

1999 IOWA CODE SUPPLEMENT

Containing

Sections of the Laws of Iowa
of a General and Permanent Nature
Enacted, Amended, Repealed or
otherwise affected by the
1999 Regular Session
of the

GENERAL ASSEMBLY OF THE
STATE OF IOWA



Published under the authority of Iowa Code chapter 2B
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GENERAL ASSEMBLY OF IOWA
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1999

PREFACE TO 1999 IOWA CODE SUPPLEMENT

This 1999 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 It shows sections of the laws of Iowa enacted, amended, repealed, or otherwise affected by the 1999 regular session of the Iowa General Assembly or by an earlier session if the effective date was deferred, arranged in the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 1999 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, 1999. See the 1999 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 1999 Code. A footnote may follow the source note or repeal. 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 1999 Code are not included but will be corrected as necessary and appear in the 2001 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 1999 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 1999 Acts and any previous years' Acts codified in this Supplement, and a table of corresponding sections from the 1999 Code to the 1999 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 1998

ARTICLE I.

BILL OF RIGHTS.

Rights of persons. SECTION 1. All men and women are, by nature, free and equal, and have certain inalienable rights — among which are those of enjoying and defending life and liberty, acquiring,

possessing and protecting property, and pursuing and obtaining safety and happiness.

Amended 1998, Amendment [45]

When indictment necessary — grand jury. SEC. 11. All offenses less than felony and in which the maximum permissible imprisonment does not exceed thirty days shall be tried summarily before an officer authorized by law, on information under oath, without indictment, or the intervention of a grand jury, saving to the defendant the right of appeal; and no person shall be held to answer for any higher criminal offense, unless on presentment or indictment by a grand jury, except in cases arising in the

army, or navy, or in the militia, when in actual service, in time of war or public danger.

The grand jury may consist of any number of members not less than five, nor more than fifteen, as the general assembly may by law provide, or the general assembly may provide for holding persons to answer for any criminal offense without the intervention of a grand jury.

Paragraph 1 amended 1998, Amendment [46]

IOWA CODE SUPPLEMENT

1999

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*" mean 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 branch*" include every officer or employee of the judicial branch 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, an associate juvenile judge, an associate probate 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.

13A. "*Livestock*" includes but is not limited to an animal classified as an ostrich, rhea, or emu.

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

15. Reserved.

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.

21A. *Persons with mental illness.* The words “persons with mental illness” include persons with psychosis, persons who are severely depressed, and persons with any type of mental disease or mental disorder, except that mental illness does not refer to mental retardation as defined in section 222.2, or to insanity, diminished responsibility, or mental incompetency as defined and used in the Iowa criminal code or in the rules of criminal procedure, Iowa court rules, 3d ed. 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.

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 officer 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, and includes an electronic record as defined in

section 554C.201. A signature, when required by law, must be made by the writing or markings of the person whose signature is required. “*Signature*” includes an electronic or digital signature as defined in section 554C.201. If a person is unable due to a physical disability to make a written signature or mark, that person may substitute either of the following in lieu of a signature required by law:

a. The name of the person with a disability written by another upon the request and in the

presence of the person with a disability.

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

40. The word “*year*” means twelve consecutive months.

99 Acts, ch 146, §42

Subsection 39, unnumbered paragraph 1 amended

CHAPTER 6A

EMINENT DOMAIN LAW (CONDEMNATION)

6A.21 Condemnation of agricultural land — definitions.

1. Except as otherwise provided, for purposes of this chapter and chapter 6B:

a. “*Agricultural land*” means real property owned by a person in tracts of ten acres or more and not laid off into lots of less than ten acres or divided by streets and alleys into parcels of less than ten acres, and that has been used for the production of agricultural commodities during three out of the past five years. Such use of property includes, but is not limited to, the raising, harvesting, handling, drying, or storage of crops used for feed, food, seed, or fiber; the care or feeding of livestock; the handling or transportation of crops or livestock; the storage, treatment, or disposal of livestock manure; and the application of fertilizers, soil conditioners, pesticides, and herbicides on crops. Agricultural land includes land on which is located farm residences or outbuildings used for agricultural purposes and land on which is located facilities, structures, or equipment for agricultural purposes. Agricultural land includes land taken out of agricultural production for purposes of environmental protection or preservation.

b. “*Private development purposes*” means the construction of, or improvement related to, recreational trails, recreational development paid for primarily with private funds, housing and residential development, or commercial or industrial enterprise development.

c. “*Public use*” or “*public purpose*” or “*public improvement*” does not include the authority to condemn agricultural land for private development purposes unless the owner of the agricultural land consents to the condemnation.

2. The limitation on the definition of public use, public purpose, or public improvement does not apply to a slum area or blighted area as defined in section 403.17, or to agricultural land acquired for industry as that term is defined in section 260E.2, or to the establishment, relocation, or improvement of a road pursuant to chapter 306, or to the establishment of a railway under the supervision of the department of transportation as provided in section 327C.2, or to an airport as defined in section 328.1, or to land acquired in order to replace or mitigate land used in a road project when federal law requires replacement or mitigation. This limitation also does not apply to utilities or persons under the jurisdiction of the Iowa utilities board in the department of commerce or to any other utility conferred the right by statute to condemn private property or to otherwise exercise the power of eminent domain.

99 Acts, ch 171, §1, 41, 42

Section applies to urban renewal areas established before, on, or after July 1, 1999, and to amendments to such urban renewal areas; see 99 Acts, ch 171, §41

Section applies to state highway construction projects approved for commencement by the transportation commission on or after July 1, 1999, and to all other condemnation proceedings in which the application for condemnation is filed on or after July 1, 1999; see 99 Acts, ch 171, §42

NEW section

CHAPTER 6B

PROCEDURE UNDER EMINENT DOMAIN

6B.2A Notice of proposed public improvement.

1. An acquiring agency shall provide written notification to each owner of record of private prop-

erty that may be the subject of condemnation. The authority under this chapter is not conferred and condemnation proceedings shall not begin unless a good faith effort is made to serve the notice as pro-

vided in this section on the owner of record of the property subject to condemnation. The notice shall be mailed by ordinary mail to the owner of record's last known address no less than thirty days before adoption of the ordinance, resolution, motion, or other declaration of intent to proceed with the public improvement and the acquisition or condemnation, if necessary, of the property. If the location of the public improvement is changed or expanded after the decision has been made to proceed with the public improvement, a notice shall be mailed by ordinary mail no less than thirty days before the adoption of the ordinance, resolution, motion, or other declaration of intent to proceed with a change in the location of the public improvement to the owner of record of the land to be acquired or condemned, if necessary, in the new location of the public improvement affected by the change. The notice shall include the statement of individual rights required under section 6B.2B. The notice shall, at a minimum, include the following information:

a. The general nature of the public improvement.

b. The acquiring agency's intended use of the private property for the public improvement.

c. The process to be followed by the acquiring agency in making the decision to proceed with the public improvement and the acquisition or condemnation, if necessary, of the property.

d. The time, place, and manner at which an opportunity is provided for public input into the decision to proceed with the public improvement and the acquisition or condemnation, if necessary, of the property.

e. The current status in the planning process for the public improvement, including meetings held and decisions made.

2. The authority to condemn is not conferred until the appropriate authority approves the public improvement, including the approval of any permits required by state or federal law which permits are necessary for commencement of the project. This subsection does not apply to land condemned for public improvements undertaken pursuant to section 306.19.

3. If, after making a good faith effort, an acquiring agency is unable to ascertain the owner of record's last known address, or the identity of the owner of record is uncertain, or the mail is returned as undeliverable or is refused, the acquiring agency shall cause a notice to be published once in a newspaper of general circulation in the county or city where the private property is located.

99 Acts, ch 171, §2, 42

Section applies to state highway construction projects approved for commencement by the transportation commission on or after July 1, 1999, and to all other condemnation proceedings in which the application for condemnation is filed on or after July 1, 1999; see 99 Acts, ch 171, §42

NEW section

6B.2B Acquisition negotiation statement of rights.

1. The acquiring agency shall make a good faith effort to negotiate with the owner to purchase the private property before filing an application for condemnation or otherwise proceeding with the condemnation process.

2. The acquiring agency shall provide the owner of record of the private property with a statement of their individual rights to be included with the notice required under section 6B.2A. The attorney general shall adopt rules pursuant to chapter 17A prescribing a statement of rights which may be used in substantial form by any person required to provide the statement by this section.

99 Acts, ch 171, §3, 42

Section applies to state highway construction projects approved for commencement by the transportation commission on or after July 1, 1999, and to all other condemnation proceedings in which the application for condemnation is filed on or after July 1, 1999; see 99 Acts, ch 171, §42

NEW section

6B.3 Application — recording — notice — time for appraisal — new proceedings.

1. The proceedings shall be instituted by a written application filed with the chief judge of the judicial district of the county in which the land sought to be condemned is located. The application shall set forth:

a. A description of all the property in the county affected or sought to be condemned, by its congressional numbers, in tracts not exceeding one-sixteenth of a section, or, if the land consists of lots, by the numbers of the lot and block, and plat designation.

b. A plat showing the location of the right-of-way or other property sought to be condemned with reference to such description.

c. The names of all record owners of the different tracts of land sought to be condemned, or otherwise affected by such proceedings, and of all record holders of liens and encumbrances on such lands; also the place of residence of all such persons so far as known to the applicant.

d. The purpose for which condemnation is sought. For purposes of section 6B.4A, if condemnation of agricultural land is sought by a city or county, or an agency of a city or county, for location of an industry as that term is defined in section 260E.2, the application shall so state. However, the city or county shall not be required to disclose information on an industrial prospect with which the city or county is currently negotiating.

e. A request for the appointment of a commission to appraise the damages.

f. If the damages are to be paid by the state and the land to be condemned is within an agricultural area as provided in chapter 352, a statement disclosing whether any of that land is classified as class I or class II land under the United States de-

partment of agriculture natural resources conservation service land capability classification system contained in the agriculture handbook number 210, 1961 edition and, if so classified, stating that the class I or class II land is reasonably necessary for the work of internal improvement for which condemnation is sought.

g. A showing of the minimum amount of land necessary to achieve the public purpose and the amount of land to be acquired by condemnation for the public improvement. Any land to be acquired by condemnation beyond the necessary minimum to complete the project shall be presumed not to be necessary for a public use or public purpose unless the applicant can show that a substantial need exists for the additional property to achieve the public use or public purpose, or that the land in question is of little or no value or utility to the owner, or that the owner consents to the condemnation.

h. A statement indicating the efforts made by the applicant to negotiate in good faith with the owner to acquire the private property sought to be condemned.

2. The applicant shall mail a copy of the application by certified mail to the owner at the owner's last known address and to any mortgagee of record at the mortgagee's last known address and to any other record lienholder or encumbrancer of the land at the lienholder's or encumbrancer's last known address. If service of notice by certified mail cannot be made in the manner prescribed in this section, the applicant shall cause a notice to be published once in a newspaper of general circulation in the county. If service of notice is made by publication, an affidavit shall be filed with the county recorder along with the application. The affidavit shall state the reason why service of notice by certified mail could not be made, the name of the publication, and the date of the publication. Service of notice by publication shall be deemed complete on the day of publication.

3. The applicant shall promptly certify that its application for condemnation has been approved by the chief judge and shall file the original approved application with the county recorder in the manner required under section 6B.37. The county recorder shall file and index the application in the record of deeds and preserve the application as required by sections 6B.38 and 558.55. The filing and indexing constitute constructive notice to all parties that a proceeding to condemn the property is pending and that the applicant has the right to acquire the property from all owners, lienholders, and encumbrancers whose interests are of record at the time of the filing. After filing and indexing, the county recorder shall file a copy of the application with the office of secretary of state.

When indexed, the proceeding is considered pending so as to charge all persons not having an interest in the property with notice of its pendency, and while pending no interest can be acquired by

the third parties in the property against the rights of the applicant. If the appraisal of damages is not made within one hundred twenty days, the proceedings instituted under this section are terminated and all rights and interests of the applicant arising out of the application for condemnation terminate. The applicant may reinstitute a new condemnation proceeding at any time. The reinstated proceedings are entirely new proceedings and not a revival of the terminated proceeding.

99 Acts, ch 171, §4, 42

1999 amendments apply to state highway construction projects approved for commencement by the transportation commission on or after July 1, 1999, and to all other condemnation proceedings in which the application for condemnation is filed on or after July 1, 1999; see 99 Acts, ch 171, §42

Section amended

6B.4 Commission to assess damages.

Annually the board of supervisors of a county shall appoint not less than twenty-eight residents of the county and the names of such persons shall be placed on a list and they shall be eligible to serve as members of a compensation commission. One-fourth of the persons appointed shall be owner-operators of agricultural property, one-fourth of the persons appointed shall be owners of city property, one-fourth shall be licensed real estate salespersons or real estate brokers, and one-fourth shall be persons having knowledge of property values in the county by reason of their occupation, such as bankers, auctioneers, property managers, property appraisers, and persons responsible for making loans on property.

The chief judge of the judicial district shall select by lot six persons from the list, two persons who are owner-operators of agricultural property when the property to be condemned is agricultural property; two persons who are owners of city property when the property to be condemned is other than agricultural property; and two persons from each of the remaining two representative groups, who shall constitute a compensation commission to assess the damages to all property to be taken by the applicant and located in the county, and shall name a chairperson from the persons selected. A person shall not be selected as a member of the compensation commission if the person possesses any interest in the proceeding which would cause the person to render a biased decision. The clerk of the district court shall send, by ordinary mail, a list of those persons selected to the applicant and to the owner of the property at the owner's last known address. The list shall be provided prior to the mailing, by any party, of a notice of assessment under section 6B.8. If the clerk of the district court is unable to locate an address for the owner of the property, the list shall be published once in a newspaper of general circulation in the county. The applicant shall reimburse the clerk of the district court for the cost of mailing and publication.

A compensation commission appointed pursuant to this section is a governmental body as defined in section 21.2 and its meetings shall be conducted in

compliance with chapter 21. Notice published by the sheriff pursuant to section 6B.11 shall constitute public notice of the meeting pursuant to section 21.4.

99 Acts, ch 171, §5, 6, 42

1999 amendments apply to state highway construction projects approved for commencement by the transportation commission on or after July 1, 1999, and to all other condemnation proceedings in which the application for condemnation is filed on or after July 1, 1999; see 99 Acts, ch 171, §42

Unnumbered paragraph 2 amended
NEW unnumbered paragraph 3

6B.4A Review of applications by compensation commission.

1. If a city or county, or an agency of a city or county, has filed an application for condemnation of agricultural land for industry, the application is subject to review by the compensation commission pursuant to this section.

2. At any time before the thirty-day notice of assessment expires pursuant to section 6B.8, a landowner may apply to the compensation commission for review of the condemnation application to determine whether the use of condemnation is necessary for the placement of an industry in the community. When reviewing an application, the commission shall consider all of the following:

a. The feasibility of acquiring the agricultural land by methods other than condemnation.

b. The public cost and public benefit from locating the industry on the agricultural land.

c. The ability to adapt the industry development plans to avoid the use of condemnation.

d. The existence of a specific industry to be located on the agricultural land.

e. The amount of agricultural land requested to be condemned compared to the total amount of agricultural land needed for the project.

3. The commission shall approve or deny the application for condemnation within thirty days of receiving a request to review the condemnation application. A majority vote of the commission members is necessary to approve or deny a condemnation application. The sheriff shall notify the landowner and condemner of the commission's determination by certified mail.

