to have a continuance, issuable by the clerk, to a date certain not more than sixty days thereafter. If the plaintiff elects to proceed, the action shall be dismissed without prejudice as against each defendant not served with notice.

4. *Return of service.* Proper notice shall be established by a signed return receipt or a return of service as provided in rule 59 of the rules of civil procedure.

5. *Notification to parties.* When a small claim is set for hearing the clerk immediately shall notify by ordinary mail each party or the attorney representing the party, and the judicial officer to whom the action is assigned, of the date, time and place of hearing.

6. *Default.* If a defendant fails to appear and the clerk in accordance with subsection 4 determines that proper notice has been given, judgment shall be rendered against the defendant by the clerk if the relief is readily ascertainable. If the relief is not readily ascertainable the claim shall be assigned to a judicial magistrate for determination and the clerk shall immediately notify the plaintiff or the plaintiff's attorney and the judicial magistrate of such assignment by ordinary mail.

93 Acts, ch 154, §21  
Unnumbered paragraph 1 amended

## CHAPTER 633

### PROBATE CODE

#### 633.16 Control of probate records.

The court shall have jurisdiction and supervision of the probate records of the clerk, and may direct the destruction of records it deems to be old, obsolete or unnecessary.

93 Acts, ch 70, §10  
Section amended

#### 633.20 Referee — clerk — associate probate judge.

1. The court may appoint a referee in probate for the auditing of the accounts of fiduciaries and for the performance of other ministerial duties the court prescribes. A person shall not be appointed as referee in a matter where the person is acting as a fiduciary or as the attorney.

2. The court may appoint the clerk as referee in probate. In such cases, the fees received by the clerk for serving in the capacity of referee are fees of the office of the clerk of court and shall be deposited in the court revenue distribution account established under section 602.8108.

3. The chief judge of a judicial district may appoint an associate probate judge and may remove the associate probate judge for cause following a hearing. The associate probate judge shall be an attorney admitted to practice law in this state and shall be qualified for the position by training and experience. The associate probate judge shall have jurisdiction to audit accounts of fiduciaries and to perform ministe-

rial duties and judicial functions as the court prescribes.

93 Acts, ch 70, §11  
NEW subsection 3

**633.29 Probate record.**

The clerk shall also keep a book to be known as the Probate Record that shall contain journal entries of all orders and journal entries when real estate is sold or mortgaged by a fiduciary under an order of court.

93 Acts, ch 70, §12  
Section amended

**633.30 Bonds given by fiduciaries.** Repealed by 93 Acts, ch 70, § 15.

**633.42 Requests for notice.**

At any time after the issuance of letters testamentary or of administration upon a decedent's estate, any person interested in the estate may file with the clerk a written request, in triplicate, for notice of the time and place of all hearings in such estate for which notice is required by law, by rule of court, or by an order in such estate. The request for notice shall state the name and post-office address of such person and the name and post-office address of the attorney, if any, for the party requesting the notice. The clerk shall docket the request, and transmit the duplicates to the personal representative of the estate of the decedent and to the personal representative's attorney of record, if any. Thereafter, the personal representative shall, unless otherwise ordered by the court, serve, by ordinary mail, upon such person, or the person's attorney, if any, a notice of each hearing.

93 Acts, ch 111, §1  
Section amended

**633.219 Share of others than surviving spouse.**

The part of the intestate estate not passing to the surviving spouse, or if there is no surviving spouse, the entire net estate passes as follows:

1. To the issue of the decedent per stirpes.
2. If there is no surviving issue, to the parents of the decedent equally; and if either parent is dead, the portion that would have gone to such deceased parent shall go to the survivor.
3. If there is no person to take under either subsection 1 or 2 of this section, to the issue of the parents or either of them per stirpes.
4. If there is no person to take under subsection 1, 2, or 3 of this section, but the decedent is survived by one or more grandparents or issue of grandparents, half the estate passes to the paternal grandparents, if both survive, or to the surviving paternal grandparent, or to the issue of the paternal grandparents if both are deceased, the issue taking per stirpes, and the other half passes to the maternal relatives in the same manner; but if there is no surviving grandparent or issue of grandparent on one side, the entire estate passes to the relatives of the other side in the same manner as the half.

5. If there is no person to take under subsection 1, 2, 3, or 4 of this section, the portion uninherited shall go to the issue of the deceased spouse of the intestate, per stirpes. If the intestate has had more than one spouse who died in lawful wedlock, it shall be equally divided between the issue, per stirpes, of those deceased spouses.

6. If there is no person who qualifies under either subsection 1, 2, 3, 4, or 5 of this section, the intestate property shall escheat to the state of Iowa.

93 Acts, ch 111, §2  
Section amended

**633.300 Certificate of probate.**

When a will has been admitted to probate the clerk shall have a certificate of such fact, endorsed thereon or annexed thereto, signed by the clerk and attested by the seal of the court; and, when so certified, it, or the transcript of the record properly authenticated, may be read in evidence in all courts without further proof.

93 Acts, ch 70, §13  
Section amended

**633.301 Copy of will for executor.**

When a will has been admitted to probate and certified pursuant to section 633.300, the clerk shall cause an authenticated copy thereof to be placed in the hands of the executor to whom letters are issued. The clerk shall retain the will in a separate file provided for that purpose until the time for contest has expired, and promptly thereafter shall place it with the files of the estate.

93 Acts, ch 70, §14  
Section amended

**633.304 Notice of probate of will with administration.**

On admission of a will to probate, the executor, as soon as letters are issued, shall cause to be published once each week for two consecutive weeks in a daily or weekly newspaper of general circulation published in the county in which the estate is pending and at any time during the pendency of administration that the executor has knowledge of the name and address of a person believed to own or possess a claim which will not or may not be paid or otherwise satisfied during administration, provide by ordinary mail to each such claimant at the claimant's last known address, and as soon as practicable give notice, except to any executor, by ordinary mail to the surviving spouse, each heir of the decedent and each devisee under the will admitted to probate whose identities are reasonably ascertainable, at such persons' last known addresses, a notice of admission of the will to probate and of the appointment of the executor, in which shall be included a notice that any action to set aside the probate of the will must be brought within the later to occur of four months from the date of the second publication of the notice or one month from the date of mailing of this notice or thereafter be forever barred, and in which shall be included a notice to debtors to make payment, and to

creditors having claims against the estate to file them with the clerk within four months from the second publication of the notice, or thereafter be forever barred.

As used in this section, "heir" means only such person as would, in an intestate estate, be entitled to a share under subsection 1, 2, or 3 of section 633.219.

The notice shall be substantially in the following form:

Notice of Probate of Will, of Appointment of Executor, and Notice to Creditors

In the District Court of Iowa in and for ..... County. Probate No. ....

In the Estate of ....., Deceased To All Persons Interested in the Estate of ..... Deceased, who died on or about ....., 19.....:

You are hereby notified that on the ..... day of ....., 19....., the last will and testament of ....., deceased, bearing date of the ..... day of ....., 19....., was admitted to probate in the above named court and that ..... was appointed executor of the estate. Any action to set aside the will must be brought in the district court of said county within the later to occur of four months from the date of the second publication of this notice or one month from the date of mailing of this notice to all heirs of the decedent and devisees under the will whose identities are reasonably ascertainable, or thereafter be forever barred.

Notice is further given that all persons indebted to the estate are requested to make immediate payment to the undersigned, and creditors having claims against the estate shall file them with the clerk of the above named district court, as provided by law, duly authenticated, for allowance, and unless so filed by the later to occur of four months from the second publication of this notice or one month from the date of mailing of this notice (unless otherwise allowed or paid) a claim is thereafter forever barred.

Dated this ..... day of ....., 19.....

.....  
Executor of estate

.....  
Address

.....  
Attorney for executor

.....  
Address

Date of second publication  
..... day of ....., 19.....  
(Date to be inserted by publisher)

93 Acts, ch 111, §3  
NEW unnumbered paragraph 2

633.305 Notice if no administration.

On admission of a will to probate without administration of the estate, and upon advanced payment of the costs by the proponent, the clerk shall cause to be published, in the manner prescribed in the preceding section, a notice of the admission of the will to probate. As soon as practicable following the admission of the will to probate, the proponent shall give notice of the admission of the will to probate by ordinary mail addressed to the surviving spouse, each heir of the decedent, and each devisee under the will admitted to probate whose identities are reasonably ascertainable, at such persons' last known addresses. The notice of the admission of the will to probate shall include a notice that any action to set aside the will must be brought within the later to occur of four months from the date of the second publication of the notice or one month from the date of mailing of this notice, or thereafter be barred.

As used in this section, "heir" means only such person as would, in an intestate estate, be entitled to a share under subsection 1, 2, or 3 of section 633.219.

The notice shall be substantially in the following form:

Notice of Proof of Will Without Administration

In the District Court of Iowa in and for ..... County. Probate No. ....

In the Estate of ....., Deceased To All Persons Interested in the Estate of ..... Deceased, who died on or about ....., 19.....:

You are hereby notified that on the ..... day of ....., 19....., the last will and testament of ....., deceased, bearing date of the ..... day of ....., 19....., was admitted to probate in the above named court and there will be no present administration of the estate. Any action to set aside the will must be brought in the district court of the county within the later to occur of four months from the date of the second publication of this notice or one month from the date of mailing of this notice to all heirs of the decedent and devisees under the will whose identities are reasonably ascertainable, or thereafter be forever barred.

Dated this ..... day of ....., 19.....

.....  
Clerk of the district court

.....  
Attorney for estate

.....  
Address

Date of second publication  
..... day of ....., 19.....  
(Date to be inserted by publisher)

93 Acts, ch 111, §4  
NEW unnumbered paragraph 2



**633.653A Claims for cost of medical care or services.**

The provision of medical care or services to a ward who is a recipient of medical assistance under chapter 249A creates a claim against the conservatorship for the amount owed to the provider under the medi-

cal assistance program for the care or services. The amount of the claim, after being allowed or established as provided in this part, shall be paid by the conservator from the assets of the conservatorship.

93 Acts, ch 106, §9  
NEW section

**CHAPTER 642**

**GARNISHMENT**

**642.23 Support disbursements by the clerk.**

Notwithstanding the seventy-day period in section 626.16 for the return of an execution in garnishment for the payment of a support obligation, the sheriff shall promptly deposit any amounts collected with the clerk of the district court, and the clerk shall disburse the amounts, after subtracting applicable fees, within two working days of the filing of an order condemning funds as follows:

1. To the person entitled to the support pay-

ments when the clerk of the district court is the official entity responsible for the receipt and disbursement of support payments pursuant to section 252B.14.

2. To the collection services center when the collection services center is the official entity responsible for the receipt and disbursement of support payments pursuant to section 252B.14.

93 Acts, ch 79, §53  
Section amended

**CHAPTER 648**

**FORCIBLE ENTRY OR DETENTION OF REAL PROPERTY**

**648.19 No joinder or counterclaim — exception.**

An action of this kind shall not be brought in connection with any other action, with the exception of a claim for rent or recovery as provided in section 555B.3, 562A.24, 562A.32, 562B.22, 562B.25, or 562B.27, nor shall it be made the subject of counter-

claim. When joined with an action for rent or recovery as provided in section 555B.3, 562A.24, 562A.32, 562B.22, 562B.25, or 562B.27, notice of hearing as provided in section 648.5 is sufficient.

93 Acts, ch 154, §22  
Section amended

## CHAPTER 654

### FORECLOSURE OF REAL ESTATE MORTGAGES

#### 654.2C Mediation notice — foreclosure on agricultural property.

A person shall not initiate a proceeding under this chapter to foreclose a deed of trust or mortgage on agricultural property, as defined in section 654A.1, which is subject to chapter 654A and which is subject to a debt of twenty thousand dollars or more under the deed of trust or mortgage unless the person receives a mediation release under section 654A.11, or

unless the court determines after notice and hearing that the time delay required for the mediation would cause the person to suffer irreparable harm. Title to land that is agricultural property is not affected by the failure of any creditor to receive a mediation release, regardless of its validity.