4. A determination made by the compensation commission pursuant to this section shall be final unless appealed from. An appeal must be filed with the district court within thirty days of mailing the commission's determination to the condemner and the landowner. At the time of appeal, the appellant shall give written notice that the appeal has been taken to the adverse party, or the adverse party's agent or attorney. Notice of an appeal shall be served in the same manner as an original notice. The appeal shall be docketed in the name of the person appealing and all other interested parties to the action shall be defendants.

5. This section does not apply to condemnation of agricultural land if the industry is an eligible business under section 15.329 and the department

of economic development enters into an agreement under section 15.330 with the industry.

6. For purposes of this section, "industry" means the same as defined in section 260E.2.

99 Acts, ch 171, §7, 42

Section applies to state highway construction projects approved for commencement by the transportation commission on or after July 1, 1999, and to all other condemnation proceedings in which the application for condemnation is filed on or after July 1, 1999; see 99 Acts, ch 171, §42

NEW section

6B.7 Commissioners to qualify.

Before proceeding with the assessment all commissioners shall qualify by filing with the sheriff a written oath that they will to the best of their ability faithfully and impartially assess damages and make a written report containing the information used by the commission in assessing the damages to the sheriff. The applicant or the owner may challenge one commissioner without stating cause. A challenge to the appointment of a commissioner must be made to the chief judge of the judicial district no less than seventy-two hours before the condemnation jury is set to meet. A commissioner shall be appointed to fill a vacancy resulting from a challenge no less than twenty-four hours before the jury is set to meet.

99 Acts, ch 171, §8, 42

1999 amendment applies to state highway construction projects approved for commencement by the transportation commission on or after July 1, 1999, and to all other condemnation proceedings in which the application for condemnation is filed on or after July 1, 1999; see 99 Acts, ch 171, §42
Section amended

6B.8 Notice of assessment.

The applicant, or the owner or any lienholder or encumbrancer of any land described in the application, may, at any time after the appointment of the commissioners, have the damages to the lands of any such owner assessed by giving the other party, if a resident of this state, thirty days' notice, in writing. The notice shall specify the day and the hour when the commissioners will view the premises, and shall be personally served in the same manner as original notices. If a city or county, or an agency of a city or county, is seeking to condemn agricultural land for an industry as that term is defined in section 260E.2, the notice shall inform the landowner that the landowner may request that the compensation commission review the application as provided in section 6B.4A.

Service of the notice to a person not a resident of this state shall be by certified mail to the person's last known address. At the same time, the applicant shall cause a notice to be published once in a newspaper of general circulation in the county prior to the day fixed for the appraisal, which day shall be at least thirty days after publication. Service of notice in this manner shall be deemed complete on the day of publication.

99 Acts, ch 171, §9, 42

1999 amendments apply to state highway construction projects approved for commencement by the transportation commission on or after July 1, 1999, and to all other condemnation proceedings in which the application for condemnation is filed on or after July 1, 1999; see 99 Acts, ch 171, §42
Section amended

6B.11 Filing of notices and return of service.

Notices, immediately after the service thereof, shall, with proper return of service endorsed thereon or attached thereto, be filed with the sheriff. The sheriff shall at once cause the commissioners to be notified of the day and hour when they will be required to proceed with the appraisalment. The notice to the commissioners shall also be published by the sheriff pursuant to section 331.305.

99 Acts, ch 171, §10, 42

1999 amendment applies to state highway construction projects approved for commencement by the transportation commission on or after July 1, 1999, and to all other condemnation proceedings in which the application for condemnation is filed on or after July 1, 1999; see 99 Acts, ch 171, §42
Section amended

6B.12 Notice when residence unknown.

If the person's residence is unknown after a good faith effort is made to find the person's last known address, the notice required in section 6B.8 shall be published in a newspaper of general circulation in the county, once each week for at least four successive weeks prior to the day fixed for the appraisalment, which day shall be at least thirty days after the first publication of the notice.

99 Acts, ch 171, §11, 42

1999 amendment applies to state highway construction projects approved for commencement by the transportation commission on or after July 1, 1999, and to all other condemnation proceedings in which the application for condemnation is filed on or after July 1, 1999; see 99 Acts, ch 171, §42
Section amended

6B.14 Appraisalment — report.

The commissioners shall, at the time fixed in the aforesaid notices, view the land sought to be condemned and assess the damages which the owner will sustain by reason of the appropriation; and they shall file their written report with the sheriff. At the request of the condemner or the condemnee, the commission shall divide the damages into parts to indicate the value of any dwelling, the value of the land and improvements other than a dwelling, and the value of any additional damages. The appraisalment and return may be in parcels larger than forty acres belonging to one person and lying in one tract, unless the agent or attorney of the applicant, or the commissioners, have actual knowledge that the tract does not belong wholly to the person in whose name it appears of record; and in case of such knowledge, the appraisalment shall be made of the different portions as they are known to be owned.

In assessing the damages the owner or tenant will sustain, the commissioners shall consider and make allowance for personal property which is damaged or destroyed or reduced in value.

An owner or tenant occupying land which is proposed to be acquired by condemnation shall be awarded a sum sufficient to remove such owner's or tenant's personal property from the land to be acquired, which sum shall represent reasonable costs of moving the personal property from the land to be acquired to a point no greater than fifty miles; but in any event, damages awarded under this section

for moving shall not exceed five thousand dollars for each owner or tenant occupying land proposed to be condemned. An owner or tenant may apply for an award pursuant to this section only if all other damages provided by law have been awarded and such amount awarded is insufficient to pay the owner's or tenant's reasonable costs of moving.

99 Acts, ch 171, §12, 42

1999 amendment applies to state highway construction projects approved for commencement by the transportation commission on or after July 1, 1999, and to all other condemnation proceedings in which the application for condemnation is filed on or after July 1, 1999; see 99 Acts, ch 171, §42
Unnumbered paragraph 3 amended

6B.21 Appeals — how docketed and tried.

The appeal shall be docketed in the name of the person appealing and all other interested parties to the action shall be defendants. In the event the condemner and the condemnee appeal, the appeal shall be docketed in the name of the appellant which filed the application for condemnation and all other parties to the action shall be defendants. The appeal shall be tried as in an action by ordinary proceedings.

99 Acts, ch 171, §13, 42

1999 amendment applies to state highway construction projects approved for commencement by the transportation commission on or after July 1, 1999, and to all other condemnation proceedings in which the application for condemnation is filed on or after July 1, 1999; see 99 Acts, ch 171, §42
Section amended

6B.26 Dispossession of owner.

A landowner shall not be dispossessed under condemnation proceedings of the landowner's residence, dwelling house, outbuildings if the residence or dwelling house is also acquired, orchard, or garden, until the damages thereto have been finally determined and paid. However, if the property described in this section is condemned for highway purposes by the state department of transportation, the condemning authority may take possession of the property either after the damages have been finally determined and paid or one hundred eighty days after the compensation commission has determined and filed its award, in which event all of the appraisalment of damages shall be paid to the property owner before the dispossession can take place. This section shall not apply to condemnation proceedings for drainage or levee improvements, or for public school purposes. For the purposes of this section, "outbuildings" means structures and improvements located in proximity to the landowner's residence.

99 Acts, ch 171, §14, 42

1999 amendment applies to state highway construction projects approved for commencement by the transportation commission on or after July 1, 1999, and to all other condemnation proceedings in which the application for condemnation is filed on or after July 1, 1999; see 99 Acts, ch 171, §42
Section amended

6B.33 Costs and attorney fees.

The applicant shall pay all costs of the assessment made by the commissioners and reasonable attorney fees and costs incurred by the condemnee as determined by the commissioners if the award of the commissioners exceeds one hundred ten percent of the final offer of the applicant prior to condemnation. The applicant shall file with the sheriff

an affidavit setting forth the most recent offer made to the person whose property is sought to be condemned. Members of such commissions shall receive a per diem of fifty dollars and actual and necessary expenses incurred in the performance of their official duties. The applicant shall reimburse the county sheriff for the per diem and expense amounts paid by the sheriff to the members. The applicant shall reimburse the owner for the expenses the owner incurred for recording fees, penalty costs for full or partial prepayment of any pre-existing recorded mortgage entered into in good faith encumbering the property, and for similar expenses incidental to conveying the property to the applicant. The applicant shall also pay all costs occasioned by the appeal, including reasonable attorney fees to be taxed by the court, unless on the trial thereof the same or a lesser amount of damages is awarded than was allowed by the tribunal from which the appeal was taken.

99 Acts, ch 171, §15, 42

1999 amendment applies to state highway construction projects approved for commencement by the transportation commission on or after July 1, 1999, and to all other condemnation proceedings in which the application for condemnation is filed on or after July 1, 1999; see 99 Acts, ch 171, §42
Section amended

6B.38 Record of proceedings.

The county recorder shall record the papers, statements, and certificate in the record of deeds and properly index them. The recorder may return the recorded instrument to the sender or dispose of that instrument if the sender does not wish to have the instrument returned. A document filed in the recorder's office before July 1, 1990, may be returned to the sender or disposed of if the sender does not wish to have the document returned and if there is an official copy of that document in the recorder's office.

The county recorder shall file a copy of the sheriff's statement required by section 6B.35, subsection 5, with the office of the secretary of state.

99 Acts, ch 171, §16, 42

Unnumbered paragraph 2 applies to state highway construction projects approved for commencement by the transportation commission on or after July 1, 1999, and to all other condemnation proceedings in which the application for condemnation is filed on or after July 1, 1999; see 99 Acts, ch 171, §42
NEW unnumbered paragraph 2

6B.42 Eminent domain — payment to displaced persons.

1. *a.* The acquiring agency shall provide to the person, in addition to any other sums of money in payment of just compensation, the payments and assistance required by law, in accordance with chapter 316.

b. A person aggrieved by a determination made as to eligibility for relocation assistance, a payment, or the amount of the payment, upon application, may have the matter reviewed by the appropriate acquiring agency.

c. An acquiring agency subject to this section that proposes to displace a person shall inform the person of the person's right to receive relocation assistance and payments, and of an aggrieved per-

son's right to appeal a determination as to assistance and payments.

2. *a.* A utility or railroad subject to section 327C.2, or chapters 476, 478, 479, 479A, and 479B, authorized by law to acquire property by condemnation, which acquires the property of a person or displaces a person for a program or project which has received or will receive federal financial assistance as defined in section 316.1, shall provide to the person, in addition to any other sums of money in payment of just compensation, the payments and assistance required by law, in accordance with chapter 316.

b. A person aggrieved by a determination made by a utility as to eligibility for relocation assistance, a payment, or the amount of the payment, upon application, may have the matter reviewed by the utilities division of the department of commerce.

c. A person aggrieved by a determination made by a railroad as to eligibility for relocation assistance, a payment, or the amount of the payment, upon application, may have the matter reviewed by the state department of transportation.

d. A utility or railroad subject to this section that proposes to displace a person shall inform the person of the person's right to receive relocation assistance and payments, and of an aggrieved person's right to appeal to the utilities division of the department of commerce or the state department of transportation.

99 Acts, ch 171, §17, 42

1999 amendment applies to state highway construction projects approved for commencement by the transportation commission on or after July 1, 1999, and to all other condemnation proceedings in which the application for condemnation is filed on or after July 1, 1999; see 99 Acts, ch 171, §42
Section amended

6B.45 Mailing copy of appraisal.

When any real property or interest in real property is to be purchased, or in lieu thereof to be condemned, the acquiring agency or its agent shall submit to the person, corporation, or entity whose property or interest in the property is to be taken, by ordinary mail, at least ten days prior to the date of contact, a copy of the appraisal in its entirety upon such real property or interest in such real property prepared for the acquiring agency or its agent, which shall include, at a minimum, an itemization of the appraised value of the real property or interest in the property, any buildings on the property, all other improvements including fences, severance damages, and loss of access. The appraisal sent to the condemnee shall be that appraisal upon which the condemnor will rely to establish an amount which the condemnor believes to be just compensation for the real property. All other appraisals made on the property as a result of the condemnation proceeding shall be made available to the condemnee upon request. In lieu of an appraisal, a utility or person under the jurisdiction of the utilities board of the department of commerce, or any other utility conferred the right by statute to condemn private property, shall provide in writing by certified mail to the owner of record thirty days

prior to negotiations, the methods and factors used in arriving at an offered price for voluntary easements including the range of cash amount of each component.

99 Acts, ch 171, §18, 42

1999 amendment applies to state highway construction projects approved for commencement by the transportation commission on or after July 1, 1999, and to all other condemnation proceedings in which the application for condemnation is filed on or after July 1, 1999; see 99 Acts, ch 171, §42
Section amended

6B.54 Federally assisted project and displacing activities — acquisition policies.

For any project or displacing activity that has received or will receive federal financial assistance as defined in section 316.1, for any state-funded projects, or for any other public improvement for which condemnation is sought, an acquiring agency shall, at a minimum, satisfy the following policies:

1. Every reasonable effort shall be made to acquire expeditiously real property by negotiation.

2. Real property shall be appraised as required by section 6B.45 before the initiation of negotiations, and the owner or the owner's designated representative shall be given an opportunity to accompany at least one appraiser of the acquiring agency during an inspection of the property, except that an acquiring agency may prescribe a procedure to waive the appraisal in cases involving the acquisition of property with a low fair market value. In lieu of an appraisal, a utility or person under the jurisdiction of the utilities board of the department of commerce, or any other utility conferred the right by statute to condemn private property, shall provide in writing by certified mail to the owner of record thirty days before negotiations, the methods and factors used in arriving at an offered price for voluntary easements including the range of cash amount of each component.

3. Before the initiation of negotiations for real property, the acquiring agency shall establish an amount which it believes to be just compensation for the real property, and shall make a prompt offer to acquire the property for the full amount established by the agency. In no event shall the amount be less than the lowest appraisal of the fair market value of the property. In the case of a utility or person under the jurisdiction of the utilities board of the department of commerce, or any other utility conferred the right by statute to condemn private property, the amount shall not be less than the amount indicated by the methods and factors used in arriving at an offered price for a voluntary easement.

4. The construction or development of a public improvement shall be so scheduled that, to the greatest extent practicable, no person lawfully occupying real property shall be required to move from a dwelling or to move the person's business or farm operation without at least ninety days' written notice of the date by which the move is required.

5. If an owner or tenant is permitted to occupy the real property acquired on a rental basis for a short term or for a period subject to termination on short notice, the amount of rent required shall not exceed the fair rental value of the property to a short-term occupier.

6. In no event shall the time of condemnation be advanced, or negotiations or condemnation and the deposit of funds in court for the use of the owner be deferred, or any other coercive action be taken to compel an agreement on the price to be paid for the property.

7. If an interest in real property is to be acquired by exercise of the power of eminent domain, formal condemnation proceedings shall be instituted. The acquiring agency shall not intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of the owner's real property.

8. If the acquisition of only a portion of property would leave the owner with an uneconomical remnant, the acquiring agency shall offer to acquire that remnant. For the purposes of this chapter, an "*uneconomical remnant*" is a parcel of real property in which the owner is left with an interest after the partial acquisition of the owner's property, where the acquiring agency determines that the parcel has little or no value or utility to the owner.

9. A person whose real property is being acquired in accordance with this chapter, after the person has been fully informed of the person's right to receive just compensation for the property, may donate the property, any part of the property, any interest in the property, or any compensation paid for it as the person may determine.