Repealed on July 1, 1995, 86 Acts, ch 1214, § 29, 89 Acts, ch 108, § 1, 90 Acts, ch 1143, § 29, 32, 93 Acts, ch 29, § 4, 93 Acts, ch 171, § 23  
Footnote updated, section not amended

## CHAPTER 654A

### FARM MEDIATION — FARMER-CREDITOR DISPUTES

Legislative findings, 90 Acts, ch 1143, §1  
Chapter repealed July 1, 1995, §654A 17

#### 654A.17 Repeal of chapter.

This chapter is repealed on July 1, 1995.

93 Acts, ch 29 §2, 5, 93 Acts, ch 171, §19, 26  
See Code editor's note to §6A 10  
Section amended

## CHAPTER 654B

### FARM MEDIATION — CARE AND FEEDING CONTRACTS — NUISANCES

Legislative findings, 90 Acts, ch 1143, §1  
Chapter repealed July 1, 1995, §654B 12

#### 654B.1 Definitions.

1. “*Care and feeding contract*” means an agreement, either oral or written, between a farm resident and the owner of livestock, under which the farm resident agrees to act as a feeder by promising to care for and feed the livestock on the farm resident’s premises.

2. “*Dispute*” means a controversy between a person who is a farm resident and another person, which arises from a claim eligible to be resolved in a civil proceeding in law or equity, if the claim relates to either of the following:

a. The performance of either person under a care and feeding contract, if both persons are parties to the contract.

b. An action of one person which is alleged to be a nuisance interfering with the enjoyment of the other person.

3. “*Farmland*” means agricultural land that is principally used for farming as defined in section 9H.1.

4. “*Farm mediation service*” means the organization selected pursuant to section 13.13.

5. “*Farm resident*” means a person holding an interest in farmland, in fee, under a real estate contract, or under a lease, if the person manages farming operations on the land. A farm resident includes a natural person, or any corporation, trust, or limited partnership as defined in section 9H.1.

6. “*Mediation release*” means an agreement or statement signed by all parties or by less than all the parties and the mediator pursuant to section 654B.8.

7. “*Nuisance*” means an action injurious to health, indecent, or offensive to the senses, or an obstruction to the free use of property, so as essentially

to interfere with the comfortable enjoyment of life or property, including but not limited to nuisances defined in section 657.2, subsections 1 through 5, and 7.

8. “*Other party*” means any person having a dispute with a farm resident.

9. “*Participate*” or “*participation*” means attending a mediation meeting, and having knowledge about and discussing issues concerning a subject re-

lating to a dispute.

Section not amended  
 Subsection 5, reference to transferred chapter corrected editorially

**654B.12 Repeal of chapter.**

This chapter is repealed on July 1, 1995.

93 Acts, ch 29, §3, 5, 93 Acts, ch 171, §20, 26  
 See Code editor’s note to §6A 10  
 Section amended

**CHAPTER 656**

**FORFEITURE OF REAL ESTATE CONTRACTS**

**656.8 Mediation notice.**

Notwithstanding sections 656.1 through 656.5, a person shall not initiate proceedings under this chapter to forfeit a real estate contract for the purchase of agricultural property, as defined in section 654A.1, which is subject to an outstanding obligation on the contract of twenty thousand dollars or more unless the person received a mediation release under

section 654A.11, or unless the court determines after notice and hearing that the time delay required for the mediation would cause the person to suffer irreparable harm. Title to land that is agricultural property is not affected by the failure of any creditor to receive a mediation release, regardless of its validity.

Repealed July 1, 1995, 86 Acts, ch 1214, § 29, 89 Acts, ch 108, § 1, 90 Acts, ch 1143, § 29, 32, 93 Acts, ch 29, § 4, 93 Acts, ch 171, § 23  
 Footnote updated, section not amended

**CHAPTER 657**

**NUISANCES**

**657.10 Mediation notice.**

Notwithstanding this chapter, a person, required under chapter 654B to participate in mediation, shall not begin a proceeding subject to this chapter until the person receives a mediation release under section 654B.8, or until the court determines after notice and hearing that one of the following applies:

1. The time delay required for the mediation would cause the person to suffer irreparable harm.
2. The dispute involves a claim which should be resolved as a class action.

Repealed July 1, 1995, 90 Acts, ch 1143, § 29, 32, 93 Acts, ch 29, § 4, 93 Acts, ch 171, § 23  
 Footnote updated, section not amended

## CHAPTER 669

### STATE TORT CLAIMS

#### 669.2 Definitions.

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

1. *“Acting within the scope of the employee’s office or employment”* means acting in the employee’s line of duty as an employee of the state.

2. *“Award”* means any amount determined by the state appeal board to be payable to a claimant under section 669.3, and the amount of any compromise or settlement under section 669.9.

3. *“Claim”* means:

a. Any claim against the state of Iowa for money only, on account of damage to or loss of property or on account of personal injury or death, caused by the negligent or wrongful act or omission of any employee of the state while acting within the scope of the employee’s office or employment, under circumstances where the state, if a private person, would be liable to the claimant for such damage, loss, injury, or death.

b. Any claim against an employee of the state for money only, on account of damage to or loss of property or on account of personal injury or death, caused by the negligent or wrongful act or omission of any employee of the state while acting within the scope of the employee’s office or employment.

4. *“Employee of the state”* includes any one or more officers, agents, or employees of the state or any state agency, including members of the general assembly, and persons acting on behalf of the state or any state agency in any official capacity, temporarily or permanently in the service of the state of Iowa, whether with or without compensation but

does not include a contractor doing business with the state. Professional personnel, including physicians, osteopathic physicians and surgeons, osteopathic physicians, optometrists and dentists, who render services to patients and inmates of state institutions under the jurisdiction of the department of human services or the Iowa department of corrections are to be considered employees of the state, whether the personnel are employed on a full-time basis or render services on a part-time basis on a fee schedule or other arrangement. Criminal defendants while performing unpaid community service ordered by the district court, board of parole, or judicial district department of correctional services, or an inmate providing services pursuant to a chapter 28E agreement entered into pursuant to section 904.703, are to be considered employees of the state.

5. *“State agency”* includes all executive departments, agencies, boards, bureaus, and commissions of the state of Iowa, and corporations whose primary function is to act as, and while acting as, instrumentalities or agencies of the state of Iowa, whether or not authorized to sue and be sued in their own names. This definition does not include a contractor with the state of Iowa. Soil and water conservation districts as defined in section 161A.3, subsection 5, judicial district departments of correctional services as established in section 905.2, and regional boards of library trustees as defined in chapter 256, are state agencies for purposes of this chapter.

6. *“State appeal board”* means the state appeal board as defined in section 73A.1.

93 Acts, ch 48, §53  
Subsection 5 amended

## CHAPTER 690

### BUREAU OF CRIMINAL IDENTIFICATION

#### 690.2 Finger and palm prints — photographs — duty of sheriff and chief of police.

The sheriff of every county, and the chief of police of each city regardless of the form of government thereof, shall take the fingerprints of all unidentified dead bodies in their respective jurisdictions and all persons who are taken into custody for the commission of a serious misdemeanor, aggravated misdemeanor, or felony and shall forward such fingerprint records on such forms and in such manner as may be prescribed by the commissioner of public safety,

within two working days after the fingerprint records are taken, to the department of public safety and, if appropriate, to the federal bureau of investigation. Fingerprints may be taken of a person who has been arrested for a public offense subject to an enhanced penalty for conviction of a second or subsequent offense. In addition to the fingerprints as herein provided, any such officer may also take the photograph and palm prints of any such person and forward them to the department of public safety. If a defendant is convicted by a court of this state of an offense

which is a serious misdemeanor, aggravated misdemeanor, or felony, the court shall determine whether such defendant has previously been fingerprinted in connection with the criminal proceedings leading to the conviction and, if not, shall order that the defendant be fingerprinted and those prints submitted to the department of public safety.

93 Acts, ch 115, §1  
Section amended

**690.4 Fingerprints and photographs at institutions.**

The warden of the Iowa medical and classification center and superintendent of the state training school shall take or procure the taking of the fingerprints, and, in the case of the Iowa medical and classification center only, Bertillon photographs of any person received on commitment to their respective institutions, and shall forward such fingerprint records and photographs within ten days after they are taken to the department of public safety and to the federal bureau of investigation. Information obtained from fingerprint cards submitted pursuant to this section may be retained by the department of public safety as criminal history records. If a charge for a serious misdemeanor, aggravated misdemeanor, or felony is brought against a person already in the custody of a law enforcement or correctional agency and the charge is filed in a case separate from the case for which the person was previously arrested or confined, the agency shall take the fingerprints of the person in connection with the new case and submit them to the department of public safety.

The wardens and superintendents of all department of corrections facilities shall procure the taking of a photograph showing the facial features of each inmate of a state correctional institution prior to the inmate's discharge. The photograph shall be placed in the inmate's file and shall be made available to the Iowa department of public safety upon request.

93 Acts, ch 115, §2  
Section amended

**690.5 Administrative sanctions.**

An agency subject to fingerprinting and disposition requirements under this chapter shall take all steps necessary to ensure that all agency officials and employees understand the requirements and shall provide for and impose administrative sanctions, as appropriate, for failure to report as required.

If a criminal justice agency subject to fingerprinting and disposition requirements fails to comply with the requirements, the commissioner of public safety shall order that the agency's access to criminal history record information maintained by the repository be denied or restricted until the agency complies with the reporting requirements.

The state court administrator shall develop a policy to ensure that court personnel understand and comply with the fingerprinting and disposition requirements and shall also develop sanctions for court personnel who fail to comply with the requirements.

93 Acts, ch 115, §3  
NEW section

**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 272.2, subsection 14.

j. A person or the person's attorney but only with regard to the person's own criminal history data,

subject to the identification and fee requirements of section 692.2, subsection 6, and section 692.5

*k* To tribal officials, tribal gaming commissions, or tribal regulatory agency members of a federally recognized Indian tribe engaged in gaming within the state, who are directly responsible for authorized gaming background investigations or licensing pursuant to the Iowa gaming compact

2 The bureau shall maintain a list showing the individual or agency to whom the data is disseminated and the date of dissemination

3 Persons authorized to receive information under subsection 1 shall request and may receive criminal history data only when both of the following apply

*a* The data is for official purposes in connection with prescribed duties or required pursuant to section 237.8, subsection 2 or section 237A.5

*b* The request for data is based upon name, fingerprints, or other individual identifying characteristics

4 The provisions of this section and section 692.3 which relate to the requiring of an individually identified request prior to the dissemination or redissemination of criminal history data do not apply to the furnishing of criminal history data to the federal bureau of investigation or to the dissemination or redissemination of information that an arrest warrant has been or will be issued, and other relevant information including but not limited to, the offense and the date and place of alleged commission, individually identifying characteristics of the person to be arrested, and the court or jurisdiction issuing the warrant

5 Notwithstanding other provisions of this section, the department and bureau may provide copies or communicate information from criminal history data to any youth service agency approved by the 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

93 Acts ch 53 § 8 93 Acts ch 110 § 4  
Subsection 1 NEW paragraphs j and k

#### **692.5 Right of notice, access and challenge.**

Any person or the person's attorney shall have the right to examine and obtain a copy of criminal history data filed with the department that refers to the person. The person or person's attorney shall present or mail to the department written authorization and the person's fingerprint identification. The department shall not copy the fingerprint identification and shall return or destroy the identification after the copy of the criminal history data is made. The department may prescribe reasonable hours and places of examination

Any person who files with the bureau a written statement to the effect that a statement contained in the criminal history data that refers to the person is nonfactual, or information not authorized by law to be kept, and requests a correction or elimination of that information that refers to that person shall be notified within twenty days by the bureau, in writing, of the bureau's decision or order regarding the correction or elimination. Judicial review of the actions of the bureau may be sought in accordance with the terms of the Iowa administrative procedure Act. Immediately upon the filing of the petition for judicial review the court shall order the bureau to file with the court a certified copy of the criminal history data and in no other situation shall the bureau furnish an individual or the individual's attorney with a certified copy, except as provided by this chapter

Upon the request of the petitioner, the record and evidence in a judicial review proceeding shall be closed to all but the court and its officers, and access thereto shall be refused unless otherwise ordered by the court. The clerk shall maintain a separate docket for such actions. No person, other than the petitioner shall permit a copy of any of the testimony or pleadings or the substance thereof to be made available to any person other than a party to the action or the party's attorney. Violation of the provisions of this section shall be a public offense, punishable under section 692.7

Whenever the bureau corrects or eliminates data as requested or as ordered by the court, the bureau shall advise all agencies or individuals who have received the incorrect information to correct their files. Upon application to the district court and service of notice on the commissioner of public safety, any individual may request and obtain a list of all persons and agencies who received criminal history data referring to the individual, unless good cause be shown why the individual should not receive said list

93 Acts ch 110 § 5  
Unnumbered paragraph 1 amended

**692.15 Reports to department.**

1. If it comes to the attention of a sheriff, police department, or other law enforcement agency that a public offense has been committed in its jurisdiction, the law enforcement agency shall report information concerning such a public offense to the department on a form to be furnished by the department not more than thirty-five days from the time the public offense first comes to the attention of the law enforcement agency. The reports shall be used to generate crime statistics. The department shall submit statistics to the governor, the general assembly, and the division of criminal and juvenile justice planning of the department of human rights on a quarterly and yearly basis.

2. If a sheriff, police department, or other law enforcement agency makes an arrest which is reported to the department, the arresting law enforcement agency and any other law enforcement agency which obtains custody of the arrested person shall furnish a disposition report to the department if the arrested person is transferred to the custody of another law enforcement agency or is released without having a complaint or information filed with any court.

3. The law enforcement agency making an arrest and securing fingerprints pursuant to section 690.2 shall fill out a final disposition report on each arrest on a form and in the manner prescribed by the commissioner of public safety. The final disposition report shall be forwarded to the county attorney in the county where the arrest occurred.

4. The county attorney of each county shall complete the final disposition report and submit it to the department within thirty days if a preliminary information or citation is dismissed without a new charge being filed. If an indictment is returned or a county attorney's information is filed, the final disposition form shall be forwarded to the clerk of the district court of that county.

5. If a criminal complaint or information is filed in any court, the clerk shall furnish a disposition report of the case.

6. Any disposition report shall be sent to the department within thirty days after disposition on a form provided by the department.

7. The hate crimes listed in section 729A.2 are subject to the reporting requirements of this section.

93 Acts, ch 115, §6  
Section amended

**692.16 Review and removal.**

At least every year the bureau shall review and determine current status of all Iowa arrests reported, which are at least one year old with no disposition data. Any Iowa arrest recorded within a computer data storage system which has no disposition data after four years shall be removed unless there is an outstanding arrest warrant or detainer on such charge.

93 Acts, ch 115, §7  
Section 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 and also includes the source documents of the information included in the criminal history data and fingerprint records.

Criminal history data may be collected for management or research purposes.

93 Acts, ch 115, §8  
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. The court shall not impose a fine in lieu of the minimum sentence, although a fine may be imposed in addition to the minimum sentence. 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 sen-

tence 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 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 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.

93 Acts, ch 157, §9  
Subsection 4 amended

#### **708.6 Terrorism.**

A person commits a class "C" felony when the person, with the intent to injure or provoke fear or anger in another, shoots, throws, launches, or discharges a dangerous weapon at, into, or in a building, vehicle, airplane, railroad engine, railroad car, or boat, occupied by another person, or within an assembly of people, and thereby places the occupants or people in reasonable apprehension of serious injury or threatens to commit such an act under circumstances raising a reasonable expectation that the threat will be carried out.

A person commits a class "D" felony when the person shoots, throws, launches, or discharges a dangerous weapon at, into, or in a building, vehicle, airplane, railroad engine, railroad car, or boat, occupied by another person, or within an assembly of people, and thereby places the occupants or people in reasonable apprehension of serious injury or threatens to commit such an act under circumstances raising a reasonable expectation that the threat will be carried out.

93 Acts, ch 112, §1, 2  
Section amended



## CHAPTER 709B

## TESTS FOR CERTAIN SEXUAL OFFENDERS

**709B.1 Definitions.**

As used in this chapter, unless the context otherwise requires

1 “*AIDS*” means acquired immune deficiency syndrome as defined by the centers for disease control of the United States department of health and human services

2 “*Convicted offender*” means a person convicted of a sexual assault

3 “*Department*” means the Iowa department of public health

4 “*Division*” means the crime victims assistance division of the office of the attorney general

5 “*HIV*” means the human immunodeficiency virus identified as the causative agent of AIDS

6 “*HIV related test*” means a test for the anti body or antigen to HIV

7 “*Petitioner*” means a person who is the victim of a sexual assault which resulted in alleged significant exposure or the parent, guardian, or custodian of a victim if the victim is a minor, for whom the county attorney files a petition with the district court to require the convicted offender to undergo an HIV related test

8 “*Sexual assault*” means sexual abuse as defined in section 709 1, or any other sexual offense by which a victim has allegedly had sufficient contact with a convicted offender to be deemed a significant exposure

9 “*Significant exposure*” means contact of the victim’s ruptured or broken skin or mucous membranes with the blood or bodily fluids, other than tears, saliva, or perspiration of the convicted offender “*Significant exposure*” is presumed to have occurred when there is a showing that there was penetration of the convicted offender’s penis into the victim’s vagina or anus, contact between the mouth and genitalia, or contact between the genitalia of the offender and the genitalia or anus of the victim

10 “*Victim counselor*” means a person who is engaged in a crime victim center as defined in section 236A 1, who is certified as a counselor by the crime victim center, and who has completed at least twenty hours of training provided by the Iowa coalition against sexual assault or a similar agency

93 Acts ch 140 §1  
NEW section

**709B.2 HIV-related test — convicted sexual assault offender.**

1 If a person is convicted of sexual assault, the county attorney, if requested by the petitioner, shall petition the court for an order requiring the person convicted to submit to an HIV related test, provided that all of the following conditions are met

a The sexual assault for which the offender was convicted included sufficient contact between the victim and the offender to be deemed a significant exposure pursuant to section 709B 1

b The authorized representative of the petitioner, the county attorney, or the court sought to obtain written informed consent from the convicted offender to the testing

c Written informed consent was not provided by the convicted offender

2 Upon receipt of the petition, the court shall

a Prior to the scheduling of a hearing, refer the victim for counseling by a victim counselor or a person requested by the victim who is authorized to provide the counseling required pursuant to section 141 22, regarding the nature, reliability, and significance of the HIV-related test and of the serologic status of the convicted offender

b Schedule a hearing to be held as soon as is practicable

c Cause written notice to be served on the convicted offender who is the subject of the proceeding, in accordance with the rules of civil procedure relating to the service of original notice, or if the convicted offender is represented by legal counsel, provide written notice to the convicted offender and the convicted offender’s legal counsel

d Provide for the appointment of legal counsel for a convicted offender if the convicted offender desires but is financially unable to employ counsel

e Furnish legal counsel with copies of the petition

3 Unless a petitioner chooses to be represented by private counsel, the county attorney shall represent the victim’s interest in all proceedings under this section

4 a A hearing under this section shall be conducted in an informal manner consistent with orderly procedure and in accordance with the Iowa rules of evidence The hearing shall be limited in scope to the review of questions of fact only as to the issue of whether the sexual assault for which the offender was convicted provided sufficient contact between the victim and the offender to be deemed a significant exposure and to questions of law

b In determining whether the contact should be deemed a significant exposure, the court shall base the determination on the testimony presented during the proceedings on the sexual assault charge, the minutes of the testimony or other evidence included in the court record, or if a plea of guilty was entered, based upon the complaint or upon testimony provided during the hearing

c The victim may testify at the hearing, but shall not be compelled to testify The court shall not

consider the refusal of a victim to testify at the hearing as material to the court's decision regarding issuance of an order requiring testing.

d. The hearing shall be in camera unless the convicted offender and the petitioner agree to a hearing in open court and the court approves. The report of the hearing proceedings shall be sealed and no report of the proceedings shall be released to the public, except with the permission of all parties and the approval of the court.

e. Stenographic notes or electronic or mechanical recordings shall be taken of all court hearings unless waived by the parties.

5. Following the hearing, the court may require a convicted offender to undergo an HIV-related test only if the petitioner proves all of the following by a preponderance of the evidence:

a. The sexual assault constituted a significant exposure.

b. An authorized representative of the petitioner, the county attorney, or the court sought to obtain written informed consent from the convicted offender.

c. Written informed consent was not provided by the convicted offender.

6. A convicted offender who is required to undergo an HIV-related test may appeal to the court for review of questions of law only, but may appeal questions of fact if the findings of fact are clearly erroneous.

93 Acts, ch 140, §2  
NEW section

### **709B.3 Testing, reporting, and counseling — penalties.**

1. The physician or other practitioner who orders the test of a convicted offender for HIV under this chapter shall disclose the results of the test to the convicted offender and to the victim counselor or a person requested by the victim who is authorized to provide the counseling required pursuant to section 141.22, who shall disclose the results to the petitioner.

2. All testing under this chapter shall be accompanied by pretest and posttest counseling as required under section 141.22.

3. Subsequent testing arising out of the same incident of exposure shall be conducted in accordance with the procedural and confidentiality requirements of this chapter.

4. Results of a test performed under this chapter, except as provided in subsection 6, shall be disclosed only to the physician or other practitioner who orders the test of the convicted offender, the convicted offender, the victim, the victim counselor or person requested by the victim who is authorized to provide the counseling required pursuant to section 141.22, the physician of the victim if requested by the victim, and the parent, guardian, or custodian of the victim, if the victim is a minor. Results of a test performed under this chapter shall not be disclosed to any other person without the written, informed consent of the convicted offender. A person to whom the

results of a test have been disclosed under this chapter is subject to the confidentiality provisions of section 141.23, and shall not disclose the results to another person except as authorized by section 141.23, subsection 1.

5. Notwithstanding subsection 4, test results shall not be disclosed to a convicted offender who elects against disclosure.

6. If testing is ordered under this chapter, the court shall also order periodic testing of the convicted offender during the period of incarceration, probation, or parole if the physician or other practitioner who ordered the initial test of the convicted offender certifies that, based upon prevailing scientific opinion regarding the maximum period during which the results of an HIV-related test may be negative for a person after being HIV-infected, additional testing is necessary to determine whether the convicted offender was HIV-infected at the time the sexual assault was perpetrated. The results of the test conducted pursuant to this subsection shall be released only to the physician or other practitioner who orders the test of the convicted offender, the convicted offender, the victim counselor or person requested by the victim who is authorized to provide the counseling required pursuant to section 141.22, who shall disclose the results to the petitioner, and the physician of the victim, if requested by the victim.

7. The court shall not consider the disclosure of an alleged offender's serostatus to an alleged victim, prior to conviction, as a basis for a reduced plea or reduced sentence.

8. The fact that an HIV-related test was performed under this chapter and the results of the test shall not be included in the convicted offender's medical or criminal record unless otherwise included in department of corrections records.

9. The fact that an HIV-related test was performed under this chapter and the results of the test shall not be used as a basis for further prosecution of a convicted offender in relation to the incident which is the subject of the testing, to enhance punishments, or to influence sentencing.

10. If the serologic status of a convicted offender, which is conveyed to the victim, is based upon an HIV-related test other than a test which is authorized as a result of the procedures established in this chapter, legal protections which attach to such testing shall be the same as those which attach to an initial test under this chapter, and the rights to a pre-disclosure hearing and to appeal provided under this chapter shall apply.