10. As soon as practicable after the date of payment of the purchase price or the date of deposit in court of funds to satisfy the award of compensation in a condemnation proceeding to acquire real property, whichever is earlier, the acquiring agency shall reimburse the owner, to the extent the acquiring agency deems fair and reasonable, for expenses the owner necessarily incurred for all of the following:

a. Recording fees, transfer taxes, and similar expenses incidental to conveying the real property to the acquiring agency.

b. Penalty costs for full or partial prepayment of any preexisting recorded mortgage entered into in good faith encumbering the real property.

Payments and expenditures under this subsection are incidental to and arise out of the program or project for which the acquisition activity takes place. Such payments and expenditures may be made from the funds made available for the program or project.

A person aggrieved by a determination as to the eligibility for or amount of a reimbursement may have the matter reviewed in accordance with section 316.9.

11. An owner shall not be required to surrender possession of real property before the acquiring agency concerned pays the agreed purchase price.

99 Acts, ch 171, §19, 20, 42

1999 amendments to unnumbered paragraph 1 and subsections 2, 3, 8, and 9 apply to state highway construction projects approved for commencement by the transportation commission on or after July 1, 1999, and to all other condemnation proceedings in which the application for condemnation is filed on or after July 1, 1999; see 99 Acts, ch 171, §42

Unnumbered paragraph 1 and subsections 2, 3, 8, and 9 amended

6B.55 Buildings, structures, and improvements on federally assisted programs and projects.

For any program or project that has received or will receive federal financial assistance as defined in section 316.1, for any state-funded projects, or for any other public improvement for which condemnation is sought, an acquiring agency shall at a minimum satisfy the following policies:

1. If an interest in real property is acquired, the acquiring agency shall acquire an equal interest in all buildings, structures, or other improvements located upon the real property which are required to be removed from the real property or which are determined to be adversely affected by the use to which the real property will be put.

2. For the purpose of determining the just compensation to be paid for any building, structure, or other improvement required to be acquired under this section, the building, structure, or other improvement shall be deemed to be a part of the real property to be acquired, notwithstanding the right or obligation of a tenant of the lands, as against the owner of any other interest in the real property, to remove the building, structure, or improvement at the expiration of the tenant's term. The fair market value which the building, structure, or improvement contributes to the fair market value of the real property to be acquired, or the fair market value of the building, structure, or improvement for removal from the real property, whichever is the greater, shall be paid to the owner of the building, structure, or improvement.

3. Payment for the building, structure, or improvement under this section shall not result in duplication of any payments otherwise authorized by state law. The payment shall not be made unless the owner of the land involved disclaims all interest in the improvements of the tenant. In consideration for any such payment, the tenant shall assign, transfer, and release all the tenant's right, title, and interest in and to the improvements. Nothing with regard to the above-mentioned acquisition of buildings, structures, or other improvements shall be construed to deprive the tenant of any rights to reject payment and to obtain payment

for the property interests in accordance with other laws of this state.

99 Acts, ch 171, §21, 42

1999 amendment to unnumbered paragraph 1 applies to state highway construction projects approved for commencement by the transportation commission on or after July 1, 1999, and to all other condemnation proceedings in which the application for condemnation is filed on or after July 1, 1999; see 99 Acts, ch 171, §42

Unnumbered paragraph 1 amended

6B.57 Procedural compliance.

If a city makes a good faith effort to serve, send, or provide the notices or documents required under this chapter to the owner of private property that is or may be the subject of condemnation, but fails to provide the notice or documents to the owner, such failure shall not constitute grounds for invalidation of the condemnation proceeding if the chief judge of the judicial district determines that such failure can be corrected by delaying the condemnation proceedings to allow compliance with the requirement and such failure does not unreasonably prejudice the owner.

99 Acts, ch 171, §22, 42

Section applies to state highway construction projects approved for commencement by the transportation commission on or after July 1, 1999, and to all other condemnation proceedings in which the application for condemnation is filed on or after July 1, 1999; see 99 Acts, ch 171, §42

NEW section

6B.58 Acquiring agency — definition.

For purposes of this chapter, an "acquiring agency" means the state of Iowa or any person or entity conferred the right by statute to condemn private property or to otherwise exercise the power of eminent domain.

99 Acts, ch 171, §23, 42

Section applies to state highway construction projects approved for commencement by the transportation commission on or after July 1, 1999, and to all other condemnation proceedings in which the application for condemnation is filed on or after July 1, 1999; see 99 Acts, ch 171, §42

NEW section

6B.59 Sale of acquired property — reimbursement to landowner.

If an acquiring agency acquires property by condemnation, or by otherwise exercising the power of eminent domain, and that property is later sold by the acquiring agency for more than the acquisition price paid to the landowner, the acquiring agency shall pay to the landowner from whom the property was acquired the difference between the price at which it was acquired and the price at which it was sold by the acquiring agency less the cost of any improvements made to or benefiting the land by the acquiring agency. This section does not apply to property acquired by the Iowa department of transportation.

99 Acts, ch 171, §24, 42

Section applies to state highway construction projects approved for commencement by the transportation commission on or after July 1, 1999, and to all other condemnation proceedings in which the application for condemnation is filed on or after July 1, 1999; see 99 Acts, ch 171, §42

NEW section

CHAPTER 7G

IOWA STATEHOOD SESQUICENTENNIAL

Repealed by 99 Acts, ch 114, §55

CHAPTER 7H

STATEWIDE ELECTED OFFICIALS — SALARIES

7H.1 Annual salaries of elected state officers.

For the fiscal years beginning July 1, 1997, and July 1, 1998, the annual salaries of the governor, lieutenant governor, attorney general, auditor of state, secretary of agriculture, secretary of state, and treasurer of state shall be determined as provided in this section. Commencing with the first pay period which ends during the new fiscal year in July, the annual salaries of the elected state officers enumerated in this section, as their annual salaries existed during the preceding fiscal year, shall be adjusted by an amount equal to the average of the annual cost-of-living pay adjustments negotiated for the members of the collective bargaining units represented by the state police officers council labor union, the American federation of state, county, and municipal employees, and the Iowa united professionals for the same fiscal year.

The annual salaries determined for the elected state officers as provided in this section for the fiscal year beginning July 1, 1998, shall remain in effect for subsequent fiscal years until otherwise provided by the general assembly.

For the fiscal year beginning July 1, 1999, commencing with the first pay period which ends during the new fiscal year in July, the annual salaries of the attorney general, auditor of state, secretary of agriculture, and treasurer of state shall be increased by three percent over their annual salaries existing for the preceding fiscal year. The annual salaries determined for the elected state officials as provided in this paragraph for the fiscal year beginning July 1, 1999, shall remain in effect for subsequent fiscal years until otherwise provided by the general assembly.

99 Acts, ch 200, §16
NEW unnumbered paragraph 2

CHAPTER 7I

COMMUNITY EMPOWERMENT ACT

Transferred to chapter 28; 99 Acts, ch 190, §19, 20

CHAPTER 8

DEPARTMENT OF MANAGEMENT — BUDGET AND FINANCIAL CONTROL ACT

8.6 Specific powers and duties.

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

1. *Forms.* To consult with all state officers and agencies which receive reports and forms from county officers, in order to devise standardized reports and forms which will permit computer processing of the information submitted by county officers, and to prescribe forms on which each municipality, at the time of preparing estimates required under section 24.3, shall be required to compile in parallel columns the following data and estimates for immediate availability to any taxpayer upon request:

a. For the immediate prior fiscal year, revenue from all sources, other than revenue received from property taxation, allocated to each of the several

funds and separately stated as to each such source, and for each fund the unencumbered cash balance thereof at the beginning and end of the year, the amount received by property taxation allocated to each fund, and the amount of actual expenditure for each fund.

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

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

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

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

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

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

5. Reserved.

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

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

8. *Rules.* To make such rules, subject to the approval of the governor, as may be necessary for effectively carrying on the work of the department of management. The director may, with the approval of the executive council, require any state official, agency, department or commission, to require any applicant, registrant, filer, permit holder or license holder, whether individual, partnership,

trust or corporation, to submit to said official, agency, department or commission, the social security or the tax number or both so assigned to said individual, partnership, trust or corporation.

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

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

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

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

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

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

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

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

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

i. Statements showing:

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

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

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

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

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

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

(7) Other data or information as the director deems advisable.

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

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

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

13. *Capital project budgeting requests.* To compile annually all capital project budgeting requests of all state agencies, as defined in section 8.3A, and to consolidate the requests, with individual state agency priorities noted, into a report for submission with the budget documents by the governor pursuant to section 8.22. Any additional information regarding the capital project budgeting requests or priorities shall be compiled and submitted in the same report.

14. *Capital project priority plan.* To prepare annually, in cooperation with the department of general services, a five-year capital project priority plan for all state agencies, as defined in section 8.3A, to be submitted with the budget documents by the governor pursuant to section 8.22. The plan shall include but is not limited to the following:

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

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

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

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

e. The proposed means of funding each capital project.

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

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

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

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

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

15. *Capital project planning and budgeting authority.* To call upon any state agency, as defined

in section 8.3A, for assistance the director may require in performing the director's duties under subsections 13 and 14. All state agencies, upon the request of the director, shall assist the director and are authorized to make available to the director any existing studies, surveys, plans, data, and other materials in the possession of the state agencies which are relevant to the director's duties.

99 Acts, ch 204, §21, 22
Subsection 13 amended
Subsection 14, unnumbered paragraph 1 amended

8.8 Special olympics fund — appropriation.

A special olympics fund is created in the office of the treasurer of state under the control of the department of management. There is appropriated annually from the general fund of the state to the special olympics fund thirty thousand dollars for distribution to one or more organizations which administer special olympics programs benefiting the citizens of Iowa with disabilities.

99 Acts, ch 208, §15
Section amended

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, and 663.44.

99 Acts, ch 135, §1
Section amended

8.62 Use of reversions.

1. For the purposes of this section, "operational appropriation" means an appropriation from the general fund of the state providing for salary, support, administrative expenses, or other personnel-related costs.

2. Notwithstanding the provisions of section 8.33 or any other provision of law to the contrary, if on June 30 of a fiscal year, a balance of an operational appropriation remains unexpended or unencumbered, not more than fifty percent of the balance may be encumbered by the agency to which the appropriation was made and used as provided in this section and the remaining balance shall be deposited in the cash reserve fund created in section 8.56. Moneys encumbered under this section shall only be used by the agency during the succeeding fiscal year for employee training, technology enhancement, or purchases of goods and services from Iowa prison industries. Unused

moneys encumbered under this section shall be deposited in the cash reserve fund on June 30 of the succeeding fiscal year.

3. On or before June 30 of the fiscal year following the fiscal year in which funds were encumbered under this section, an agency encumbering funds under this section shall report to the joint appropriations subcommittee which recommends funding for the agency, the legislative fiscal bureau, the department of management, and the legislative fiscal committee of the legislative council detailing how the moneys were expended. Moneys shall not be encumbered under this section from an appropriation which received a transfer from another appropriation pursuant to section 8.39.

99 Acts, ch 182, §1, 2
Subsection 2 amended
Subsection 4 stricken

8.63 Innovations fund.

1. An innovations fund is created in the state treasury under the control of the department of management for the purpose of stimulating and encouraging innovation in state government by the awarding of repayable loans to state agencies.

2. The director of the department of management shall establish an eight-member committee to be called the state innovations fund committee. The committee shall review all requests for funds and approve loans of funds if the committee determines that an agency request would result in cost savings or added revenue to the general fund of the state. Eligible projects are projects which cannot be funded from an agency's operating budget without adversely affecting the agency's normal service levels. Projects may include, but are not limited to, purchase of advanced technology, contracting for expert services, and acquisition of equipment or supplies.

3. A state agency seeking a loan from the innovations fund shall complete an application form

designed by the state innovations fund committee which employs a return on investment concept and demonstrates how state general fund expenditures will be reduced or how state general fund revenues will increase. Minimum loan requirements for state agency requests shall be determined by the committee. As an incentive to increase state general fund revenues, an agency may retain up to fifty percent of savings realized in connection with a loan from the innovations fund. The amount retained shall be determined by the innovations fund committee.

4. *a.* In order for the innovations fund to be self-supporting, the innovations fund committee shall establish repayment schedules for each innovation fund loan awarded. Agencies shall repay the funds over a period not to exceed five years with interest, at a rate to be determined by the innovations fund committee.

b. If the department of management and the department of revenue and finance certify that the savings from a proposed innovations fund project will result in a net increase in the balance of the general fund of the state without a corresponding cost savings to the requesting agency, and if the requesting agency meets all other eligibility requirements, the innovations fund committee may approve the loan for the project and not require repayment by the requesting agency. There is appropriated from the general fund of the state to the department of revenue and finance an amount sufficient to repay the loan amount.

5. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys deposited in the innovations fund shall be credited to the innovations fund. Notwithstanding section 8.33, moneys remaining in the innovations fund at the end of a fiscal year shall not revert to the general fund of the state.

99 Acts, ch 208, §16
Subsection 4 amended

CHAPTER 8A

IOWA COUNCIL ON HUMAN INVESTMENT

8A.2 Innovation zones. Repealed by 98 Acts, ch 1206, § 19. See § 28.5.

Section not amended; reference change applied

CHAPTER 8D

IOWA COMMUNICATIONS NETWORK

Appropriations for network costs; review of ownership of network; support of technology programs; century date change programming; system upgrades; 95 Acts, ch 217; 96 Acts, ch 1209; 97 Acts, ch 210; 98 Acts, ch 1224; 99 Acts, ch 196; 99 Acts, ch 207

8D.3 Iowa telecommunications and technology commission — members — duties.

1. *Commission established.* A telecommunications and technology commission is established with the sole authority to supervise the management, development, and operation of the network and ensure that all components of the network are technically compatible. The commission shall ensure that the network operates in an efficient and responsible manner consistent with the provisions of this chapter for the purpose of providing the best economic service attainable to the network users consistent with the state's financial capacity. The commission shall ensure that educational users and the use, design, and implementation for educational applications be given the highest priority concerning use of the network. The commission shall provide for the centralized, coordinated use and control of the network.

2. *Members.* The commission is composed of five members appointed by the governor and subject to confirmation by the senate. Members of the commission shall not serve in any manner or be employed by an authorized user of the network or by an entity seeking to do or doing business with the network. The governor shall appoint a member as the chairperson of the commission from the five members appointed by the governor, subject to confirmation by the senate. Members of the commission shall serve six-year staggered terms as designated by the governor and appointments to the commission are subject to the requirements of sections 69.16, 69.16A, and 69.19. Vacancies shall be filled by the governor for the duration of the unexpired term. The salary of the members of the commission shall be twelve thousand dollars per year, except that the salary of the chairperson shall be seventeen thousand dollars per year. Members of the commission shall also be reimbursed for all actual and necessary expenses incurred in the performance of duties as members. Meetings of the commission shall be held at the call of the chairperson of the commission. In addition to the members appointed by the governor, the auditor of state or the auditor's designee shall serve as a nonvoting, ex officio member of the commission.

The benefits and salary paid to the members of the commission shall be adjusted annually equal to the average of the annual pay adjustments, expense reimbursements, and related benefits pro-

vided under collective bargaining agreements negotiated pursuant to chapter 20.