11. HIV-related testing required under this chapter shall be conducted by the state hygienic laboratory.

12. Notwithstanding the provisions of this chapter requiring initial testing, if a petition is filed with the court under section 709B.2 requesting an order for testing and the order is granted, and if a test has previously been performed on the convicted offender while under the control of the department of correc-

tions, the test results shall be provided in lieu of the performance of an initial test of the convicted offender, in accordance with this chapter.

13. In addition to the counseling received by a victim, referral to appropriate health care and support services shall be provided.

14. In addition to persons to whom disclosure of the results of a convicted offender's HIV-related test results is authorized under this chapter, the victim may also disclose the results to the victim's spouse, persons with whom the victim has engaged in vaginal, anal, or oral intercourse subsequent to the sexual assault, or members of the victim's family within the third degree of consanguinity.

15. A person to whom disclosure of a convicted offender's HIV-related test results is authorized under this chapter shall not disclose the results to any other person for whom disclosure is not authorized under this chapter. A person who intentionally or recklessly makes an unauthorized disclosure under this chapter 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 chapter. Proceedings maintained under this subsection shall provide for the anonymity of the test subject and all documentation shall be maintained in a confidential manner.

93 Acts, ch 140, §3  
NEW section

## CHAPTER 724

### WEAPONS

#### **724.6 Professional permit to carry weapons.**

1. A person may be issued a permit to carry weapons when the person's employment in a private investigation business or private security business licensed under chapter 80A, or a person's employment as a peace officer, correctional officer, security guard, bank messenger or other person transporting property of a value requiring security, or in police work, reasonably justifies that person going armed. The permit shall be on a form prescribed and published by the commissioner of public safety, shall identify the holder, and shall state the nature of the employment requiring the holder to go armed. A permit so issued, other than to a peace officer, shall authorize the person to whom it is issued to go armed anywhere in the state, only while engaged in the employment, and while going to and from the place of the employment. A permit issued to a certified peace officer shall authorize that peace officer to go armed anywhere in the state at all times. Permits shall expire twelve months after the date when issued except

that permits issued to peace officers and correctional officers are valid through the officer's period of employment unless otherwise canceled. When the employment is terminated, the holder of the permit shall surrender it to the issuing officer for cancellation.

2. Notwithstanding subsection 1, fire fighters, as defined in section 411.1, subsection 9, airport fire fighters included under section 97B.49, subsection 16, paragraph "d", subparagraph (4), emergency medical technicians-ambulance and emergency rescue technicians, as defined in section 147.1, and advanced emergency medical care providers, as defined in section 147A.1, shall not, as a condition of employment, be required to obtain a permit under this section. However, the provisions of this subsection shall not apply to a person designated as an arson investigator by the chief fire officer of a political subdivision.

93 Acts, ch 31, §1  
Section amended

## CHAPTER 804

### COMMENCEMENT OF ACTIONS — ARREST — DISPOSITIONS OF PRISONERS

#### **804.31 Arrest of deaf or hard-of-hearing person — use of interpreters — fee.**

When a person is detained for questioning or arrested for an alleged violation of a law or ordinance and there is reason to believe that the person is deaf or hard-of-hearing, the peace officer making the arrest or taking the person into custody or any other officer detaining the person shall determine if the person is a deaf or hard-of-hearing person as defined in section 622B.1. If the officer so determines, the officer, at the earliest possible time and prior to commencing any custodial interrogation of the person, shall procure a qualified interpreter in accordance with section 622B.2 and the rules adopted by the supreme court under section 622B.1 unless the deaf or hard-of-hearing person knowingly, voluntarily, and intelligently waives the right to an interpreter in writing by executing a form prescribed by the department of human rights and the Iowa county attorneys association. The interpreter shall interpret the officer's warnings of constitutional rights and protections and all other warnings, statements, and questions spoken or written by any officer, attorney, or other person present and all statements and questions communicated in sign language by the deaf or hard-of-hearing person.

This section does not prohibit the request for and administration of a preliminary breath screening test or the request for and administration of a chemical test of a body substance or substances under chapter 321J prior to the arrival of a qualified interpreter for a deaf or hard-of-hearing person who is believed to have committed a violation of section 321J.2. However, upon the arrival of the interpreter the officer who requested the chemical test shall explain through the interpreter the reason for the testing, the consequences of the person's consent or refusal, and the ramifications of the results of the test, if one was administered.

When an interpreter is not readily available and

the deaf or hard-of-hearing person's identity is known, the person may be released by the law enforcement agency into the temporary custody of a reliable family member or other reliable person to await the arrival of the interpreter, if the person is eligible for release on bail and is not believed to be an immediate threat to the person's own safety or the safety of others.

An answer, statement, or admission, oral or written, made by a deaf or hard-of-hearing person in reply to a question of a law enforcement officer or any other person having a prosecutorial function in a criminal proceeding is not admissible in court and shall not be used against the deaf or hard-of-hearing person if that answer, statement, or admission was not made or elicited through a qualified interpreter, unless the deaf or hard-of-hearing person had waived the right to an interpreter pursuant to this section. In the event of a waiver and criminal proceeding, the court shall determine whether the waiver and any subsequent answer, statement, or admission made by the deaf or hard-of-hearing person were knowingly, voluntarily, and intelligently made.

When communication occurs with a person through an interpreter pursuant to this section, all questions or statements and responses shall be relayed through the interpreter. The role of the interpreter is to facilitate communication between the hearing and deaf or hard-of-hearing parties. An interpreter shall not be compelled to answer any question or respond to any statement that serves to violate that role at the time of questioning or arrest or at any subsequent administrative or judicial proceeding.

An interpreter procured under this section shall be paid a reasonable fee and expenses by the governmental subdivision funding the law enforcement agency that procured the interpreter.

93 Acts, ch 75, §14  
Section amended

## CHAPTER 805

## CITATIONS IN LIEU OF ARREST

**805.8 Scheduled violations.**

1. *Application.* Except as otherwise indicated, violations of sections of the Code specified in this section are scheduled violations, and the scheduled fine for each of those violations is as provided in this section, whether the violation is of state law or of a county or city ordinance. The criminal penalty surcharge required by section 911.2 shall be added to the scheduled fine.

2. *Traffic violations.*

a. For parking violations under sections 321.236, 321.239, 321.358, 321.360, and 321.361, the scheduled fine is five dollars. The scheduled fine for a parking violation of section 321.236 increases in an amount up to ten dollars, as authorized by ordinance pursuant to section 321.236, subsection 1, paragraph "a", if the parking violation is not paid within thirty days of the date upon which the violation occurred. For purposes of calculating the unsecured appearance bond required under section 805.6, the scheduled fine shall be five dollars. However, violations charged by a city or county upon simple notice of a fine instead of a uniform citation and complaint as permitted by section 321.236, subsection 1, paragraph "a", are not scheduled violations, and this section shall not apply to any offense charged in that manner. For a parking violation under section 321.362 or 461A.38 the scheduled fine is ten dollars. For a parking violation under section 321L.4, subsection 2, the scheduled fine is fifty dollars.

b. For registration violations under sections 321.32, 321.34, 321.37, 321.38, and 321.41 the scheduled fine is five dollars.

c. For improperly used or nonused, or defective or improper equipment, other than brakes, driving lights and brakelights, under sections 321.317, 321.387, 321.388, 321.389, 321.390, 321.391, 321.392, 321.393, 321.422, 321.432, 321.436, 321.437, 321.438, subsection 1 or 3, 321.439, 321.440, 321.441, 321.442, 321.444, and 321.445, the scheduled fine is ten dollars.

d. For improper equipment under section 321.438, subsection 2, the scheduled fine is fifteen dollars.

e. For improperly used or nonused or defective or improper equipment under sections 321.383, 321.384, 321.385, 321.386, 321.398, 321.402, 321.403, 321.404, 321.409, 321.419, 321.420, 321.423, 321.430, and 321.433, the scheduled fine is twenty dollars.

f. For violations of the conditions or restrictions of a motor vehicle license under section 321.180, 321.193 and 321.194, the scheduled fine is twenty dollars.

g. (1) For excessive speed violations when not more than five miles per hour in excess of the limit

under sections 321.236, subsections 5 and 11, 321.285, and 461A.36, the scheduled fine is ten dollars.

(2) Excessive speed in conjunction with a violation of section 321.278 is not a scheduled violation, whatever the amount of excess speed.

(3) For excessive speed violations when in excess of the limit under sections 321.236, subsections 5 and 11, 321.285, and 461A.36 by five or less miles per hour the fine is ten dollars, by more than five and not more than ten miles per hour the fine is twenty dollars, by more than ten and not more than fifteen miles per hour the fine is thirty dollars, by more than fifteen and not more than twenty miles per hour the fine is forty dollars, and by more than twenty miles per hour the fine is forty dollars plus two dollars for each mile per hour of excessive speed over twenty miles per hour over the limit.

(4) Notwithstanding subparagraphs (1) and (3), for excessive speed violations in speed zones greater than fifty-five miles per hour when in excess of the limit by five miles per hour or less the fine is ten dollars, by more than five and not more than ten miles per hour the fine is twenty dollars, by more than ten and not more than fifteen miles per hour the fine is forty dollars, by more than fifteen and not more than twenty miles per hour the fine is sixty dollars, and by more than twenty miles per hour the fine is sixty dollars plus two dollars for each mile per hour of excessive speed over twenty miles per hour over the limit.

(5) Excessive speed in whatever amount by a school bus is not a scheduled violation under any section listed in a subparagraph of this paragraph "g".

h. For operating, passing, turning and standing violations under sections 321.236, subsections 3, 4, 9 and 12, 321.275, subsections 1 through 8, 321.295, 321.297, 321.299, 321.303, 321.304, subsections 1 and 2, 321.305, 321.306, 321.311, 321.312, 321.314, 321.315, 321.316, 321.318, 321.323, 321.340, 321.344, 321.353, 321.354, 321.363, 321.365, 321.366, 321.368, 321.382 and 321.395, the scheduled fine is fifteen dollars.

i. For violations involving failures to yield or to observe pedestrians and other vehicles under sections 321.257, subsection 2, 321.288, 321.298, 321.307, 321.308, 321.313, 321.319, 321.320, 321.321, 321.329, 321.333, and 321.367, the scheduled fine is twenty dollars.

j. For violations by pedestrians and bicyclists under sections 321.234, subsections 3 and 4, 321.236, subsection 10, 321.257, subsection 2, 321.325, 321.326, 321.328, 321.331, 321.332, 321.397 and 321.434, the scheduled fine is ten dollars.

k. For violations by operators of school buses and emergency vehicles, and for violations by other

motor vehicle operators when in vicinity, under sections 321.231, 321.324, and 321.372, the scheduled fine is twenty-five dollars.

For violations by operators of school buses under section 321.285, the scheduled fine is twenty-five dollars. However, excessive speed by a school bus in excess of ten miles over the limit is not a scheduled violation.

*l.* For violations of traffic signs and signals, and for failure to obey an officer under sections 321.229, 321.236, subsections 2 and 6, 321.256, 321.257, subsection 2, 321.294, 321.304, subsection 3, 321.322, 321.341, 321.342, 321.343 and 321.415, the scheduled fine is twenty dollars.

*m.* For height, weight, length, width and load violations and towed vehicle violations under sections 321.309, 321.310, 321.381, 321.394, 321.437, 321.454, 321.455, 321.456, 321.457, 321.458, 321.461, and 321.462, the scheduled fine is twenty-five dollars. For weight violations under sections 321.459 and 321.466, the scheduled fine is twenty dollars for each two thousand pounds or fraction thereof of overweight.

*n.* For violation of display of identification required by section 326.22 and violation of trip permits as prescribed by section 326.23, the scheduled fine is twenty dollars.

*o.* For violation of registration provisions under section 321.17; violation of intrastate hauling on foreign registration under section 321.54; improper operation or failure to register under section 321.55; and violation of requirement for display of registration or plates under section 321.98, the scheduled fine is twenty dollars.