3. *Duties.* The commission shall do all of the following:

a. Enter into agreements pursuant to chapter 28E as necessary and appropriate for the purposes of the commission. However, the commission shall not enter into an agreement with an unauthorized user or any other person pursuant to chapter 28E for the purpose of providing such user or person access to the network.

b. Adopt rules pursuant to chapter 17A as deemed appropriate and necessary, and directly related to the implementation and administration of the duties of the commission. The commission, in consultation with the department of general services, shall also adopt and provide for standard communications procedures and policies relating to the use of the network which recognize, at a minimum, the need for reliable communications services.

c. Establish an appeal process for review by the commission of a scheduling conflict decision, including a scheduling conflict involving an educational user, or the establishment of a fee associated with the network upon the request of a person affected by such decision or fee. A determination made by the commission pursuant to this paragraph shall be final.

d. Review and approve for adoption, rules as proposed and submitted by an authorized user group necessary for the authorized user group's access and use of the network. The commission may refuse to approve and adopt a proposed rule, and upon such refusal, shall return the proposed rule to the respective authorized user group proposing the rule with a statement indicating the commission's reason for refusing to approve and adopt the rule.

e. (1) Develop and issue for response all requests for proposals for any construction, installation, repair, maintenance, or equipment and parts necessary for the network. In preparing the request for proposals, the commission shall do all of the following:

(a) Review existing requests for proposals related to the network.

(b) Consider and evaluate all competing technologies which could be used in any construction, installation, repair, or maintenance project.

(c) Allow flexibility for proposals to be submitted in response to a request for proposals issued

by the commission such that any qualified provider may submit a bid on a site-by-site basis, or on a merged area or defined geographic area basis, or both, and by permitting proposals to be submitted for use of competing or alternative technologies in each defined area.

(d) Ensure that rural communities have access to comparable services to the services provided in urban areas resulting from any plans to construct, install, repair, or maintain any part of the network.

(2) In determining which proposal to recommend to the general assembly to accept, consider what is in the long-term best interests of the citizens of the state and the network, and utilize, if possible, the provision of services with existing service providers consistent with those best interests. In determining what is in the long-term best interests of the citizens of the state and the network, the commission, at a minimum, shall consider the cost to taxpayers of the state.

(3) Deliver a written report and all proposals submitted in response to the request for proposals for Part III to the general assembly no later than January 1, 1995. The commission shall not enter into any agreement related to such proposals without prior authorization by a constitutional majority of each house of the general assembly and approval by the governor.

f. Annually prepare a written five-year financial plan for the network which shall be provided to the general assembly and the governor no later than January 15 of each year. The plan shall include estimates for income and expenses for the network for the five-year period and the actual income and expenses for the preceding fiscal year. The plan shall include the amount of general fund appropriations to be requested for the payment of operating expenses and debt service. The plan shall also include any recommendations of the commission related to changes in the system and other items as deemed appropriate by the commission. The recommendations of the commission contained in the plan shall include a detailed plan for the connection of all public schools to the network, including a discussion and evaluation of all potential financing options, an estimate of all costs incurred in providing such connections, and a schedule for completing such connections, including the anticipated final completion date for such connections.

g. Review existing maintenance contracts and past contracts to determine vendor capability to perform the obligations under such contracts. The commission shall report to the general assembly prior to January 1 of each year as to the performance of all vendors under each contract and shall make recommendations concerning continued funding for the contracts.

h. Pursue available opportunities to cooperate and coordinate with the federal government for the use and potential expansion of the network and for the financing of any such expansion.

i. Evaluate existing and projected rates for use of the system and ensure that rates are sufficient to pay for the operation of the system excluding the cost of construction and lease costs for Parts I, II, and III. The commission shall establish all hourly rates to be charged to all authorized users for the use of the network. A fee established by the commission to be charged to a hospital licensed pursuant to chapter 135B, a physician clinic, or the federal government shall be at an appropriate rate so that, at a minimum, there is no state subsidy related to the costs of the connection or use of the network related to such user.

j. Make recommendations to the general assembly, as deemed appropriate by the commission, concerning the operation of the network.

k. Provide necessary telecommunications cabling to provide state communications.

99 Acts, ch 207, §§

Creation of information technology department effective July 1, 2000; link to Iowa telecommunications and technology commission; transition provisions; 99 Acts, ch 207, §§ 6, 7, 22

Subsection 3, NEW paragraph k

8D.13 Iowa communications network.

1. Moneys in the Iowa communications network fund are appropriated to the Iowa telecommunications and technology commission for purposes of providing financing for the procurement, operation, and maintenance of the Iowa communications network with sufficient capacity to serve the video, data, and voice requirements of the educational telecommunications system consisting of Part I, Part II, and Part III, and other public and private agencies.

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

a. “*Part I*” means the communications connections between central switching and institutions under the control of the board of regents, nonprofit institutions of higher education eligible for tuition grants, and the regional switching centers for the remainder of the network.

b. “*Part II*” means the communications connections between the regional switching centers and the secondary switching centers.

c. “*Part III*” means the communications connection between the secondary switching centers and the agencies defined in section 8D.2, subsections 4 and 5, excluding state agencies, institutions under the control of the board of regents, nonprofit institutions of higher education eligible for tuition grants, and the judicial branch, judicial district departments of correctional services, hospitals and physician clinics, agencies of the federal government, and post offices.

3. The financing for the procurement costs for the entirety of Part I except for the communications connections between central switching and institutions under the control of the board of regents, and nonprofit institutions of higher education eligible for tuition grants, and for the video, data, and voice

capacity for state agencies and for Part II and Part III, shall be provided by the state. The financing for the procurement and maintenance costs for Part III shall be provided by the state. A local school board, governing authority of a nonpublic school, or an area education agency 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 network. The basis for the amount of state financing is one hundred percent of a single interactive audio and interactive video connection for Part III, and such data and voice capacity as is necessary. If a school board, governing authority of a nonpublic school, or area education agency board elects to provide one hundred percent of the financing for the leasing costs for Part III, the school district or area education agency may become part of the network as soon as the network can reasonably connect the district or agency. A local school board, governing authority of a nonpublic school, or an area education agency board may also elect not to become part of the network. Construction of Part III, related to a school board, governing authority of a nonpublic school, or area education agency board which provides one hundred percent of the financing for the leasing costs for Part III, may proceed as determined by the commission and consistent with the purpose of this chapter.

4. The commission shall develop the requests for proposals that are needed for the Iowa communications network with sufficient capacity to serve the video, data, and voice requirements of state agencies and for educational telecommunications applications. The commission shall develop a request for proposals for each of the systems that will make up the network. The commission may develop a request for proposals for each definitive component of the network or the commission 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 network consistent with the provisions of this chapter, may require maintenance costs to be identified, and the resulting contract may provide for maintenance for parts of the network. The master contract may provide for electronic classrooms, satellite equipment, receiving equipment, studio and production equipment, and other associated equipment as required.

5. The state shall lease all fiberoptic cable facilities or facilities with DS-3 capacity for Part III connections for which state funding is provided. The state shall lease all fiberoptic cable facilities or facilities with DS-3 or DS-1 capacity for the judicial branch, judicial district department of correctional services, and state agency connections for which state funding is provided. Such facilities shall be leased from qualified providers. The state shall not

own such facilities, except for those facilities owned by the state as of January 1, 1994.

The lease provisions of this subsection do not apply to a school district which elects to provide one hundred percent of the financing for the district's connection.

6. 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.

7. The commission shall be responsible for the network design and shall be responsible for the implementation of each component of the network as it is incorporated into the network. 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 commission shall be responsible for all management, operations, control switching, diagnostics, and maintenance functions of network operations as provided in this chapter. 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.

8. The education telecommunications council shall review all requests for grants for educational telecommunications applications, if they are a part of the Iowa communications network, to ensure that the educational telecommunications application is consistent with the telecommunications plan. All other grant requests shall be reviewed as determined by the commission. If the education telecommunications council 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 the commission's 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 commission, 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 and state communications shall be based on the ongoing operational costs of the network and of providing state communications only. For the services rendered to state agencies by the commission, the commission shall prepare a statement of services rendered and the agencies shall pay in a manner consistent with procedures established by the department of revenue and finance.

12. The commission, on its own or as recommended by an advisory committee of the commission and approved by the commission, shall permit a fee to be charged by a receiving site to the originator of the communication provided on the network. The fee charged shall be for the purpose of recovering the operating costs of a receiving site. The fee charged shall be reduced by an amount received by the receiving site pursuant to a state appropriation for such costs, or federal assistance received for such costs. Fees established under this subsection shall be paid by the originator of the communication directly to the receiving site. For purposes of this section, "operating costs" include the costs associated with the management or coordination, operations, utilities, classroom, equipment, maintenance, and other costs directly related to providing the receiving site.

13. The auditor of state shall, no less than annually, examine the financial condition and transactions of the commission as provided in chapter 11. A copy of the auditor's report concerning such examination shall be provided to the general assembly.

14. 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.

15. Access to the network shall be offered to the judicial district departments of correctional services established in section 905.2, provided that such departments contribute an amount consistent with their share of use for the part of the system in which the departments participate, as determined by the commission.

16. Access shall be offered to hospitals licensed pursuant to chapter 135B and physician clinics for diagnostic, clinical, consultative, data, and educational services for the purpose of developing a comprehensive, statewide telemedicine network, to an agency of the federal government, and to a post office defined as a public agency pursuant to section 8D.2, subsection 5. A hospital, physician clinic, an agency of the federal government, or a post office defined as a public agency pursuant to section 8D.2, subsection 5, shall be responsible for all costs associated with becoming a part of the network.

17. Access shall be offered to the judicial branch provided that the judicial branch contributes an amount consistent with the judicial branch's share of use for the part of the network in which the judicial branch participates, as determined by the commission.

18. Notwithstanding chapter 476, the provisions of chapter 476 shall not apply to a public utility in furnishing a telecommunications service or facility to the commission for the Iowa communications network or to any authorized user of the Iowa communications network for such authorized user's connection to the network.

19. Access to the network shall be offered to the department of public safety and the department of public defense for the purpose of establishing and operating a shared data-only network providing law enforcement, emergency management, disaster service, emergency warning, and other emergency information dissemination services to federal, state, and local law enforcement agencies as provided in section 80.9, and local emergency management offices established under the authority of sections 29C.9 and 29C.10.

Appropriations for network costs; review of ownership of network; support of technology programs; century date change programming; system upgrades; 95 Acts, ch 217; 96 Acts, ch 1209; 97 Acts, ch 210; 98 Acts, ch 1224; 99 Acts, ch 207

Section not amended; footnote revised

CHAPTER 9

SECRETARY OF STATE

9.2A Records relating to condemnation.

The secretary of state shall receive and preserve in the secretary's office all papers transmitted to the secretary in relation to condemnation and shall keep an alphabetical list of acquiring agencies in a book provided for that purpose, in which shall be entered the name of the acquiring agency, the

county in which the real property is located, and the date the condemnation application was filed.

99 Acts, ch 171, §25, 42

Section applies to state highway construction projects approved for commencement by the transportation commission on or after July 1, 1999, and to all other condemnation proceedings in which the application for condemnation is filed on or after July 1, 1999; see 99 Acts, ch 171, §42

NEW section

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 22 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 22 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, building, or other area in which hogs or cattle fed for slaughter are confined. The term includes areas which are used for the raising of crops or other vegetation and upon which hogs or cattle fed for slaughter are allowed to graze or feed.

13. “*Fiduciary capacity*” means an undertaking to act as executor, administrator, personal representative, guardian, conservator or receiver.

14. “*Grantor*” means a natural person, other than a nonresident alien as defined under this sec-

tion, who is the creator of a revocable trust or a trust.

15. “*Limited liability company*” means a limited liability company as defined in section 490A.102.

16. “*Limited partnership*” means a partnership as defined in section 487.101, subsection 7, which owns or leases agricultural land or is engaged in farming.

17. “*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.

18. “*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.

19. “*Processor*” means a person, firm, corporation, limited liability company, or limited partnership, which alone or in conjunction with others, directly or indirectly controls the manufacturing, processing or preparation for sale of beef or pork products having a total annual wholesale value of ten million dollars or more. Any person, firm, corporation, 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.

20. “*Revocable trust*” means a trust which provides that the grantor retains the power to amend, modify, or revoke the trust at any time prior to the death of the grantor, regardless of whether, subsequent to the execution of the revocable trust and at any time prior to death, the grantor is legally competent to exercise the power to amend, modify, or revoke the trust and regardless of when the trust is created.

21. “*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. Testamentary trust includes a revocable trust that has not been revoked prior to the grantor's death.

22. "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, or a revocable trust. A trust includes a legal entity holding property as trustee, agent, escrow agent, attorney in fact, and in any similar capacity.

99 Acts, ch 169, §1
Subsection 12 amended

CHAPTER 10A

DEPARTMENT OF INSPECTIONS AND APPEALS

Division of administrative hearings established effective July 1, 1999, and applying to agency proceedings commenced, or conducted on a remand from a court or other agency, on or after that date;
98 Acts, ch 1202, §1-3, 45, 46

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.

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, 135G, 135H, 135J, 137C, 137D, and 137F.

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.

98 Acts, ch 1202, §1, 46
For 1998 amendments to this section effective July 1, 1999, see 98 Acts, ch 1202, §1, 46
Subsection 5 amended

10A.106 Divisions of the department.

The department is comprised of the following divisions:

1. Administrative hearings division.
2. Audits division.
3. Investigations division.
4. Inspections division.

The allocation of departmental duties to the divisions of the department in sections 10A.302, 10A.402, and 10A.502 does not prohibit the direc-

tor from reallocating departmental duties within the department. The director shall not reallocate any of the duties of the division of administrative hearings, created by section 10A.801, to any other unit of the department.

98 Acts, ch 1202, §2, 46
For 1998 amendments to this section effective July 1, 1999, see 98 Acts, ch 1202, §2, 46
Section amended

ARTICLE II

APPEALS AND FAIR HEARINGS DIVISION

See §10A.801

10A.201 Definitions. Repealed by 98 Acts, ch 1202, § 45, 46.

Section repealed effective July 1, 1999; 98 Acts, ch 1202, § 45, 46

10A.202 Responsibilities. Repealed by 98 Acts, ch 1202, § 45, 46.

Section repealed effective July 1, 1999; 98 Acts, ch 1202, § 45, 46
With respect to proposed amendments to former §10A.202 by 99 Acts, ch 192, §33, see Code editor's note

10A.403 Investigators — peace officer status.

Investigators of the division shall have the powers and authority of peace officers when acting within the scope of their responsibilities to conduct investigations as specified in section 10A.402, subsection 7. An investigator shall not carry a weapon to perform responsibilities as described in this section.

99 Acts, ch 80, §1
NEW section

ARTICLE VIII

ADMINISTRATIVE HEARINGS DIVISION

10A.801 Division of administrative hearings — creation, powers, duties.

1. *Definitions.* For purposes of this section, unless the context otherwise requires:

a. *“Administrator”* means the chief administrative law judge who shall coordinate the administration of the division.

b. *“Division”* means the administrative hearings division of the department of inspections and appeals.

2. The administrator shall coordinate the division's conduct of appeals and administrative hearings as otherwise provided by law.

3. a. The department shall employ a sufficient number of administrative law judges to conduct proceedings for which agencies are required, by section 17A.11 or any other provision of law, to use an administrative law judge employed by the division. An administrative law judge employed by the division shall not perform duties inconsistent with the judge's duties and responsibilities as an administrative law judge and shall be located in an office that is separated from the offices of the agencies for

which that person acts as a presiding officer. Administrative law judges shall be covered by the merit system provisions of chapter 19A.

b. The division shall facilitate, insofar as practicable, specialization by its administrative law judges so that particular judges may become expert in presiding over cases in particular agencies. An agency may, by rule, identify particular classes of its contested cases for which the administrative law judge who acts as presiding officer shall have specified technical expertness. After the adoption of such a rule, the division may assign administrative law judges to preside over those identified particular classes of contested cases only if the administrative law judge possesses the technical expertness specified by agency rule. The division may charge the applicable agency for the costs of any training required by the division's administrative law judges to acquire or maintain the technical expertise specified by agency rule.

4. If the division cannot furnish one of its administrative law judges in response to an agency request, the administrator shall designate in writing a full-time employee of an agency other than the requesting agency to serve as administrative law judge for the proceeding, but only with the consent of the employing agency. The designee must possess the same qualifications required of administrative law judges employed by the division.

5. The division may furnish administrative law judges on a contract basis to any governmental entity to conduct any proceeding.

6. After July 1, 1999, a person shall not be newly employed by the division as an administrative law judge to preside over contested case proceedings unless that person has a license to practice law in this state.

7. The division shall adopt rules pursuant to this chapter and chapter 17A to do all of the following:

a. To establish procedures for agencies to request and for the administrator to assign administrative law judges employed by the division.

b. To establish procedures and adopt forms, consistent with chapter 17A and other provisions of law, to govern administrative law judges employed by the division, but any rules adopted under this paragraph shall be applicable to a particular contested case proceeding only to the extent that they are not inconsistent with the rules of the agency under whose authority that proceeding is conducted. Nothing in this paragraph precludes an agency from establishing procedural requirements otherwise within its authority to govern its contested case proceedings, including requirements with respect to the timeliness of decisions rendered for it by administrative law judges.

c. To establish standards and procedures for the evaluation, training, promotion, and discipline for the administrative law judges employed by the division. Those procedures shall include provisions

for each agency for whom a particular administrative law judge presides to submit to the division on a periodic basis the agency's views with respect to the performance of that administrative law judge or the need for specified additional training for that administrative law judge. However, the evaluation, training, promotion, and discipline of all administrative law judges employed by the division shall remain solely within the authority of the division.

d. To establish, consistent with the provisions of this section and chapter 17A, a code of administrative judicial conduct that is similar in function and substantially equivalent to the Iowa code of judicial conduct, to govern the conduct, in relation to their quasi-judicial functions in contested cases, of all persons who act as presiding officers under the authority of section 17A.11, subsection 1. The code of administrative judicial conduct shall separately specify which provisions are applicable to agency heads or members of multimembered agency heads when they act as presiding officers, taking into account the objectives of the code and the fact that agency heads, unlike administrative law judges, have other duties imposed upon them by law. The code of administrative judicial conduct may also contain separate provisions, that are appropriate and consistent with the objectives of such a code, to govern the conduct of agency heads or the members of multimember agency heads when they act as presiding officers. However, a provision of the code

of administrative judicial conduct shall not be made applicable to agency heads or members of multimember agency heads unless the application of that provision to agency heads and members of multimember agency heads has previously been approved by the administrative rules coordinator.

e. To facilitate the performance of the responsibilities conferred upon the division by this section, chapter 17A, and any other provision of law.

8. The division may do all of the following:

a. Provide administrative law judges, upon request, to any agency that is required to or wishes to utilize the services of an administrative law judge employed by the division.

b. Maintain a staff of reporters and other personnel.

c. Administer the provisions of this section and rules adopted under its authority.

9. The division may charge agencies for services rendered and the payment received shall be considered repayment receipts as defined in section 8.2.

10. Except to the extent specified otherwise by statute, decisions of administrative law judges employed by the division are subject to review by the agencies for which they act as presiding officers as provided by section 17A.15 or any other provision of law.

98 Acts, ch 1202, §3, 46

Section effective July 1, 1999; 98 Acts, ch 1202, §3, 46

NEW section

CHAPTER 12

TREASURER OF STATE

12.27 Credit rules. Repealed by 99 Acts, ch 73, § 1.

12.32 Definitions.

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

1. "*Eligible borrower*" means any person who is in the business or is entering the business of producing, processing, or marketing horticultural crops or nontraditional crops in this state or any person in this state who is qualified to participate in one of the programs in this division. "*Eligible borrower*" does not include a person who has been determined to be delinquent in making child support payments or any other payments due the state.

2. "*Eligible lending institution*" means a financial institution that is empowered to make commercial loans and is eligible pursuant to chapter 12C to be a depository of state funds.

3. "*Linked investment*" means a certificate of deposit placed pursuant to this division by the treasurer of state with an eligible lending institution, at an interest rate not more than three percent be-

low current market rate on the condition that the institution agrees to lend the value of the deposit, according to the investment agreement provided in section 12.35, to an eligible borrower at a rate not to exceed four percent above the rate paid on the certificate of deposit. The treasurer of state shall determine and make available the current market rate which shall be used each month.

4. "*Qualified linked investment*" means a linked investment in which a certificate of deposit is placed by the treasurer of state with an eligible lending institution under the traditional livestock producers linked investment program* established under section 12.43A.

99 Acts, ch 177, §1, 9

*"Traditional livestock producers linked investment loan program" probably intended; corrective legislation is pending
NEW subsection 4

12.34 Linked investments — limitations — rules — maturity and renewal of certificates.

1. The treasurer of state may invest up to the lesser of one hundred eight million dollars or ten percent of the balance of the state pooled money

fund in certificates of deposit in eligible lending institutions as provided in this division. The moneys invested pursuant to this section shall be used as follows:

a. The treasurer of state may invest up to sixty-eight million dollars to support programs provided in this division other than the traditional livestock producers linked investment loan program as provided in section 12.43A and the value-added agricultural linked investment loan program as provided in section 12.43B.

b. The treasurer of state shall invest the remaining amount as follows:

(1) At least twenty million dollars shall be invested in order to support the traditional livestock producers linked investment loan program as provided in section 12.43A.

(2) At least twenty million dollars shall be invested in order to support the value-added agricultural linked investment loan program as provided in section 12.43B.

2. *a.* The treasurer of state shall adopt rules pursuant to chapter 17A to administer this division.

b. The treasurer of state in cooperation with the board of directors of the agricultural development authority as established in section 175.3 shall adopt rules for the administration of the traditional livestock producers linked investment loan program as provided in section 12.43A. The treasurer of state in cooperation with the agricultural products advisory council established in section 15.203 shall adopt rules for the administration of the value-added agricultural linked investment loan program as provided in section 15.204.

3. A certificate of deposit, which is placed by the treasurer of state with an eligible lending institution on or after July 1, 1996, may be renewed at the option of the treasurer. The following shall apply to the certificate of deposit:

a. For a linked investment other than a qualified linked investment, the initial certificate of deposit for a given borrower shall have a maturity of one year. The certificate of deposit may be renewed on an annual basis for a total term not to exceed five years.

b. For a qualified linked investment, the initial certificate of deposit for a given borrower shall have a maturity of one year. The certificate of deposit may be renewed on an annual basis for a total term not to exceed three years.

99 Acts, ch 177, § 2, 7, 9

Investment agreements in effect on May 24, 1999, excepted from provisions of 1999 amendments; agency review and report on programs; 99 Acts, ch 177, § 7-9

Section amended

12.41 Horticultural and nontraditional crops linked investment loan program.

The treasurer of state shall adopt rules to implement a horticultural and nontraditional crops linked investment loan program to provide statewide availability of lower cost funds for lending

that will stimulate existing or encourage new businesses in the areas of producing, processing, or marketing horticultural or nontraditional crops. The rules shall be in accordance with the following:

1. In order to qualify as an eligible borrower, the loan application must be for the purchase or lease of land, machinery, equipment, or the purchase of other inputs used in the business of producing, processing, or marketing horticultural or nontraditional crops as defined in rules adopted by the treasurer.

2. The gross income earned by the borrower's business of producing, processing, or marketing horticultural or nontraditional crops is not more than three hundred thousand dollars for the borrower's last tax year.

3. Loan proceeds shall not be used to refinance existing debt, including credit card debt. However, proceeds may be used to refinance a short-term bridge loan made in anticipation of the treasurer's approval of the linked investment loan package.

4. The maximum loan amount that an eligible borrower may receive under this program is two hundred thousand dollars for a production loan and five hundred thousand dollars for processing or marketing facilities.

99 Acts, ch 177, § 3, 9

NEW subsection 2 and former subsections 2 and 3 renumbered as 3 and 4

12.43A Traditional livestock producer's linked investment loan program.

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

a. "Farm operation" means the same as defined in section 352.2.

b. "Livestock" means cattle or swine.

c. "Livestock operation" means an animal feeding operation as defined in section 455B.161 in which livestock is provided care and feeding, or any other area which is used for raising crops or other vegetation and upon which livestock is fed or allowed to graze.

d. "Traditional livestock producer" means a person who is the owner and operator of livestock subject to care and feeding at a livestock operation in which the person holds a legal interest. The person may own the livestock or own the livestock jointly with another person. As the owner operator, the person must make daily management decisions and perform physical work which significantly contributes to the care and feeding of the livestock.

2. The treasurer of state shall adopt rules as provided in section 12.34 to implement a traditional livestock producers linked investment loan program. The purpose of the program is to increase the availability of lower cost loans to traditional livestock producers.

3. In order to qualify for a loan in accordance with an investment agreement under this division, all of the following requirements must be satisfied:

a. In order to be an eligible borrower, all of the following must apply:

(1) The borrower must be a traditional livestock producer.

(2) The borrower must be a resident of this state who is at least eighteen years of age.

(3) The borrower must not be any of the following:

(a) A party to a pending legal or administrative action, including a contested case proceeding under chapter 17A, relating to an alleged violation involving an animal feeding operation as regulated by the department of natural resources, regardless of whether the pending action is brought by the department or the attorney general.

(b) Classified as a habitual violator for a violation of state law involving an animal feeding operation as regulated by the department of natural resources.

b. The livestock operation must be located in this state.

c. The gross income earned by the borrower's farm operation must be more than fifty thousand dollars but not more than three hundred thousand dollars for the borrower's last tax year.

d. At least fifty percent of the gross income earned by the borrower's farm operation during the last tax year must derive from livestock owned and sold by the borrower.

4. An investment agreement shall not be for a loan of more than one hundred thousand dollars.

5. A borrower is not eligible to receive a loan as part of a linked investment loan package under this

program if the borrower has received three loans pursuant to a linked investment loan package under this program approved by the treasurer of state within the last ten years. For purposes of this subsection, a loan provided as part of a renewed certificate of deposit shall be deemed to be a new loan.

99 Acts, ch 177, §4, 9
NEW section

12.43B Value-added agricultural linked investment loan program.

1. The treasurer of state shall establish and administer, and adopt rules as necessary to establish and administer, a value-added agricultural linked investment loan program. The purpose of the program is to provide capital in the form of low-interest loans in order to do any of the following:

a. Stimulate existing businesses or encourage the establishment of new businesses that add value through the processing of agricultural commodities.

b. Encourage the production of agricultural commodities, if a shortage in production exists.

2. A borrower shall be eligible to participate in the value-added agricultural linked investment loan program, to the extent that the borrower meets eligibility requirements established by the treasurer of state as provided in section 12.34.

3. A borrower shall not receive a loan of more than two hundred fifty thousand dollars under this program.

99 Acts, ch 177, §5, 9
NEW section

CHAPTER 12C

DEPOSIT OF PUBLIC FUNDS

12C.1 Deposits in general — definitions.

1. All funds held by 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. Notwithstanding provisions of this section to the contrary, public funds of a state government deferred compensation plan established by the executive council may also be invested in the investment products authorized under section 509A.12.

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

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. “Bank” also means a savings and loan or savings association.

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 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 credit union, then public deposits in the 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, public deposits in the bank shall be secured pursuant to sections 12C.23A 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.

99 Acts, ch 117, §1–4, 15; 99 Acts, ch 208, §42, 74
 Subsection 2, paragraphs c and f amended
 Subsection 3, paragraphs a and b amended

12C.6A Eligibility for state public funds — procedures.

1. Public funds of the state shall not be deposited in a financial institution which does not demonstrate a commitment to serve the needs of the local community in which it is chartered to do business, including the needs of neighborhoods, rural areas, and small businesses in communities served by the financial institution. These needs include credit services as well as deposit services.

2. In addition to establishing a minimum interest rate for public funds pursuant to section 12C.6,

the committee composed of the superintendent of banking, the superintendent of credit unions, the auditor of state or a designee, and the treasurer of state shall develop a list of financial institutions eligible to accept state public funds. The committee shall require that a financial institution seeking to qualify for the list shall annually provide the committee a written statement that the financial institution has a commitment to community reinvestment consistent with the safe and sound operation of a financial institution, unless the financial institution has received a rating of satisfactory or higher pursuant to the federal Community Reinvestment Act, 12 U.S.C. § 2901 et seq., and such rating is certified to the committee by the superintendent of banking. To qualify for the list a financial institution must demonstrate a continuing commitment to meet the credit needs of the local community in which it is chartered.

3. The committee may require a financial institution to provide public notice inviting the public to submit comments to the financial institution regarding its community lending activities. Each financial institution shall maintain a file open to public inspection which contains public comments received on its community investment activities, and the financial institution’s response to those comments. The committee shall adopt procedures for both of the following:

a. To receive information relating to a financial institution’s commitment to community reinvestment.

b. To receive challenges from any person to a financial institution’s continued eligibility to receive state public funds.

4. At least once a year the committee shall review any challenges that have been filed pursuant to subsection 3. The committee may hold a public hearing to consider the challenge. In considering a challenge, the committee shall review documents filed with federal regulatory authorities pursuant to the Community Reinvestment Act, 12 U.S.C. § 2901 et seq., and regulations adopted pursuant to the Act, as amended to January 1, 1990. In addition, consistent with the confidentiality of financial institution records the committee shall consider other factors including, but not limited to, the following:

a. Activities conducted to determine the credit needs of the community.

b. Marketing and special credit-related programs to make citizens in the community aware of the credit services offered.

c. A description of how services actually provided satisfied the needs described under paragraph “a”.

d. Practices intended to discourage application for home mortgages, small business loans, small farm loans, community development loans, and, if consumer lending constitutes a substantial major-

ity of a financial institution's business, consumer loans.

e. Geographic distribution of credit extensions, credit applications and credit denials.

f. Evidence of prohibited discriminatory or other illegal credit practices.

g. Participation in local community and rural development and redevelopment projects, and in state and federal business and economic development programs, including investment in an Iowa agricultural industry finance corporation formed under the Iowa agricultural industry finance Act pursuant to chapter 15E.

h. Origination or purchase of residential mortgage loans, housing rehabilitation loans, home improvement loans and business or farm loans within the community.

i. Ability to meet various community credit needs based on financial condition, size, legal impediments, and local economic conditions.