*p.* For failure to comply with administrative rules adopted under section 325.3, 327.3 or 327A.17 which require that evidence of intrastate authority be carried and displayed upon request, that a valid lease be carried and displayed upon request, or that a valid fee receipt be carried and displayed upon request, the scheduled fine is twenty-five dollars.

*q.* For failure to have proper carrier identification markings under section 325.31, 327.19, 327A.8 or 327B.1, the scheduled fine is fifteen dollars.

*r.* For failure to have proper evidence of interstate authority carried or displayed under section 327B.1 and for failure to register, carry, or display evidence that interstate authority is not required under section 327B.1, the scheduled fine is one hundred dollars.

*s.* For violations of rules adopted by the department under section 321.449, the scheduled fine is twenty-five dollars.

*t.* For violation of section 321.364 or rules adopted under section 321.450, the scheduled fine is fifty dollars.

*u.* For obtaining, possessing, or having in one's control or one's premises a motor vehicle license, a nonoperator's identification card, or a blank motor vehicle license form in violation of section 321.216, subsection 7 or 8, the scheduled fine is fifty dollars.

*v.* Violations of the schedule of axle and tandem

axle and gross or group of axle weight violations in section 321.463 shall be scheduled violations subject to the provisions, procedures and exceptions contained in sections 805.6 to 805.11, irrespective of the amount of the fine under that schedule. Violations of the schedule of weight violations shall be chargeable, where the fine charged does not exceed one hundred dollars, only by uniform citation and complaint. Violations of the schedule of weight violations, where the fine charged exceeds one hundred dollars:

(1) Shall, when the violation is admitted and section 805.9 applies, be chargeable upon uniform citation and complaint, indictment, or county attorney's information,

(2) but otherwise, shall be chargeable only upon indictment or county attorney's information. In all cases of charges under the schedule of weight violations, the charge shall specify the amount of fine charged under the schedule. Where a defendant is convicted and the fine under the foregoing schedule of weight violations exceeds one hundred dollars, the conviction shall be of an indictable offense although section 805.9 is employed and whether the violation is charged upon uniform citation and complaint, indictment, or county attorney's information.

*w.* For failure to have a valid license or permit for operating a motor vehicle on the highways of this state, the scheduled fine is twenty dollars.

*x.* For failing to secure a child with a child restraint system, safety belt, or harness in violation of section 321.446, the scheduled fine is ten dollars.

*y.* For failure of having a bicycle safety flag on a motorized bicycle in violation of section 321.275, subsection 9, the scheduled fine is five dollars.

*2A. Moving traffic violations — construction zones.* The scheduled fine for any moving traffic violations under chapter 321 as provided in this section shall be doubled or shall be set at one hundred dollars, whichever is less, if the violation occurs within any road construction zone, as defined in section 321.1.

*3. Violations of navigation laws.*

*a.* For violations of registration, inspections, identification, and record provisions under sections 462A.5, 462A.35, 462A.37, and for unused or improper or defective lights and warning devices under section 462A.9, subsections 3, 4, 5, 9, and 10, the scheduled fine is ten dollars.

*b.* For violations of registration, identification, and record provisions under sections 462A.4 and 462A.10 and for unused or improper or defective equipment under section 462A.9, subsections 2, 6, 7, 8, and 13, and section 462A.11 and for operation violations under sections 462A.26, 462A.31 and 462A.33, the scheduled fine is twenty dollars.

*c.* For operating violations under sections 462A.12, 462A.15, subsection 1, 462A.24, and 462A.34, the scheduled fine is twenty-five dollars. However, a violation of section 462A.12, subsection 2, is not a scheduled violation.

*d.* For violations of use, location and storage of vessels, devices and structures under sections

462A.27, 462A.28 and 462A.32, the scheduled fine is fifteen dollars.

e. For violations of all subdivision ordinances under section 462A.17, subsection 2, except those relating to matters subject to regulation by authority of subsection 5 of section 462A.31, the scheduled fine is the same as prescribed for similar violations of state law. For violations of subdivision ordinances for which there is no comparable state law the scheduled fine is ten dollars.

4. *Snowmobile and all-terrain vehicle violations.*

a. For registration violations under section 321G.3, the scheduled fine is twenty dollars. When the scheduled fine is paid, the violator shall submit sufficient proof that a valid registration has been obtained.

b. For operating violations under sections 321G.9, subsections 1, 2, 3, 4, 5 and 7, 321G.11, and 321G.13, subsections 4 and 9, the scheduled fine is twenty dollars.

c. For improper or defective equipment under section 321G.12, the scheduled fine is ten dollars.

d. For violations of section 321G.19, the scheduled fine is fifteen dollars.

e. For identification violations under section 321G.5, the scheduled fine is ten dollars.

5. *Fish and game law violations.*

a. For violations of section 484A.2, the scheduled fine is ten dollars.

b. For violations of sections 481A.54, 481A.69, 481A.71, 481A.72, 482.6, 483A.3, 483A.6, 483A.19, and 483A.27, the scheduled fine is twenty dollars.

c. For violations of sections 481A.6, 481A.21, 481A.22, 481A.24, 481A.26, 481A.50, 481A.56, 481A.60 through 481A.62, 481A.82, 481A.83, 481A.84, 481A.92, 481A.123, 482.7, 483A.7, 483A.8, 483A.23, and 483A.24, the scheduled fine is twenty-five dollars.

d. For violations of sections 481A.7, 481A.47, 481A.52, 481A.53, 481A.55, 481A.58, 481A.63, 481A.76, 481A.81, 481A.90, 481A.91, 481A.97, 481A.122, 481A.126, 481A.142, 482.8, and 483A.37, the scheduled fine is fifty dollars.

e. For violations of sections 481A.85, 481A.93, 481A.95, 481A.120, 481A.137, 481B.5, 482.3, and 482.9, the scheduled fine is one hundred dollars.

f. For violations of section 481A.38 relating to the taking, pursuing, killing, trapping or ensnaring, buying, selling, possessing, or transporting any game, protected nongame animals, furbearing animals, or fur or skin of the animals, mussels, frogs, or fish or part of them, the scheduled fines are as follows:

(1) For deer or turkey, the scheduled fine is one hundred dollars.

(2) For protected nongame, the scheduled fine is one hundred dollars.

(3) For mussels, frogs, spawn, or fish, the scheduled fine is twenty-five dollars.

(4) Other game, the scheduled fine is fifty dollars.

(5) For furbearing animals, the scheduled fine is seventy-five dollars.

g. For violations of section 481A.38 relating to an attempt to take, pursue, kill, trap, buy, sell, possess, or transport any game, protected nongame animals, furbearing animals, or fur or skin of the animals, mussels, frogs, or fish or part of them, the scheduled fines are as follows:

(1) For game or furbearing animals, the scheduled fine is fifty dollars.

(2) For protected nongame, the scheduled fine is fifty dollars.

(3) For mussels, frogs, spawn, or fish, the scheduled fine is ten dollars.

h. For violations of section 481A.48 relating to restrictions on game birds and animals, the scheduled fines are as follows:

(1) Out-of-season, the scheduled fine is one hundred dollars.

(2) Over limit, the scheduled fine is one hundred dollars.

(3) Attempt to take, the scheduled fine is fifty dollars.

(4) General waterfowl restrictions, the scheduled fine is fifty dollars.

(a) No federal stamp, the scheduled fine is fifty dollars.

(b) Unplugged shotgun, the scheduled fine is ten dollars.

(c) Possession of other than steel shot, the scheduled fine is twenty-five dollars.

(d) Early or late shooting, the scheduled fine is twenty-five dollars.

i. For violations of section 481A.67 relating to general violations of fishing laws, the scheduled fine is twenty-five dollars.

(1) For over limit catch, the scheduled fine is thirty dollars.

(2) For under minimum length or weight, the scheduled fine is twenty dollars.

(3) For out-of-season fishing, the scheduled fine is fifty dollars.

j. For violations of section 481A.73 relating to trotlines and throwlines:

(1) For trotline or throwline violations in legal waters, the scheduled fine is twenty-five dollars.

(2) For trotline or throwline violations in illegal waters, the scheduled fine is fifty dollars.

k. For violations of section 481A.80 relating to minnows:

(1) For general minnow violations, the scheduled fine is twenty-five dollars.

(2) For commercial purposes, the scheduled fine is fifty dollars.

l. For violations of section 481A.87 relating to the taking or possessing of furbearing animals out of season:

(1) For red fox, gray fox, or mink, the scheduled fine is one hundred dollars.

(2) For all other furbearers, the scheduled fine is fifty dollars.

m. For violations of section 482.4 relating to gear tags:

(1) For commercial license violations, the scheduled fine is one hundred dollars.

(2) For no gear tags, the scheduled fine is twenty-five dollars.

*n.* For violations of section 482.11 relating to turtles:

(1) For commercial turtle violations, the scheduled fine is one hundred dollars.

(2) For sport turtle violations, the scheduled fine is fifty dollars.

*o.* For violations of section 482.12 relating to mussels:

(1) For commercial mussel violations, the scheduled fine is one hundred dollars.

(2) For sport mussel violations, the scheduled fine is fifty dollars.

*p.* For violations of section 483A.1 relating to licenses and permits, the scheduled fines are as follows:

(1) For a license or permit costing ten dollars or less, the scheduled fine is twenty dollars.

(2) For a license or permit costing more than ten dollars but not more than twenty dollars, the scheduled fine is thirty dollars.

(3) For a license or permit costing more than twenty dollars but not more than forty dollars, the scheduled fine is fifty dollars.

(4) For a license or permit costing more than forty dollars but not more than fifty dollars, the scheduled fine is seventy dollars.

(5) For a license or permit costing more than fifty dollars, the scheduled fine is one hundred dollars.

*q.* For violations of section 483A.26 relating to false claims for licenses:

(1) For making a false claim for a license by a resident, the scheduled fine is fifty dollars.

(2) For making a false claim for a license by a nonresident, the scheduled fine is one hundred dollars.

*r.* For violations of section 483A.36 relating to the conveyance of guns:

(1) For conveying an assembled, unloaded gun, the scheduled fine is twenty-five dollars.

(2) For conveying a loaded gun, the scheduled fine is fifty dollars.

5A. *Ginseng violations.* For a violation of sec-

tion 456A.24, subsection 11, the scheduled fine is one hundred dollars.

6. *Violations relating to the use and misuse of parks and preserves.*

*a.* For violations under sections 461A.39, 461A.45 and 461A.50, the scheduled fine is ten dollars.

*b.* For violations under sections 461A.40, 461A.43, 461A.46 and 461A.49, the scheduled fine is fifteen dollars.

*c.* For violations of section 461A.44, the scheduled fine is fifty dollars.

*d.* For violations of section 461A.48, the scheduled fine is twenty-five dollars.

7. *Description of violations.* The descriptions of offenses used in this section are for convenience only and shall not be construed to define any offense or to include or exclude any offense other than those specifically included or excluded by reference to the Code. A reference to a section or subsection of the Code without further limitation includes every offense defined by that section or subsection.

8. *Energy emergency violations.* For violations of an executive order issued by the governor under the provisions of section 473.8, the scheduled fine is fifty dollars.

9. *Radar jamming devices.* For violation of section 321.232, the scheduled fine is ten dollars.

10. *Alcoholic beverage violations.* For violations of section 123.47A, which constitute first offenses as provided in that section, the scheduled fine is fifteen dollars.

11. *Smoking violations.* For violations of section 142B.6, the scheduled fine is twenty-five dollars, and is a civil penalty, and the criminal penalty surcharge under section 911.2 shall not be added to the penalty, and the court costs pursuant to section 805.9, subsection 6, shall not be imposed. If the civil fine is not paid in a timely manner, a citation shall be issued for the violation in the manner provided in section 804.1. The complainant shall not be charged a filing fee.