5. *a.* A person who believes a bank has failed to meet its community reinvestment responsibility may file a complaint with the committee detailing the basis for that belief.

b. If any committee member, in the member's discretion, finds that the complaint has merit, the member may order the bank alleged to have failed to meet its community reinvestment responsibility to attend and participate in a meeting with the complainant. The committee member may specify who, at minimum, shall represent the financial institution* at the meeting. At the meeting, or at any other time, the bank may, but is not required to, enter into an agreement with a complainant to correct alleged failings.

c. A majority of the committee may order a bank against which a complaint has been filed pursuant to this subsection, to disclose such additional information relating to community reinvestment as required by the order of the majority of the committee.

d. This subsection does not preempt any other remedies available under statutory or common law available to the committee, the superintendent of banking, or aggrieved persons to cure violations of this section or chapter 524, or rules adopted pursuant to this section or chapter 524. The committee may conduct a public hearing as provided in subsection 4 based upon the same complaint. An order finding merit in a complaint and ordering a meeting is not an election of remedies.

99 Acts, ch 53, §1; 99 Acts, ch 117, §5, 15

*The term "bank" probably intended; corrective legislation is pending
Subsection 4, paragraph g amended
Subsection 5, paragraphs a–c amended

12C.15 Restriction on requiring collateral.

A local government shall not require a pledge of collateral for that portion of the local government's

deposits in a credit union that is covered by insurance of a federal agency or instrumentality.

99 Acts, ch 117, §6, 15
Section amended

12C.16 Security for deposit of public funds.

1. Before a deposit of public funds is made by a public officer with a credit union in excess of the amount federally insured, the public officer shall obtain security for the deposit by one or more of the following:

a. The credit union may give to the public officer a corporate surety bond of a surety corporation approved by the treasury department of the United States and authorized to do business in this state, which bond shall be in an amount equal to the public funds on deposit at any time. The bond shall be conditioned that the deposit shall be paid promptly on the order of the public officer making the deposit and shall be approved by the officer making the deposit.

b. The credit union may deposit, maintain, pledge and assign for the benefit of the public officer in the manner provided in this chapter, securities approved by the public officer, the market value of which is not less than one hundred ten percent of the total deposits of public funds placed by that public officer in the credit union. The securities shall consist of any of the following:

(1) Direct obligations of, or obligations that are insured or fully guaranteed as to principal and interest by, the United States of America or an agency or instrumentality of the United States of America.

(2) Public bonds or obligations of this state or a political subdivision of this state.

(3) Public bonds or obligations of another state or a political subdivision of another state whose bonds are rated within the two highest classifications of prime as established by at least one of the standard rating services approved by the superintendent of banking pursuant to chapter 17A.

(4) To the extent of the guarantee, loans, obligations, or nontransferable letters of credit upon which the payment of principal and interest is fully secured or guaranteed by the United States of America or an agency or instrumentality of the United States of America or the U.S. central credit union, and the rating of the U.S. central credit union remains within the two highest classifications of prime established by at least one of the standard rating services approved by the superintendent of banking by rule pursuant to chapter 17A. The treasurer of state shall adopt rules pursuant to chapter 17A to implement this section.

(5) First lien mortgages which are valued according to practices acceptable to the treasurer of state.

(6) Investments in an open-end management investment company registered with the federal securities and exchange commission under the federal Investment Company Act of 1940, 15 U.S.C. § 80(a), which is operated in accordance with 17 C.F.R. § 270.2a-7.

Direct obligations of, or obligations that are insured or fully guaranteed as to principal and interest by, the United States of America, which may be used to secure the deposit of public funds under subparagraph (1), include investments in an investment company or investment trust registered under the federal Investment Company Act of 1940, 15 U.S.C. § 80a, the portfolio of which is limited to the United States government obligations described in subparagraph (1) and to repurchase agreements fully collateralized by the United States government obligations described in subparagraph (1), if the investment company or investment trust takes delivery of the collateral either directly or through an authorized custodian.

2. If public funds are secured by both the assets of a credit union and a bond of a surety company, the assets and bond shall be held as security for a rateable proportion of the deposit on the basis of the market value of the assets and of the total amount of the surety bonds.

99 Acts, ch 117, §7, 15
Section amended

12C.17 Deposit of securities.

1. A credit union which receives public funds shall pledge securities owned by it as required by this chapter in one of the following methods:

a. The securities shall be deposited with the county, city, or other public officers at the option of the officers.

b. The securities shall be deposited pursuant to a bailment agreement with a financial institution having facilities for the safekeeping of securities and doing business in the state. A financial institution which receives securities for safekeeping is liable to the public officer to whom the securities are pledged for any loss suffered by the public officer if the financial institution relinquishes custody of the securities contrary to the provisions of this chapter or the instrument governing the pledge of the securities.

c. The securities shall be deposited with the federal reserve bank, the federal home loan bank of Des Moines, Iowa, or the U.S. central credit union pursuant to a bailment agreement or a pledge custody agreement.

d. The securities may be deposited by any combination of methods specified in paragraphs "a", "b", and "c".

2. A deposit of securities shall not be made in a facility owned or controlled directly or indirectly by the financial institution which deposits the securities.

3. All deposits of securities, other than deposits of securities with the appropriate public officer, shall have a joint custody receipt taken for the securities with one copy delivered to the public officer and one copy delivered to the credit union. A credit union pledging securities with a public officer may cause the securities to be examined in the officer's office to show the securities are placed with the officer as collateral security and are not transferable except upon the conditions provided in this chapter.

4. Upon written request from the appropriate public officer but not less than monthly, the federal home loan bank of Des Moines, Iowa, or the U.S. central credit union, shall report a description, the par value and the market value of any pledged collateral by a credit union.

99 Acts, ch 117, §8, 15
Section amended

12C.18 Condition of security.

The condition of the surety bond or the deposit of securities, instruments, or a joint custody receipt, must be that the credit union will promptly pay to the parties entitled public funds, including any interest on the funds, in its custody upon lawful demand and, when required by law, pay the funds to the public officer who made the deposit.

99 Acts, ch 117, §9, 15
Section amended

12C.19 Withdrawals, exchanges of security.

1. Securities pledged pursuant to this chapter may be withdrawn on application of the pledging depository institution and upon approval of the public officer to whom the securities are pledged if the deposit of securities is no longer necessary to comply with this chapter, or is required for collection by virtue of its maturity or for exchange. The depository institution shall replace securities so withdrawn for collection or exchange.

2. In an exchange of deposited securities for new securities, the amount of security on deposit at any time shall not be decreased below that otherwise required by this chapter.

3. In the event of substitution, addition, or exchange of securities, the holder or custodian of the securities shall, on the same day, forward by regular mail to the public officer and the credit union, a receipt specifically describing and identifying both the substituted or additional securities.

4. The public officer which deposits public funds with a credit union shall require, if the market value of the securities deposited with or for the benefit of the officer falls below one hundred ten percent of the deposit liability to the public officer, the deposit of additional security to bring the total market value of the security to one hundred ten percent of the amount of public funds held by the credit union.

99 Acts, ch 117, §10, 15
Subsections 3 and 4 amended

12C.21 Required collateral — banks.

Repealed by 99 Acts, ch 117, § 14, 15.

12C.23 Payment of losses in a credit union.

1. The pledging of securities by a credit union pursuant to this chapter constitutes consent by the credit union to the disposition of the securities in accordance with this section.

The acceptance of public funds by a credit union pursuant to this chapter constitutes consent by the credit union to assessments by the treasurer of state in accordance with this chapter.

2. The credit union and the security given for the public funds in its hands are liable for payment if the credit union fails to pay a check, draft, or warrant drawn by the public officer or to account for a check, draft, warrant, order, or certificates of deposit, or any public funds entrusted to it if, in failing to pay, the credit union acts contrary to the terms of an agreement between the credit union and the public body treasurer. The credit union and the security given for the public funds in its hands are also liable for payment if the credit union fails to pay an assessment by the treasurer of state when the assessment is due.

3. If a credit union is closed by its primary regulatory officials, the public body with deposits in the credit union may sell the collateral to pay for any loss of principal and accrued interest.

a. In cooperation with the responsible regulatory officials for the credit union, the public body shall validate the amount of public funds on deposit at the defaulting credit union and the amount of deposit insurance applicable to the deposits.

b. The loss to public depositors shall be satisfied, first through any applicable deposit insurance and then through the sale of securities pledged by the defaulting credit union, and then the assets of the defaulting credit union. The priority of claims are those established pursuant to section 533.22, subsection 1, paragraph "b". To the extent permitted by federal law, in the distribution of an insolvent federally chartered credit union's assets, the order of payment of liabilities if its assets are insufficient to pay in full all its liabilities for which claims are made shall be in the same order as for the equivalent type of state chartered credit union as provided in section 533.22, subsection 1, paragraph "b".

c. The claim of a public depositor for purposes of this section shall be the amount of the depositor's deposits plus interest to the date the funds are distributed to the public depositor at the rate the credit union agreed to pay on the funds reduced by the portion of the funds which is insured by federal deposit insurance.

d. If the loss to public funds is not covered by insurance and the proceeds of the failed credit union's assets which are liquidated within thirty days of the closing of the credit union and pledged

collateral, the treasurer shall provide coverage of the remaining loss from the state sinking fund for public deposits in credit unions. If the funds are inadequate to cover the entire loss, then the treasurer shall make an assessment against other credit unions who hold public funds. The assessment shall be determined by multiplying the total amount of the remaining loss to public depositors by a percentage that represents the average of public funds deposits held by all credit unions during the preceding twelve-month period ending on the last day of the month immediately preceding the month the credit union was closed. Each credit union shall pay its assessment to the treasurer within three business days after it receives notice of assessment. If a credit union fails to pay its assessment when due, the treasurer of state shall initiate a lawsuit to collect the assessment. If a credit union is found to have failed to pay the assessment as required by this paragraph, the court shall order it to pay the assessment, court costs, reasonable attorney's fees based upon the amount of time the attorney general's office spent preparing and bringing the action, and reasonable expenses incurred by the treasurer of state's office. Idle balances in the fund are to be invested by the treasurer with earnings credited to the fund. Fees paid by credit unions for administration of this chapter will be credited to the fund and the treasurer may deduct actual costs of administration from the fund.

e. Any amount realized from the sale of collateral pursuant to paragraph "d", in excess of the amount of a credit union's assessment, shall continue to be held by the treasurer, in the same interest bearing investments available for public funds, as collateral until that credit union provides substitute collateral or is otherwise entitled to its release.

99 Acts, ch 117, §11, 15; 99 Acts, ch 208, §43, 74
Section amended

12C.23A Payment of losses in a bank.

1. The acceptance of public funds by a bank pursuant to this chapter constitutes consent by the bank to assessments by the treasurer of state in accordance with this chapter.

2. The bank is liable for payment if the bank fails to pay a check, draft, or warrant drawn by the public officer or to account for a check, draft, warrant, order, or certificates of deposit, or any public funds entrusted to it if, in failing to pay, the bank acts contrary to the terms of an agreement between the bank and the public body treasurer. The bank is also liable for payment if the bank fails to pay an assessment by the treasurer of state when the assessment is due.

3. If a bank is closed by its primary regulatory officials, the public body with deposits in the bank shall notify the treasurer of state of the amount of any claim within thirty days of the closing. The treasurer of state shall implement the following procedures:

a. In cooperation with the responsible regulatory officials for the bank, the treasurer shall validate the amount of public funds on deposit at the defaulting bank and the amount of deposit insurance applicable to the deposits.

b. The recovery of any loss to public depositors shall begin with applicable deposit insurance. The priority of claims are those established pursuant to section 524.1312, subsection 2. To the extent permitted by federal law, in the distribution of an insolvent federally chartered bank's assets, the order of payment of liabilities if its assets are insufficient to pay in full all its liabilities for which claims are made shall be in the same order as for a state-chartered bank as provided in section 524.1312, subsection 2.

c. The claim of a public depositor for purposes of this section shall be the amount of the depositor's deposits plus interest to the date the funds are distributed to the public depositor at the rate the bank agreed to pay on the funds reduced by the portion of the funds which is insured by federal deposit insurance.

d. If the loss to public funds is not covered by insurance and the proceeds of the failed bank's assets which are liquidated within thirty days of the closing of the bank are not sufficient to cover the loss, then any further payments to cover the loss will come from the state sinking fund for public deposits in banks. If the balance in that sinking fund is inadequate to pay the entire loss, then the treasurer shall obtain the additional amount needed by making an assessment against other banks whose public funds deposits exceed deposit insurance coverage. A bank's assessment shall be determined by multiplying the total amount of the remaining loss to all public depositors by a percentage that represents that bank's proportional share of the total of uninsured public funds deposits held by all banks. Each bank shall pay its assessment to the treasurer

er within three business days after it receives notice of assessment. If a bank fails to pay its assessment when due, the treasurer of state shall initiate a lawsuit to collect the assessment. If a bank is found to have failed to pay the assessment as required by this paragraph, the court shall order it to pay the assessment, court costs, reasonable attorney fees based on the amount of time the attorney general's office spent preparing and bringing the action, and reasonable expenses incurred by the treasurer of state. Idle balances in the fund shall be invested by the treasurer with earnings credited to the fund. Fees paid by banks for administration of this chapter shall be credited to the fund and the treasurer may deduct actual costs of administration from the fund.

e. Following collection of the assessments, the state treasurer shall distribute funds to the public depositors of the failed bank according to their validated claims. If the assets available are less than the total deposits, the treasurer shall prorate the claims. A public depositor receiving payment under this section shall assign to the treasurer any interest the public depositor may have in funds that subsequently become available to depositors of the defaulting bank.

99 Acts, ch 117, §12, 15; 99 Acts, ch 208, §44, 45, 74
NEW section

12C.25 State sinking funds created.

There are created in the treasurer of state's office the following funds:

1. A state sinking fund for public deposits in banks.
2. A state sinking fund for public deposits in credit unions.

The funds shall be used to receive and disburse moneys pursuant to section 12C.23, subsection 3, paragraph "a".

99 Acts, ch 117, §13, 15
Subsection 3 stricken

CHAPTER 12D

IOWA EDUCATIONAL SAVINGS PLAN TRUST

12D.2 Creation of Iowa educational savings plan trust.

An Iowa educational savings plan trust is created. The treasurer of state is the trustee of the trust, and has all powers necessary to carry out and effectuate the purposes, objectives, and provisions of this chapter pertaining to the trust, including the power to do all of the following:

1. Make and enter into contracts necessary for the administration of the trust created under this chapter.

2. Enter into agreements with any institution of higher education, the state, or any federal or oth-

er state agency, or other entity as required to implement this chapter.

3. Carry out the duties and obligations of the trust pursuant to this chapter.

4. Accept any grants, gifts, legislative appropriations, and other moneys from the state, any unit of federal, state, or local government, or any other person, firm, partnership, or corporation which the treasurer of state shall deposit into the administrative fund, the endowment fund, or the program fund.

5. Carry out studies and projections so the treasurer of state may advise participants regard-

ing present and estimated future higher education costs and levels of financial participation in the trust required in order to enable participants to achieve their educational funding objectives.

6. Participate in any federal, state, or local governmental program for the benefit of the trust.

7. Procure insurance against any loss in connection with the property, assets, or activities of the trust.

8. Solicit and accept for the benefit of the endowment fund gifts, grants, and other moneys, including legislative appropriations and grants from any federal, state, or local governmental agency.

9. Enter into participation agreements with participants.

10. Make payments to institutions of higher education pursuant to participation agreements on behalf of beneficiaries.

11. Make refunds to participants upon the termination of participation agreements pursuant to the provisions, limitations, and restrictions set forth in this chapter.

12. Invest moneys from the endowment fund and the program fund in any investments which are determined by the treasurer of state to be appropriate.