93 Acts, ch 38, §3, 93 Acts, ch 47, §10-13, 93 Acts, ch 114, §3  
 Subsection 2, paragraph g, subparagraphs (1) and (3) amended  
 Subsection 2, paragraph k, unnumbered paragraph 1 amended and NEW unnumbered paragraph 2  
 NEW subsections 2A and 5A



## CHAPTER 811

## PRETRIAL RELEASE — BAIL

**811.2 Conditions of release — penalty for failure to appear.**

1. *Conditions for release of defendant.* All bailable defendants shall be ordered released from custody pending judgment or entry of deferred judgment on their personal recognizance, or upon the execution of an unsecured appearance bond in an amount specified by the magistrate unless the magistrate determines in the exercise of the magistrate's discretion, that such a release will not reasonably assure the appearance of the defendant as required or that release will jeopardize the personal safety of another person or persons. When such determination is made, the magistrate shall, either in lieu of or in addition to the above methods of release, impose the first of the following conditions of release which will reasonably assure the appearance of the person for trial or deferral of judgment and the safety of other persons, or, if no single condition gives that assurance, any combination of the following conditions:

a. Place the defendant in the custody of a designated person or organization agreeing to supervise the defendant.

b. Place restrictions on the travel, association or place of abode of the defendant during the period of release.

c. Require the execution of an appearance bond in a specified amount and the deposit with the clerk of the district court or a public officer designated under section 602.1211, subsection 4, in cash or other qualified security, of a sum not to exceed ten percent of the amount of the bond, the deposit to be returned to the person who deposited the specified amount with the clerk upon the performance of the appearances as required in section 811.6.

d. Require the execution of a bail bond with sufficient surety, or the deposit of cash in lieu of bond. However, except as provided in section 811.1, bail initially given remains valid until final disposition of the offense or entry of an order deferring judgment. If the amount of bail is deemed insufficient by the court before whom the offense is pending, the court may order an increase of bail and the defendant must provide the additional undertaking, written or in cash, to secure release.

e. Impose any other condition deemed reasonably necessary to assure appearance as required, or the safety of another person or persons including a condition requiring that the defendant return to custody after specified hours, or a condition that the defendant have no contact with the victim or other persons specified by the court.

2. *Determination of conditions.* In determining which conditions of release will reasonably assure the defendant's appearance and the safety of another

person or persons, the magistrate shall, on the basis of available information, take into account the nature and circumstances of the offense charged, the defendant's family ties, employment, financial resources, character and mental condition, the length of the defendant's residence in the community, the defendant's record of convictions, and the defendant's record of appearance at court proceedings or of flight to avoid prosecution or failure to appear at court proceedings.

3. *Release at initial appearance.* This chapter does not preclude the release of an arrested person as authorized by section 804.21.

4. *Statement to all defendants.* When a defendant appears before a magistrate pursuant to R.Cr.P. 2 or 3, the defendant shall be informed of the defendant's right to have said conditions of release reviewed. If the defendant indicates that the defendant desires such a review and is indigent and unable to retain legal counsel, the magistrate shall appoint an attorney to represent the defendant for the purpose of such review. Unless the conditions of release are amended and the defendant is thereupon released, the magistrate shall set forth in writing the reasons for requiring conditions imposed. A defendant who is ordered released by a magistrate other than a district court judge or district associate judge on a condition which required that the defendant return to custody after specified hours, shall, upon application, be entitled to review by the magistrate who imposed the condition in the same manner as a defendant who remains in full-time custody. In the event that the magistrate who imposed conditions of release is not available, any other magistrate in the judicial district may review such conditions.

5. *Statement of conditions when defendant is released.* A magistrate authorizing the release of a defendant under this section shall issue a written order containing a statement of the conditions imposed if any, shall inform the defendant of the penalties applicable to violation of the conditions of release and shall advise the defendant that a warrant for the defendant's arrest will be issued immediately upon such violation.

6. *Amendment of release conditions.* A magistrate ordering the release of the defendant on any conditions specified in this section may at any time amend the order to impose additional or different conditions of release, provided that, if the imposition of different or additional conditions results in the detention of the defendant as a result of the defendant's inability to meet such conditions, the provisions of subsection 3 of this section shall apply.

7. *Appeal from conditions of release.*

a. A defendant who is detained, or whose release

on a condition requiring the defendant to return to custody after specified hours is continued, after review of the defendant's application pursuant to subsection 3 or 5 of this section, by a magistrate, other than a district judge or district associate judge having original jurisdiction of the offense with which the defendant is charged, may make application to a district judge or district associate judge having jurisdiction to amend the order. Said motion shall be promptly set for hearing and a record made thereof.

b. In any case in which a court denied a motion under paragraph "a" of this subsection to amend an order imposing conditions of release, or a defendant is detained after conditions of release have been imposed or amended upon such a motion, an appeal may be taken from the district court. The appeal shall be determined summarily, without briefs, on the record made. However, the defendant may elect to file briefs and may be heard in oral argument, in which case the prosecution shall have a right to respond as in an ordinary appeal from a criminal conviction. The appellate court may, on its own motion, order the parties to submit briefs and set the time in which such briefs shall be filed. Any order so ap-

pealed shall be affirmed if it is supported by the proceeding below. If the order is not so supported, the court may remand the case for a further hearing or may, with or without additional evidence, order the defendant released pursuant to subsection 1 of this section.

8. *Failure to appear — penalty.* Any person who, having been released pursuant to this section, willfully fails to appear before any court or magistrate as required shall, in addition to the forfeiture of any security given or pledged for the person's release, if the person was released in connection with a charge which constitutes a felony, or while awaiting sentence or pending appeal after conviction of any public offense, be guilty of a class "D" felony. If the defendant was released before conviction or acquittal in connection with a charge which constitutes any public offense not a felony, the defendant shall be guilty of a serious misdemeanor. If the person was released for appearance as a material witness, the person shall be guilty of a simple misdemeanor. In addition, nothing herein shall limit the power of the court to punish for contempt.

93 Acts, ch 157, §10  
Subsection 1, paragraph e amended

## CHAPTER 815

### COSTS — COMPENSATION AND FEES — INDIGENT DEFENSE

#### 815.4 Special witnesses for indigents.

Witnesses secured for indigent or partially indigent defendants under R.Cr.P. 19 must file a claim for compensation supported by an affidavit specifying the time expended, services rendered, and expenses incurred on behalf of the defendant.

93 Acts, ch 175, §21  
Section amended

#### 815.5 Expert witnesses for state and defense.

Notwithstanding the provisions of section 622.72, reasonable compensation as determined by the court shall be awarded expert witnesses, expert witnesses for an indigent or partially indigent person referred to in section 815.4, or called by the state in criminal cases.

93 Acts, ch 175, §22  
Section amended

#### 815.9 Indigency determined — penalty.

1. For purposes of this chapter, section 68.8, section 222.22, chapter 232, chapter 814, and the rules of criminal procedure, the following apply:

a. A person is indigent if the person has an income level at or below one hundred fifty percent of the United States poverty level as defined by the

most recently revised poverty income guidelines published by the United States department of health and human services.

b. A person is not indigent if the person has an income level greater than one hundred fifty percent of the United States poverty level as defined by the most recently revised poverty income guidelines published by the United States department of health and human services.

c. A person with an income level greater than one hundred fifty percent of the most recently revised poverty income guidelines published by the United States department of health and human services may be deemed partially indigent by the court pursuant to a written finding that, given the person's circumstances, not appointing counsel at public expense would cause the person substantial hardship. However, the court shall require a person deemed partially indigent to contribute to the cost of representation in accordance with rules adopted by the state public defender.

2. A determination of the indigent status of a person shall be made on the person's initial appearance before a court. If a person is granted legal assistance as an indigent or partial indigent, the financial statement shall be filed and permanently retained in

the person's court file. The state public defender shall adopt rules prescribing the form and content of the financial statement and the criteria by which a determination of indigency shall be based. The financial statement shall contain sufficient information to allow the determination to be made of whether the person meets the guidelines set out in subsection 1 and shall be accompanied by the person's most recent pay slip, if employed.

3. A person who knowingly submits a false financial statement for the purpose of obtaining legal assistance at public expense commits a fraudulent practice. As used in this subsection, "legal assistance" includes legal counsel, transcripts, witness fees and expenses, and any other goods or services required by law to be provided to an indigent person at public expense.

93 Acts, ch 175, §23, 24  
1993 amendments to subsections 1 and 2 take effect September 1, 1993, 93 Acts, ch 175, §28  
Subsections 1 and 2 stricken and rewritten

**815.9A Recovery of indigent defense costs.**  
Costs incurred for indigent defense shall be paid

to the clerk of the district court by the person receiving the services not later than the date of sentencing or, if the person is acquitted or the charges are dismissed, within thirty days of the acquittal or dismissal, as follows:

1. If the person has an income level as determined pursuant to section 815.9 greater than one hundred percent but not more than one hundred fifty percent of the poverty guidelines, at least one hundred dollars of the indigent defense costs to be recovered in accordance with rules adopted by the state public defender.

2. If the person has an income level as determined pursuant to section 815.9 greater than one hundred fifty percent of the poverty guidelines, at least two hundred dollars of the indigent defense costs shall be recovered in accordance with rules adopted by the state public defender.

93 Acts, ch 175, §25  
NEW section

## CHAPTER 901

### JUDGMENT AND SENTENCING PROCEDURES

Task force to develop plan for use of intermediate criminal sanctions as sentencing options; 93 Acts, ch 171, §6, 11

## CHAPTER 902

### FELONIES

Structured fines pilot program, 92 Acts, ch 1202; 93 Acts, ch 81

**902.9 Maximum sentence for felons.**

The maximum sentence for any person convicted of a felony shall be that prescribed by statute or, if not prescribed by statute, if other than a class "A" felony shall be determined as follows:

1. A class "B" felon shall be confined for no more than twenty-five years.

2. An habitual offender shall be confined for no more than fifteen years.

3. A class "C" felon, not an habitual offender, shall be confined for no more than ten years, and in addition may be sentenced to a fine of at least five hundred dollars but not more than ten thousand dollars.

4. A class "D" felon, not an habitual offender, shall be confined for no more than five years, and in addition may be sentenced to a fine of at least five hundred dollars but not more than seven thousand five hundred dollars. A class "D" felon, such felony being for a violation of section 321J.2, may be sentenced to imprisonment for up to one year in the county jail.

The criminal penalty surcharge required by section 911.2 shall be added to a fine imposed on a class "C" or class "D" felon, as provided by that section, and is not a part of or subject to the maximums set in this section.

93 Acts, ch 110, §9  
Subsections 3 and 4 amended

## CHAPTER 903

### MISDEMEANORS

Structured fines pilot program, 92 Acts, ch 1202, 93 Acts, ch 81

#### 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, which fine shall not be suspended by the court, within the following limits:

a. For a simple misdemeanor, either imprisonment not to exceed thirty days, or a fine of at least fifty dollars but not to exceed one hundred dollars.

b. For a serious misdemeanor, there shall be a fine of at least two hundred fifty dollars but not to exceed one thousand five hundred dollars. In addition, the court may also order imprisonment not to exceed one year.

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. There shall be a fine of at least five hundred dollars but not to exceed five thousand dollars. 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 321, 321G, 453A, 461A, 461B, 462A, 481A, 481B, 483A, 484A, or 484B, 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.

4. 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.

93 Acts, ch 110, §10  
Subsections 1 and 2 amended

## CHAPTER 904

### DEPARTMENT OF CORRECTIONS

Policies and guidelines concerning comparable opportunities for male and female inmates, 93 Acts, ch 171, §4

#### 904.104 Board created.

A board of corrections is created within the department. The board shall consist of seven members appointed by the governor subject to confirmation by the senate. Not more than four of the members shall be from the same political party. Members shall be electors of this state. Members of the board shall serve four-year staggered terms.

93 Acts, ch 46, §4  
Section amended

#### 904.206 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 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.

93 Acts, ch 46, §5  
Subsection 1 amended

#### 904.207 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 temporary confinement of offenders who have violated conditions of release under work release or parole as defined in section 906.1, or probation granted as a result of suspension of a sen-

tence to the custody of the director of the department of corrections. The director shall adopt rules pursuant to chapter 17A, subject to the approval of the board, to implement this section.