13. Engage investment advisors, if necessary, to assist in the investment of trust assets.

14. Contract for goods and services and engage personnel as necessary, including consultants, actuaries, managers, legal counsel, and auditors for the purpose of rendering professional, managerial, and technical assistance and advice to the treasurer of state regarding trust administration and operation.

15. Establish, impose, and collect administrative fees and charges in connection with transactions of the trust, and provide for reasonable service charges, including penalties for cancellations and late payments with respect to participation agreements.

16. Administer the funds of the trust.

17. Adopt rules pursuant to chapter 17A for the administration of the trust.

99 Acts, ch 114, §1; 99 Acts, ch 122, §1, 10

1999 amendment striking unnumbered paragraph 2 applies retroactively to July 1, 1998; 99 Acts, ch 122, §10

Subsection 12 amended

Unnumbered paragraph 2 stricken

12D.3 Participation agreements for trust.

The trust may enter into participation agreements with participants on behalf of beneficiaries pursuant to the following terms and agreements:

1. *a.* Each participation agreement may require a participant to agree to invest a specific amount of money in the trust for a specific period of time for the benefit of a specific beneficiary. A participant shall not be required to make an annual contribution on behalf of a beneficiary. The minimum contribution per beneficiary per year, in a year in which a participant is making a contribution, shall be fifty dollars, and the maximum con-

tribution shall not exceed two thousand dollars per beneficiary per year adjusted annually to reflect increases in the consumer price index. However, the treasurer of state may set a maximum, as necessary, to maintain compliance with section 529 of the Internal Revenue Code.

b. Participation agreements may be amended to provide for adjusted levels of payments based upon changed circumstances or changes in educational plans.

2. Beneficiaries designated in participation agreements may be designated from date of birth up to, but not including, their eighteenth birthday. A substitute beneficiary may be older than age eighteen provided that the substitute beneficiary is not older than the original beneficiary when the substitution is made.

3. A participant's account balance shall be refunded to the participant, less endowment fund earnings, and less a refund penalty levied by the trust against account balance earnings, if any, in the event an account balance remains in the account for a thirty-day period following the beneficiary's thirtieth birthday.

4. The execution of a participation agreement by the trust shall not guarantee in any way that higher education costs will be equal to projections and estimates provided by the trust or that the beneficiary named in any participation agreement will attain any of the following:

a. Be admitted to an institution of higher education.

b. If admitted, be determined a resident for tuition purposes by the institution of higher education.

c. Be allowed to continue attendance at the institution of higher education following admission.

d. Graduate from the institution of higher education.

5. *a.* A beneficiary under a participation agreement may be changed as permitted under rules adopted by the treasurer of state upon written request of the participant prior to the date of admission of the beneficiary to an institution of higher education as long as the substitute beneficiary is eligible for participation.

b. Participation agreements may otherwise be freely amended throughout their terms in order to enable participants to increase or decrease the level of participation, change the designation of beneficiaries, and carry out similar matters as authorized by rule.

6. Each participation agreement shall provide that the participation agreement may be canceled upon the terms and conditions, and upon payment of applicable fees and costs set forth and contained in the rules adopted by the treasurer of state.

99 Acts, ch 122, §2-4, 10

1999 amendments to subsection 1, paragraph a, and subsections 2 and 3 are retroactively applicable to July 1, 1998; 99 Acts, ch 122, §10

Subsection 1, paragraph a amended

Subsection 2 amended

Subsection 3 stricken and rewritten

12D.4A Administrative fund — appropriation.

For the fiscal year beginning July 1, 1998, and ending June 30, 1999, and for the fiscal year beginning July 1, 1999, and ending June 30, 2000, an amount, not to exceed four hundred thousand dollars annually, shall be transferred from the unclaimed property trust fund established in section 556.18 to the administrative fund for the payment of costs of administration and operation of the trust. For the fiscal year beginning July 1, 2000, and succeeding fiscal years, there shall be appropriated to the administrative fund by the general assembly from the general fund of the state an amount sufficient for the payment of costs of administration and operation of the trust.

99 Acts, ch 122, §5, 10
NEW section

12D.5 Cancellation of agreements.

1. A participant may cancel a participation agreement at will. Upon cancellation of a participation agreement, a participant shall be entitled to the return of the participant's account balance, less endowment fund investment earnings, and less a refund penalty levied by the trust against the participant's account balance earnings, if any. The penalty shall be deposited into the administrative fund.

2. *a.* Upon the occurrence of any of the following circumstances, no refund penalty shall be levied by the trust in the event of cancellation of a participation agreement:

- (1) Death of the beneficiary.
- (2) Permanent disability or mental incapacity of the beneficiary.
- (3) The beneficiary is awarded a scholarship, as defined in section 529 of the Internal Revenue Code, but only to the extent the refund of earnings does not exceed the scholarship amount.

b. In the event of cancellation of a participation agreement for any of the causes listed in paragraph "a", the participant shall be entitled to receive the participant's account balance, less endowment fund investment income.

99 Acts, ch 96, §1; 99 Acts, ch 122, §6, 7, 10
1999 amendments to subsection 1 and subsection 2, paragraph b, apply retroactively to July 1, 1998; 99 Acts, ch 122, §10
Subsection 1 stricken and rewritten
Subsection 2, paragraph a, unnumbered paragraph 1 amended
Subsection 2, paragraph b amended

12D.6 Repayment and ownership of payments and investment income — transfer of ownership rights.

1. *a.* A participant retains ownership of all payments made under a participation agreement up to the date of utilization for payment of higher education costs for the beneficiary.

b. All income derived from the investment of the payments made by the participant shall be considered to be held in trust for the benefit of the beneficiary.

2. In the event the program is terminated prior to payment of higher education costs for the beneficiary, the participant is entitled to a refund of the participant's account balance.

No right to receive investment income shall exist in cases of voluntary participant cancellation except as provided in section 12D.5.

3. If the beneficiary graduates from an institution of higher education, and a balance remains in the participant's account, the treasurer of state shall pay the balance to the participant.

4. The institution of higher education shall obtain ownership of the payments made for the higher education costs paid to the institution at the time each payment is made to the institution.

5. Any amounts which may be paid to any person or persons pursuant to the Iowa educational savings plan trust but which are not listed in this section are owned by the trust.

6. A participant may transfer ownership rights to another eligible individual, including a gift of the ownership rights to a minor beneficiary. The transfer shall be made and the property distributed in accordance with rules adopted by the treasurer of state or with the terms of the participation agreement.

7. A participant shall not be entitled to utilize any interest in the trust as security for a loan.

99 Acts, ch 96, §2; 99 Acts, ch 114, §2; 99 Acts, ch 122, §8, 10
1999 amendment to subsection 2, unnumbered paragraph 1 applies retroactively to July 1, 1998; 99 Acts, ch 122, §10
Subsection 2, unnumbered paragraphs 1 and 2 amended
Subsection 6 amended

12D.9 Tax considerations.

1. For federal income tax purposes, the Iowa educational savings plan trust shall be considered a qualified state tuition program exempt from taxation pursuant to section 529 of the Internal Revenue Code. The Iowa educational savings plan trust meets the requirements of section 529(b), of the Internal Revenue Code, as follows:

a. Pursuant to section 12D.3, subsection 1, paragraph "a", a participant may make contributions to an account which is established for the purpose of meeting the qualified higher education expenses of the designated beneficiary of the account.

b. Pursuant to section 12D.3, subsection 1, a maximum contribution level is established.

c. Pursuant to section 12D.4, subsection 1, paragraph "b", a separate account is established for each beneficiary.

d. Pursuant to section 12D.4, subsection 1, paragraph "f", contributions may only be made in the form of cash.

e. Pursuant to section 12D.4, subsection 1, paragraph "g", a participant or beneficiary shall not provide investment direction regarding program contributions or earnings held by the trust.

f. Pursuant to section 12D.5, subsection 1, penalties are provided on refunds of earnings which are not used for qualified higher education expenses of the beneficiary, made on account of the

death or disability of the designated beneficiary, or made due to scholarship, allowance, or payment receipt as provided in section 529(b)(3) of the Internal Revenue Code.

g. Pursuant to section 12D.6, subsection 7, a participant shall not pledge any interest in the trust as security for a loan.

2. State income tax treatment of the Iowa educational savings plan trust shall be as provided in section 422.7, subsections 32, 33, and 34, and section 422.35, subsection 14.

99 Acts, ch 122, §9, 10

1999 amendment to subsection 1, paragraph f applies retroactively to July 1, 1998; 99 Acts, ch 122, §10

Subsection 1, paragraph f amended

CHAPTER 13

ATTORNEY GENERAL

13.2 Duties.

It shall be the duty of the attorney general, except as otherwise provided by law to:

1. Prosecute and defend all causes in the appellate courts in which the state is a party or interested.

2. Prosecute and defend in any other court or tribunal, all actions and proceedings, civil or criminal, in which the state may be a party or interested, when, in the attorney general's judgment, the interest of the state requires such action, or when requested to do so by the governor, executive council, or general assembly.

3. Prosecute and defend all actions and proceedings brought by or against any state officer in the officer's official capacity.

4. Prosecute and defend all actions and proceedings brought by or against any employee of a judicial district department of correctional services in the performance of an assessment of risk pursuant to chapter 692A.

5. Give an opinion in writing, when requested, upon all questions of law submitted by the general assembly or by either house thereof, or by any state officer, elective or appointive. Questions submitted by state officers must be of a public nature and relate to the duties of such officer.

6. Prepare drafts for contracts, forms, and other writings which may be required for the use of the state.

7. Report to the governor, at the time provided by law, the condition of the attorney general's office, opinions rendered, and business transacted of public interest.

8. Supervise county attorneys in all matters pertaining to the duties of their offices, and from time to time to require of them reports as to the condition of public business entrusted to their charge.

9. Promptly account, to the treasurer of state, for all state funds received by the attorney general.

10. Keep in proper books a record of all official opinions, and a register of all actions, prosecuted and defended by the attorney general, and of all proceedings had in relation thereto, which books shall be delivered to the attorney general's successor.

11. Perform all other duties required by law.

12. Inform prosecuting attorneys and assistant prosecuting attorneys to the state of all changes in law and matters pertaining to their office and establish programs for the continuing education of prosecuting attorneys and assistant prosecuting attorneys. The attorney general may accept funds, grants and gifts from any public or private source which shall be used to defray the expenses incident to implementing duties under this subsection.

13. Establish and administer, in cooperation with the law schools of Drake university and the state university of Iowa, a prosecutor intern program incorporating the essential elements of the pilot program denominated "*law student intern program in prosecutors' office*" funded by the Iowa crime commission and participating counties. The attorney general shall consult with an advisory committee including representatives of each participating law school and the Iowa county attorneys association, inc. concerning development, administration, and critique of this program. The attorney general shall report on the program's operation annually to the general assembly and the supreme court.

14. Develop written procedures and policies to be followed by prosecuting attorneys in the prosecution of domestic abuse cases under chapters 236 and 708.

99 Acts, ch 112, §1

NEW subsection 4 and former subsections 4-13 renumbered as 5-14

CHAPTER 13B

PUBLIC DEFENDERS

13B.2A Indigent defense advisory commission.

An indigent defense advisory commission is established within the department to advise and make recommendations to the legislature and the state public defender regarding the hourly rates paid to court-appointed counsel and per case fee limitations. These recommendations shall be consistent with the constitutional requirement to provide effective assistance of counsel to those indigent persons for whom the state is required to provide counsel.

The advisory commission shall consist of five members. The governor shall appoint three members, including one member from nominations by the Iowa state bar association and one member from nominations by the supreme court. Two members, one from each chamber of the general assembly, shall be appointed, with no more than one appointed from the same political party. Each member shall serve a three-year term, with initial terms to be staggered. No more than three members shall be licensed to practice law in Iowa. The state public defender shall serve as an ex officio member of the commission and shall serve as the nonvoting chair of the commission.

The members of the commission are entitled to receive reimbursement for actual expenses incurred as provided for in section 7E.6, subsection 2, while engaged in the performance of the duties of the commission.

The advisory commission shall file a written report every three years with the governor and the general assembly by January 1 of a year in which a report is due regarding the recommendations and activities of the commission. The first such report shall be due on January 1, 2003.

99 Acts, ch 135, §2
Previous indigent defense advisory commission repealed by 91 Acts, ch 268, §439
NEW section

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

1. The state public defender shall coordinate the provision of legal representation of all indigents under arrest or charged with a crime, seeking postconviction relief, against whom a contempt action is pending, in proceedings under chapter 229A, on appeal in criminal cases, 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 on a reopening of a sentence proceeding, 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 clerk of the district 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 represent all eligible indigents, in all of the cases and proceedings specified under subsection 1. The 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 as identified in the designation 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.

4. *a.* The state public defender shall establish fee limitations for particular categories of cases. The fee limitations shall be reviewed at least every three years. In establishing and reviewing the fee limitations, the state public defender shall consider public input during the establishment and review process, and any available information regarding ordinary and customary charges for like services; the number of cases in which legal services to indigents are anticipated; the seriousness of the charge; an appropriate allocation of resources among the types of cases; experience with existing hourly rates, claims, and fee limitations; and any other factors determined to be relevant.

b. The state public defender shall establish a procedure for the submission of all claims for payment of indigent defense costs, including the submission of interim claims in appropriate cases.

c. The state public defender may review any claim for payment of indigent defense costs and may take any of the following actions:

(1) If the charges are appropriate and reasonable, approve the claim for payment.

(2) Deny the claim, if the claim is not timely filed.

(3) Request additional information or return the claim to the attorney, if the claim is incomplete.

(4) If any portion of the claim is excessive, notify the attorney that the claim is excessive and will be reduced to an amount which is not excessive, and reduce and approve the balance of the claim.

Notwithstanding chapter 17A, the attorney may seek review of any action or intended action taken pursuant to paragraph “d” by filing a motion with the court with jurisdiction over the original ap-

pointment for review. The motion must be filed within twenty days of any action taken by the state public defender. The attorney shall have the burden to establish by a preponderance of the evidence that the amount of compensation and expenses is reasonable and necessary to competently represent the client. The filing of a motion shall not delay the payment of the amount specified by the state public defender pursuant to this subsection.

5. If any portion of the claim is not payable under the attorney's appointment, the state public defender shall deny those portions of the claim that are not payable and approve the remainder of the claim.

Notwithstanding chapter 17A, an attorney whose claim for compensation is denied may seek review of the action of the state public defender by filing a motion with the court with jurisdiction over the original appointment. The motion must be filed within thirty days of the action of the state public defender. The type of review and relief the court may provide shall be limited to the review and relief specified in chapter 17A. The filing of a motion shall not delay the payment of the amount approved by the state public defender.

6. 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.

7. The state public defender shall report in writing to the general assembly by January 20 of each year regarding any funds recouped or collected for court-appointed attorney fees or expenses of a public defender pursuant to section 331.756, subsection 5, or section 602.8107 during the previous calendar year.

8. The state public defender shall adopt rules, as necessary, pursuant to chapter 17A to administer this chapter and chapter 815.

99 Acts, ch 12, §1; 99 Acts, ch 135, §3-6; 99 Acts, ch 208, §46

*Subsection 4 does not contain a paragraph "d"; corrective legislation is pending

Emergency rules; 99 Acts, ch 135, §30

See Code editor's note to §10A.202

Subsections 1-3 amended

Subsection 4 stricken and rewritten

NEW subsection 5 and former subsections 5-7 renumbered as 6-8

Subsection 8 amended

13B.8 Office of local public defender.