93 Acts, ch 46, §6  
Section amended

#### 904.312 Purchase of supplies.

The director shall adopt rules governing the purchase of all articles and supplies needed at the various institutions and the form and verification of vouchers for the purchases. When purchases are made by sample, the sample shall be properly marked and retained until after an award or delivery of the items is made. The director may purchase supplies from any institution under the director's control, for use in any other institution, and reasonable reimbursement shall be made for these purchases.

The director shall, whenever technically feasible, purchase and use degradable loose foam packing material manufactured from grain starches or other renewable resources, unless the cost of the packing material is more than ten percent greater than the cost of packing material made from nonrenewable resources. For the purposes of this subsection, "packing material" means material, other than an exterior packing shell, that is used to stabilize, protect, cushion, or brace the contents of a package.

93 Acts, ch 176, §48  
NEW unnumbered paragraph 2

#### 904.601 Records of inmates.

The director shall keep the following record of every person committed to any of the department's institutions: Name, residence, sex, age, place of birth, occupation, civil condition, date of entrance or commitment, date of discharge, whether a discharge is final, condition of the person when discharged, the name of the institutions from which and to which the person has been transferred, and if the person is dead, the date and cause of death. The director may permit the division of libraries and information services of the department of education and the historical division of the department of cultural affairs to copy or reproduce by any photographic, photostatic, microfilm, microcard, or other process which accurately reproduces in a durable medium and to destroy in the manner described by law the records of inmates required by this paragraph.

The director shall keep other records for the use of the board of parole as the board of parole may request.

93 Acts, ch 48, §54  
Unnumbered paragraph 1 amended

#### 904.809 Private industry employment of inmates of correctional institutions.

1. The following conditions shall apply to all agreements to provide private industry employment for inmates of correctional institutions:

a. The state director and the industries board shall comply with the intent of section 904.801.

b. An inmate shall not be compelled to take private industry employment.

c. Inmates shall receive allowances commensurate with those wages paid persons in similar jobs outside the correctional institutions. This may include piece rating in which the inmate is paid only for what is produced.

d. Employment of inmates in private industry shall not displace employed workers, apply to skills, crafts, or trades in which there is a local surplus of labor, or impair existing contracts for employment or services.

e. Inmates employed in private industry shall be eligible for workers' compensation in accordance with section 85.59.

f. Inmates employed in private industry shall not be eligible for unemployment compensation while incarcerated.

g. The state director shall implement a system for screening and security of inmates to protect the safety of the public.

2. a. Any other provision of the Code to the contrary notwithstanding, the state director may, after obtaining the advice of the industries board, lease one or more buildings or portions thereof on the grounds of any state adult correctional institution, together with the real estate needed for reasonable access to and egress from the leased buildings, for a term not to exceed twenty years, to a private corporation for the purpose of establishing and operating a factory for the manufacture and processing of products, or any other commercial enterprise deemed by the state director to be consistent with the intent stated in section 904.801.

b. Each lease negotiated and concluded under this subsection shall include, and shall be valid only so long as the lessee adheres to, the following provisions:

(1) Persons working in the factory or other commercial enterprise operated in the leased property, except the lessee's supervisory employees and necessary support personnel approved by the industries board, shall be inmates of the institution where the leased property is located who are approved for such work by the state director and the lessee.

(2) The factory or other commercial enterprise operated in the leased property shall observe at all times such practices and procedures regarding security as the lease may specify, or as the state director may temporarily stipulate during periods of emergency.

3. The state director with the advice of the prison industries advisory board may provide an inmate work force to private industry. Under the program inmates will be employees of a private business.

4. Private or nonprofit organizations may subcontract with Iowa state industries to perform work in Iowa state industries shops located on the grounds of a state institution. The execution of the subcontract is subject to the following conditions:

a. The private employer shall pay to Iowa state industries a per unit price sufficient to fund allowances for inmate workers commensurate with similar jobs outside corrections institutions.

b. Iowa state industries shall negotiate a per unit price which takes into account staff supervision and equipment provided by Iowa state industries.

93 Acts, ch 46, §7  
Section stricken and rewritten

**904.810 Private industry work force.** Repealed by 93 Acts, ch 46, § 13. See § 904.809.

**904.811 Subcontracting with Iowa state industries.** Repealed by 93 Acts, ch 46, § 13. See § 904.809.

**904.901 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, attendance at an educational institution, or family visitation. 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 904.910.

93 Acts, ch 46, §8  
Section amended

**904.903 Agreement by inmate.**

An inmate approved to participate in the work release program shall sign a work release agreement. The agreement shall include all terms and conditions of the particular plan adopted for the inmate by the board of parole and shall include a statement that the inmate agrees to abide by all terms and conditions in the agreement. The agreement shall be signed by the inmate prior to participation in the program. Following the release of the inmate, the agreement may be terminated by the department in accordance with rules of the department.

93 Acts, ch 98, §1  
Section amended

**904.909 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 from the facility to which the client is assigned or violates the conditions of supervision. The client or offender shall reimburse the department of corrections for the cost of transportation incurred because of the escape or violation. The amount of reimbursement shall be the actual cost incurred by the department and shall be credited to the support account from which the billing occurred. The director of the department of corrections shall recommend rules pursuant to chapter 17A, subject to approval by the board of corrections pursuant to section 904.105, subsection 7, to implement this section.

93 Acts, ch 46, §9  
Section amended

## CHAPTER 905

### COMMUNITY-BASED CORRECTIONAL PROGRAM

**905.7 Assistance by state department.**

The Iowa department of corrections shall provide assistance and support to the respective judicial districts to aid them in complying with this chapter, and shall promulgate rules pursuant to chapter 17A establishing guidelines in accordance with and in furtherance of the purposes of this chapter. The guidelines shall include, but need not be limited to, requirements that each district department:

1. Provide pretrial release, presentence investigations, probation services, parole services, work release services, programs for offenders convicted under chapter 321J, and residential treatment centers throughout the district, as necessary.
2. Locate community-based correctional program services in or near municipalities providing a

substantial number of treatment and service resources.

3. Follow practices and procedures which maximize the availability of federal funding for the district department's community-based correctional program and assist the department of transportation which is authorized to follow practices and procedures designed to maximize the availability of federal funding for the enforcement and implementation of drunk driver prevention and other highway safety programs.

4. Provide for gathering and evaluating performance data relative to the district department's community-based correctional program and make other detailed reports to the Iowa department of corrections as requested by the board of corrections or the director of the department of corrections.

5. Maintain personnel and fiscal records on a uniform basis.

6. Provide a program to assist the court in placing defendants who as a condition of probation are sentenced to perform unpaid community service.

7. Provide for community participation in the planning and programming of the district department's community-based correctional program.

8. Provide for standards for mental fitness which shall govern the initial recruitment, selection, and

appointment of parole and probation officers. To promote these standards, the department of corrections shall by rule require a battery of psychological tests to determine cognitive skills, personality characteristics, and suitability of all applicants for a correctional career, as is required for correctional officers pursuant to section 904.108.

93 Acts, ch 171, §21  
NEW subsection 8

## CHAPTER 906

### PAROLES AND WORK RELEASE

#### 906.1 Definition of parole and work release.

Parole is the release of a person who has been committed to the custody of the director of the Iowa department of corrections by reason of the person's commission of a public offense, which release occurs prior to the expiration of the person's term, is subject to supervision by the district department of correctional services, and is on conditions imposed by the district department.

Work release is the release of a person, who has been committed to the custody of the director of the Iowa department of corrections, pursuant to sections 904.901 through 904.909.

A person who has been released on parole or work release may be temporarily assigned to the supervision of the director of the department of corrections as a result of placement in a violator facility established pursuant to section 904.207.

93 Acts, ch 46, §10  
NEW unnumbered paragraph 3

#### 906.5 Record reviewed — rules.

1. The board shall establish and implement a plan by which the board systematically reviews the status of each person who has been committed to the custody of the director of the Iowa department of corrections and considers the person's prospects for parole or work release. The board at least annually shall review the status of a person other than a class "A" felon, a class "B" felon serving a sentence of more than twenty-five years, or a felon serving a mandatory minimum sentence other than a class "A" felon, and provide the person with notice of the board's parole or work release decision.

Not less than twenty days prior to conducting a hearing at which the board will interview the person, the board shall notify the department of corrections of the scheduling of the interview, and the department shall make the person available to the board at the person's institutional residence as scheduled in the notice. However, if health, safety, or security

conditions require moving the person to another institution or facility prior to the scheduled interview, the department of corrections shall so notify the board.

2. It is the intent of the general assembly that the board shall implement a plan of early release in an effort to assist in controlling the prison population and assuring prison space for the confinement of offenders whose release would be detrimental to the citizens of this state. The board shall report to the legislative fiscal bureau on a monthly basis concerning the implementation of this plan and the number of inmates paroled pursuant to this plan and the average length of stay of those paroled.

3. At the time of a review conducted under this section, the board shall consider all pertinent information regarding the person, including the circumstances of the person's offense, any presentence report which is available, the previous social history and criminal record of the person, the person's conduct, work, and attitude in prison, and the reports of physical and mental examinations that have been made.

4. A person while on parole or work release is under the supervision of the district department of correctional services of the district designated by the board of parole. The department of corrections shall prescribe rules for governing persons on parole or work release. The board may adopt other rules not inconsistent with the rules of the department of corrections as the board deems proper or necessary for the performance of its functions.

93 Acts, ch 98, §2, 3  
Subsection 1, unnumbered paragraph 1 stricken and rewritten  
Subsections 2 and 3 amended

#### 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 904.508, money in accordance with the following schedule:

1. Upon discharge or parole, one hundred dollars.
2. Upon being placed on work release, fifty dollars.

Those inmates receiving payment under subsection 2 shall not be eligible for payment under subsection 1 unless they are returned to the institution. An inmate shall only be eligible to receive one payment under this section during any twelve-month period. The warden or superintendent shall maintain an account of all funds expended pursuant to this section.

93 Acts, ch 46, §11

Subsection 3 stricken and unnumbered paragraph 2 amended

## CHAPTER 907

### DEFERRED JUDGMENT, DEFERRED OR SUSPENDED SENTENCE AND PROBATION

Structured civil penalty pilot program, 93 Acts, ch 81

#### 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 de-

fendant 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 defendant 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.

i. The offense is a finding of contempt pursuant to section 236.8 or 236.14.

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. In addition, the court shall not defer



a sentence if it is imposed for contempt pursuant to section 236.8 or 236.14. 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, and the court shall not suspend a sentence imposed pursuant to section 236.8 or 236.14 for contempt.

93 Acts, ch 157, §11, 12  
 Subsection 1, NEW paragraph 1  
 Subsections 2 and 3 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. 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, or may order that the violator be placed in a violator facility, established pursuant to section 904.207, if the parole revocation officer or board panel determines that placement in a violator facility is necessary.

93 Acts, ch 46, §12  
 Section amended

## CHAPTER 909

### FINES

Structured fines pilot program, 92 Acts, ch 1202, 93 Acts, ch 81

#### 909.3 Payment in installments or on a fixed date.

1. All fines imposed by the court shall be paid on the day the fine is imposed.

2. The court may, in its discretion, order a fine to be paid in installments, or may fix a date in the future which is not more than one hundred twenty days from the date the fine is imposed for the payment of the fine, whenever it appears that the defendant cannot make immediate payment, or should not be made to do so.

For good cause, the court may order that the date for payment of the fine be extended beyond one hundred twenty days from the date the fine was imposed.

93 Acts, ch 110, §11  
 Section amended

#### 909.3A Community service option.

The court may, in its discretion, order the defendant to perform community service work of an equivalent value to the fine imposed where it appears that the community service work will be adequate to deter the defendant and to discourage others from similar criminal activity. The rate at which community service shall be calculated shall be the federal minimum wage.

93 Acts, ch 110, §12  
 NEW section

#### 909.6 Fine as judgment — interest assessed.

Whenever a court has imposed a fine on any defendant, the judgment in such case shall state the amount of the fine, and shall have the force and ef-

fect of a judgment against the defendant for the amount of the fine. The law relating to judgment liens, executions, and other process available to creditors for the collection of debts shall be applicable to such judgments; provided, that no law exempting the personal property of the defendant from any lien or legal process shall be applicable to such judgments.

If a court imposes a fine on an offender, the court shall impose interest charges on any amount remaining unsatisfied from the day after sentencing at the rate provided in section 535.3.

At the time of imposing the sentence, the court shall inform the offender of the amount of the fine and that the judgment includes the imposition of a criminal surcharge, court costs, and applicable fees. The court shall also inform the offender of the duty to pay the judgment in a timely manner and that interest will be charged on unsatisfied judgments.

93 Acts, ch 110, §13  
NEW unnumbered paragraphs 2 and 3

#### **909.7 Ability to pay fine presumed.**

A defendant is presumed to be able to pay a fine. However, if the defendant proves to the satisfaction of the court that the defendant cannot pay the fine, the defendant shall not be sentenced to confinement for the failure to pay the fine.

A defendant who proves that the defendant cannot pay the fine may, at the discretion of the court, be ordered to perform community service pursuant to section 909.3A.

93 Acts, ch 110, §14  
NEW unnumbered paragraph 2

#### **909.8 Payment and collection provisions apply to criminal penalty surcharge.**

The provisions of this chapter governing the payment and collection of a fine, except section 909.3A, also apply to the payment and collection of a criminal penalty surcharge imposed pursuant to chapter 911.

93 Acts, ch 110, §15  
Section amended

#### **909.9 Collection of delinquent fines and court costs — disposition.** Repealed by 93 Acts, ch 110, § 17. See § 602.8107.

#### **909.10 Collection of delinquent amounts by the court.**

1. As used in this section, unless the context otherwise requires, “*delinquent amounts*” means a fine, court-imposed court costs in a criminal proceeding, or criminal surcharge imposed pursuant to section 911.2, which remains unpaid after two years from the date that the fine, court costs, or surcharge was imposed, and which is not collected by the county attorney pursuant to section 602.8107. However, if the fine may be paid in installments pursuant to section 909.3, the fine is not a delinquent amount unless the installment remains unpaid after two years from the date the installment was due.

2. Notwithstanding the disposition sections of sections 602.8106 and 911.3, upon the collection of delinquent amounts, the clerks of the district court shall remit the delinquent amounts to the treasurer of state for deposit into the revolving fund established pursuant to section 602.1302, to be used for the payment of jury and witness fees and mileage.

93 Acts, ch 110, §16, 93 Acts, ch 171, §22  
NEW section  
Section amended

## CHAPTER 910A

### VICTIM AND WITNESS PROTECTION

#### **910A.14 Televised, videotaped, and recorded evidence — limited court testimony — minors and others.**

1. Upon its own motion or upon motion of any party, a court may protect a minor, as defined in section 599.1, from trauma caused by testifying in the physical presence of the defendant where it would impair the minor’s ability to communicate, by ordering that the testimony of the minor be taken in a room other than the courtroom and be televised by closed circuit equipment for viewing in the courtroom. However, such an order shall be entered only upon a specific finding by the court that such measures are necessary to protect the minor from trauma. Only the judge, prosecuting attorney, defen-

dant’s attorney, persons necessary to operate the equipment, and any person whose presence, in the opinion of the court, would contribute to the welfare and well-being of the minor may be present in the room with the minor during the minor’s testimony. The judge shall inform the minor that the defendant will not be present in the room in which the minor will be testifying but that the defendant will be viewing the minor’s testimony through closed circuit television.

During the minor’s testimony the defendant shall remain in the courtroom and shall be allowed to communicate with the defendant’s counsel in the room where the minor is testifying by an appropriate electronic method.

In addition, upon a finding of necessity, the court may allow the testimony of a victim or witness with a mental illness, mental retardation, or other developmental disability to be taken as provided in this subsection, regardless of the age of the victim or witness.

2. The court may, upon its own motion or upon motion of a party, order that the testimony of a minor, as defined in section 599.1, be taken by recorded deposition for use at trial, pursuant to rule of criminal procedure 12(2)(b). In addition to requiring that such testimony be recorded by stenographic means, the court may on motion and hearing, and upon a finding that the minor is unavailable as provided in Iowa rules of evidence 804(a), order the videotaping of the minor's testimony for viewing in the courtroom by the court. The videotaping shall comply with the provisions of rule of criminal procedure 12(2)(b), and shall be admissible as evidence in the trial of the cause. In addition, upon a finding of necessity, the court may allow the testimony of a victim or witness with a mental illness, mental retardation, or other developmental disability to be taken as provided in this subsection, regardless of the age of the victim or witness.

3. The court may upon motion of a party admit into evidence the recorded statements of a child, as defined in section 702.5, describing sexual contact performed with or on the child, not otherwise admissible in evidence by statute or court rule if the court determines that the recorded statements substantially comport with the requirements for admission under Iowa rules of evidence 803(24) or 804(b)(5).

4. A court may, upon its own motion or upon the motion of a party, order the court testimony of a child to be limited in duration in accordance with the developmental maturity of the child. The court may consider or hear expert testimony in order to determine the appropriate limitation on the duration of a child's testimony. However, the court shall, upon motion, limit the duration of a child's uninterrupted testimony to one hour, at which time the court shall allow the child to rest before continuing to testify.

93 Acts, ch 64, §1  
 Subsection 1 stricken and rewritten

**910A.16 Child victim services.**

1. As used in this section, "victim" means a child under the age of eighteen who has been sexually

abused or subjected to any other unlawful sexual conduct under chapter 709 or 726 or who has been the subject of a forcible felony.

2. A professional licensed or certified by the state to provide immediate or short-term medical services or mental health services to a victim may provide the services without the prior consent or knowledge of the victim's parents or guardians.

3. Such a professional shall notify the victim if the professional is required to report an incidence of child abuse involving the victim pursuant to section 232.69.

4. To the greatest extent possible, a multidisciplinary team involving the county attorney, law enforcement, community-based child advocacy organizations, and personnel of the department of human services shall be utilized in investigating cases involving a violation of chapter 709 or 726 with a child.

93 Acts, ch 64, §2  
 NEW subsection 4

**910A.20 Presence of victim counselors.**

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

a. "Proceedings related to the offense" means any activities engaged in or proceedings commenced by a law enforcement agency, judicial district department of correctional services, or a court pertaining to the commission of a public offense against the victim, in which the victim is present, as well as examinations of the victim in an emergency medical facility due to injuries from the public offense which do not require surgical procedures. "Proceedings related to the offense" includes, but is not limited to, law enforcement investigations, pretrial court hearings, trial and sentencing proceedings, and proceedings relating to the preparation of a presentence investigation report in which the victim is present.

b. "Victim counselor" means a victim counselor as defined in section 236A.1.

2. A victim counselor who is present as a result of a request by a victim shall not be denied access to any proceedings related to the offense.

3. This section does not affect the inherent power of the court to regulate the conduct of discovery pursuant to the Iowa rules of criminal or civil procedure or to preside over and control the conduct of criminal or civil hearings or trials.

93 Acts, ch 166, §1  
 NEW section

## CHAPTER 912

## CRIME VICTIM COMPENSATION

**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 three thousand 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 three thousand dollars per person or a total of six thousand dollars per victim death.

7. Reasonable expenses incurred for cleaning the scene of a homicide, if the scene is a residence, not to exceed one thousand dollars.

93 Acts, ch 104, §1

Subsections 1 and 6 amended



**CONVERSION TABLES OF SENATE AND HOUSE FILES  
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## CODE EDITOR'S NOTES

### Code Section

- 6A.10** The 1993 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.
- 135H.4** The amendments in 1993 Acts, chapter 53, section 6, and 1993 Acts, chapter 172, section 29, as amended by 1993 Acts, chapter 180, section 79, could not technically be harmonized, but the substance of the differing language is not in conflict. The later enactment, 1993 Acts, chapter 180, section 79, amending 1993 Acts, chapter 172, section 29, was codified.
- 232.141** In 1993 Acts, chapter 172, section 34, subsection 8 is stricken without replacement. However, in 1993 Acts, chapter 76, section 15, the subsection is stricken and rewritten. The effective date is the same for both provisions. The later enactment, 1993 Acts, chapter 76, section 15, was codified.
- 275.33** The amendments to subsection 2, unnumbered paragraph 1, by 1993 Acts, chapter 1, section 7, and 1993 Acts, chapter 160, section 11, could not be harmonized. The later enactment, 1993 Acts, chapter 160, section 11, was codified.
- 312.3** 1992 Acts, chapter 1100, section 3, added a new definition as paragraph e of subsection 1 effective July 1, 1992, whereas a later enactment, 1992 Acts, chapter 1238, section 27, struck and rewrote the entire subsection effective July 1, 1993, without including any definitions or lettered paragraphs. Although paragraph e was stricken upon codification of 1992 Acts, chapter 1238, section 27, in the 1993 Code Supplement, the substance of the definition remains relevant and corrective legislation will be proposed to restore it.
- 321.215** Although the lead-in of 1993 Acts, chapter 16, section 7, indicates that it amends subsection 1, paragraph e, it appears from the text of the amendment that it was unnumbered paragraph 2 of subsection 1 which was amended.
- 331.756** The amendments to subsection 15 by 1993 Acts, chapter 142, section 12, and 1993 Acts, chapter 163, section 32, are conflicting in substance and chapter 142, section 12, refers to a section that did not become law. The later enactment, 1993 Acts, chapter 163, section 32, was codified.

- 422.12A** 1993 Acts, chapter 144, section 6, states that the Act (ch 144) "is effective only if legislation providing an annual standing appropriation of \$15,000 or more to Iowa Special Olympics, Incorporated, for Special Olympic programs, is enacted by the Seventy-fifth General Assembly during the 1993 Regular Session." Because of uncertainty as to whether the one-year \$15,000 appropriation to Iowa Special Olympics, Incorporated, in 1993 Acts, chapter 180, section 63, meets the requirements of the provision conditioning the effectiveness of 1993 Acts, chapter 144, on the enactment of an annual standing appropriation, editorial notes have been included with each of the amendments and new sections codified from 1993 Acts, chapter 144. The sections affected are 173.22, 422.12A, 422.12D, and 422.12E. Inclusion of the text of these amendments and new sections in the 1993 Code Supplement should not be interpreted to represent any official determination as to their effectiveness.
- 425.17** The amendments to section 425.17, subsection 2, and section 425.23, subsections 1 and 3, by 1993 Acts, chapter 180, sections 4, 5, 6, and 22, were drafted to the 1993 Code, which included 1992 amendments originally scheduled to take effect January 1, 1993 but retroactively deferred to January 1, 1994 by 1993 Acts, chapter 180, sections 15, 16, and 23. The same effective date now applies to both the 1992 and 1993 amendments, and the 1993 amendments, 1993 Acts, chapter 180, sections 4, 5, and 6, were codified.
- 504A.87** The amendments in 1993 Acts, chapter 109, section 12, and 1993 Acts, chapter 126, section 27, could not be harmonized. The later enactment, 1993 Acts, chapter 126, section 27, which strikes and rewrites the section without retaining the subject matter amended by chapter 109, section 12, was codified.
- 521A.5** 1993 Acts, chapter 88, section 30, strikes and rewrites subsection 3, Code 1993, without mention of the amendment in 1992 Acts, chapter 1117, sections 40 and 43, which had rewritten subsection 3, Code Supplement 1991, but was not yet codified because of a deferred effective date. The enactment of the 1993 amendment means that the 1992 amendment will never become effective. The repeal of the 1992 amendment will be proposed in corrective legislation.

# CODE OF IOWA SUPPLEMENT

## 1993

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