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

a. The number of cases or potential cases where a local public defender is or would be involved.

b. The population of the area served or to be served.

c. The willingness of the local private bar to participate in cases where a public defender is or would be involved.

d. Other factors which the state public defender deems to be important.

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

2. The state public defender may appoint a local public defender and may remove the local public defender, assistant local public defenders, clerks, investigators, secretaries, or other employees for cause. Each local public defender, and any assistant local public defender, must be an attorney admitted to the practice of law before the Iowa supreme court.

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

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

99 Acts, ch 135, §7
Subsection 2 amended

13B.9 Powers and duties of local public defenders — referrals to outside counsel.

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

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

b. Represent an indigent party, without fee and upon an order of the court, in child in need of assistance, family in need of assistance, delinquency, and termination of parental rights proceedings pursuant to chapter 232 in a county served by a public defender. The local public defender shall

counsel and represent an indigent party in all proceedings pursuant to chapter 232 in a county served by a public defender and prosecute before or after judgment any appeals or other remedies which the local public defender considers to be in the interest of justice unless other counsel is appointed to the case.

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

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

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

4. If a conflict of interest arises or if the local public defender is unable to handle a case because

of a temporary overload of cases, the local public defender shall return the case to the court. The court shall first appoint a contract attorney. Appointments by the court shall be on a rotational or equalization basis considering the experience of the attorney and the difficulty of the case.

5. If a contract attorney is not available, or if a conflict of interest or overload of cases prevents a contract attorney from handling a case, the court shall appoint a private noncontract attorney who has agreed to take the case. The appointment shall be on a rotational or equalization basis, considering the experience of the attorney and the difficulty of the case.

99 Acts, ch 135, §8-10
Subsection 1, paragraph b amended, paragraph c stricken, and former paragraph d relettered as c
Subsection 3 stricken and former subsections 4-6 renumbered as 3-5

13B.10 Determination of indigence.

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

99 Acts, ch 135, §11
Subsections 2-4 stricken and former subsection 1 redesignated as an unnumbered paragraph

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 through 15E.29. Such financial assistance is subject to the availability of funds in the building loan fund established in section 15E.26.

d. Provide administration for the Iowa seed capital corporation created in sections 15E.81 to 15E.94.

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

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

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

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

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

(3) A person shall not use the label or trademark or advertise it, or attach it on any promotional literature, manufactured article or agricultural product without the approval of the department.

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

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

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

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

a. To carry out this responsibility, the department shall:

(1) Provide the mechanisms to promote and facilitate the coordination of management and technical assistance services to Iowa businesses and industries and to communities by the department, by the community colleges, and by the state board of regents institutions, including the small business development centers, the center for industrial research and service, and extension activities. In order to achieve this goal, the department may establish periodic meetings with representatives from the community colleges and the state board of regents institutions to develop this coordination. The community colleges and the state board of regents institutions shall cooperate with the department in seeking to avoid duplication of economic development services through greater coordinating efforts in the utilization of space, personnel, and materials and in the development of referral and outreach networks. The department shall annually report on the degree to which economic development activities have been coordinated and the degree to

which there are future coordination needs, and the community colleges and the state board of regents institutions shall be given an opportunity to review and comment on this report prior to its printing or release. The department shall also establish a registry of applications for federal funds related to management and technical assistance programs.

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

(3) Provide technical and financial assistance to local and regional government organizations in Iowa, analyze intergovernmental relations in Iowa, and recommend policies to state agencies, local governments, the governor, and the general assembly as these pertain to economic development.

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

(5) Encourage cities, counties, local and regional government organizations, and local and regional economic development organizations to develop and implement comprehensive community and economic development plans. In evaluating financial assistance applications, the department shall award supplementary credit to applications submitted by cities, counties, local and regional government organizations, and local and regional economic development organizations that have developed a comprehensive community and economic development plan.

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, counties, local and regional government organizations, and local and regional economic development organizations. Subject to the availability of funds for this purpose, the department may provide financial assistance to cities, counties, local and regional government organizations, and local and regional economic development organizations for the purpose of developing community and economic development plans.

(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. Employee training and retraining. To develop employee training and retraining strategies in coordination with the department of education and department of workforce development as tools for business development, business expansion, and enhanced competitiveness of Iowa industry, which will promote economic growth and the creation of new job opportunities and to administer related programs. To carry out this responsibility, the department shall:

a. Coordinate and perform the duties specified under the Iowa industrial new jobs training Act in chapter 260E, the Iowa jobs training Act in chapter 260F, and the workforce development fund in section 15.341.

b. In performing the duties set out in paragraph “*a*”, the department shall:

(1) Work closely with representatives of business and industry, labor organizations, the council on human investment, the department of education, the department of workforce development, and educational institutions to determine the employee training needs of Iowa employers, and where possible, provide for the development of industry-specific training programs.

(2) Promote Iowa employee 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) Stimulate the creation of innovative employee training and skills development activities, including business consortium and supplier network training programs, and new employee development training models.

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

(6) Review workforce development initiatives as they relate to the state’s economic development agenda, recommending action as necessary to meet the needs of Iowa’s communities and businesses.

(7) Incorporate workforce development as a component of community-based economic development activities.

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 dollar value and the number of targeted small business contracts reflect.

(c) The number of contracts which were designated to satisfy targeted small business procurement goals established pursuant to sections 73.15 through 73.21, but which were not awarded to a targeted small business, the estimated total dollar value of these awards, the lowest offer or bid on each of these awards made by the small business and the price at which these contracts were awarded pursuant to the normal procurement procedures.

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

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

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

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

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

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

e. To the extent feasible, cooperate with the department of workforce development 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 businesses.

(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 as provided for in sections 15.261 through 15.268. The department shall administer this paragraph subject to the availability of funds in the small business economic development corporation fund established in section 15.263.

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

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 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 and the level of poverty among different age groups and different family structures in Iowa society and their impact 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.14, 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.

f. Provide technical assistance to individuals who are pursuing the purchase and operation of employee-owned businesses.

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 lo-

cal, 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.

11. *Housing development.*

a. To provide assistance to local governments, housing organizations, economic development groups, and other local entities to increase the development of housing in the state and to improve the quality of existing housing in order to maximize the effects of other economic development efforts.

b. To carry out this responsibility, the department shall:

(1) Provide housing needs assessments.

(2) Provide a one-stop source, in coordination with other agencies of the state, for housing development assistance.

(3) Establish programs which assist communities or local entities in developing housing to meet a range of community needs, including programs to assist homeless shelter operations and programs to assist in the development of housing to enhance economic development opportunities in the community.

99 Acts, ch 197, §20, 23

Subsection 7, paragraph j stricken and former paragraph k relettered as j

15.204 Value-added agricultural linked investment loan program — eligibility requirements.

The agricultural products advisory council established in section 15.203, in cooperation with the department of economic development and the department of agriculture and land stewardship, shall recommend to the treasurer of state eligibility requirements for borrowers to participate in the value-added agricultural linked investment loan program established in section 12.43B. The treasurer of state shall establish the eligibility requirements by rule adopted pursuant to section 12.34.

99 Acts, ch 177, §6, 9
NEW section

15.205 through 15.220 Reserved.

15.241 Iowa "self-employment loan program".

1. A "self-employment loan program account" is established within the strategic investment fund created in section 15.313 to provide funding for the self-employment loan program. The department may contract with local community action agencies or other local entities in administering the program,

and shall work with the department of workforce development and the department of human services in developing the program. The department shall cooperate with the division of vocational rehabilitation under the department of education to implement a business development initiative for entrepreneurs with disabilities.

The self-employment loan program shall administer a low-interest loan program to provide loans to low-income persons and persons with disabilities for the purpose of establishing or expanding small business ventures. The terms of the loans shall be determined by the department, but shall not be in excess of ten thousand dollars to any single applicant or at a rate to exceed five percent simple interest per annum. The department shall maintain records of all loans approved and the effectiveness of those loans in establishing or expanding small business ventures.

The department may provide grants of not more than five thousand dollars under the program, if the grants are used to secure additional financing from private sources. The department may provide a service fee to financial institutions for administering loans provided under this section.

Payments of interest, recaptures of awards, and repayments of moneys loaned under this program shall be deposited into the strategic investment fund. Receipts from loans or grants under the business development initiative for entrepreneurs with disabilities may be maintained in a separate account within the fund.

2. a. The department shall implement and administer an entrepreneurs with disabilities technical assistance program designed to provide only technical assistance to a qualified business under this subsection.

b. A business qualifies for assistance under this program if the business is fifty-one percent or more owned, operated, and actively managed by one or more persons with a disability and is located in this state, operated for profit, and has a gross income of less than three million dollars computed as an average of the three preceding years. "Disability" means disability as defined in section 15.102.

c. A person shall not be required to be a client of the division of vocational rehabilitation services or the department for the blind in order to qualify for assistance under this program.

d. The department shall adopt rules as necessary for the administration of the program.

99 Acts, ch 114, §3

Use of self-employment loan program account funds to provide matching funds for individual development accounts under chapter 541A in fiscal year 2000; rules; 99 Acts, ch 100, §5

Subsection 1, unnumbered paragraph 1 amended

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 and allowed to accumulate in a job training fund created in the department. At the end of each fiscal year, all funds deposited under this subsection into the job training fund during the fiscal year shall be transferred to the workforce development fund account established in section 15.342A.

99 Acts, ch 183, §1
Appropriation from the job training fund to the department of workforce development for fiscal year beginning July 1, 1999, for the target alliance program; transfer to workforce development fund; 99 Acts, ch 197, §3
Subsection 2 amended

15.285 New infrastructure.

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

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

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

- a. A needs assessment study.
- b. A capital improvement plan.
- c. Evidence of a match of at least ten percent.
4. The department shall rank the applications

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

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

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

of this section are not applicable to state new infrastructure.

99 Acts, ch 192, §33
Terminology change applied

15.313 Strategic investment fund.

1. An Iowa strategic investment fund is created as a revolving fund consisting of any money appropriated by the general assembly for that purpose and any other moneys available to and obtained or accepted by the department from the federal government or private sources for placement in the fund. The fund shall also include all of the following:

a. All unencumbered and unobligated funds from the special community economic betterment program fund created under 1990 Iowa Acts, chapter 1262, section 1, subsection 18, remaining on June 30, 1992, all repayments of loans or other awards made under the community economic betterment account or under the community economic betterment program during any fiscal year beginning on or after July 1, 1985, and recaptures of awards.

b. All unencumbered and unobligated funds from the self-employment loan program, the targeted small business financial assistance program, the microenterprise development revolving fund, financing rural economic development or successor loan program, and the value-added agricultural products and processes financial assistance fund remaining on June 30, 1992, and all repayments of loans or other awards or recaptures of awards made under these programs.

Notwithstanding section 8.33, moneys in the strategic investment fund at the end of each fiscal year shall not revert to any other fund but shall remain in the strategic investment fund for expenditure for subsequent fiscal years.

2. The assets of the fund shall be used by the department for the following programs and purposes:

a. The community economic betterment program created in sections 15.315 through 15.320.

b. The business development finance corporation created in sections 15E.131 through 15E.149.

c. The self-employment loan program created in section 15.241.

d. The targeted small business financial assistance program created in section 15.247.

e. To provide comprehensive management assistance for applicants or recipients of assistance from programs supported by the fund.

f. If funds are available under a federal microloan demonstration program, a portion of the moneys in the strategic investment fund may be utilized to access those federal funds to expand the state's small business financial assistance programs including the self-employment loan pro-

gram and the targeted small business financial assistance program.

g. The entrepreneurs with disabilities program, which provides technical and financial assistance to help persons with disabilities become self-sufficient and create additional employment opportunities by establishing or expanding small business ventures.

h. The job opportunities for persons with disabilities program, which provides service and technical assistance to rehabilitation organizations or agencies that create, expand, or spin off business ventures for persons with disabilities.

3. The assets of the fund may be used for purposes of administering and operating the entrepreneurial ventures assistance program established in section 15.339.

4. The director shall submit annually at a regular or special meeting preceding the beginning of the fiscal year, for approval by the economic development board, the proposed allocation of funds from the strategic investment fund to be made for that fiscal year to the community economic betterment program, the business development finance corporation, the self-employment loan program, and the targeted small business financial assistance program and for comprehensive management assistance. If funds are available under a federal microloan demonstration program, the director may recommend an allocation for that purpose. The plans may provide for increased or decreased allocations if the demand in a program indicates that the need exceeds the allocation for that program. The director shall report on a monthly basis to the board on the status of the funds and may present proposed revisions for approval by the board in January and April of each year. Unobligated and unencumbered moneys remaining in the strategic investment fund or any of its accounts on June 30 of each year shall be considered part of the fund for purposes of the next year's allocation.

99 Acts, ch 197, §21

NEW subsection 3 and former subsection 3 renumbered as 4

15.329 Eligible business.

1. To be eligible to receive benefits under this part, a business shall, individually or as part of a group of businesses, meet all of the following requirements:

a. The community has approved by ordinance or resolution the start-up, location, or expansion of the business for the purpose of receiving the benefits of this part.

b. The business has not closed or substantially reduced its operation in one area of the state and relocated substantially the same operation in the community. This subsection does not prohibit a business from expanding its operation in the community if existing operations of a similar nature in the state are not closed or substantially reduced.

c. Provide and pay at least eighty percent of the cost of a standard medical and dental insurance plan for all full-time employees working at the facility in which the new investment occurred.

d. The business shall agree to pay a median wage for new full-time hourly nonmanagement production jobs of at least eleven dollars per hour indexed to 1993 dollars based on the gross national product implicit price deflator published by the bureau of economic analysis of the United States department of commerce or one hundred thirty percent of the average wage in the county in which the community is located, whichever is higher.

e. The business will make a capital investment of at least ten million dollars indexed to 1993 dollars based on the gross national product implicit price deflator published by the bureau of economic analysis of the United States department of commerce. If the business is occupying a vacant building suitable for industrial use, the fair market value of the building shall be counted toward the capital investment threshold.

f. The business shall agree to create at least fifty or the group of businesses at least seventy-five full-time positions at a facility located in Iowa or expanded under the program for a specified period which will be negotiated with the department and the community, but which shall be at least five years.

2. In addition to the requirements of subsection 1, a business or group of businesses shall do at least three of the following in order to be eligible for incentives under the program:

a. Offer a pension or profit sharing plan to full-time employees.

b. Produce or manufacture high value-added goods or services or be in one of the following industries:

- (1) Value-added agricultural products.
- (2) Insurance and financial services.
- (3) Plastics.
- (4) Metals.
- (5) Printing paper or packaging products.
- (6) Drugs and pharmaceuticals.
- (7) Software development.
- (8) Instruments and measuring devices and medical instruments.
- (9) Recycling and waste management.
- (10) Telecommunications.

Retail business shall not be eligible for benefits under this part.

c. The business makes child care services available to its employees.

d. Invest annually no less than one percent of pretax profits from the facility located to Iowa or expanded under the program in research and development in Iowa.

e. Invest annually no less than one percent of pretax profits from the facility located to Iowa or

expanded under the program in worker training and skills enhancement.

f. Have an active productivity and safety improvement program involving management and worker participation and cooperation with benchmarks for gauging compliance.

g. Occupy an existing facility at least one of the buildings of which shall be vacant and shall contain at least twenty thousand square feet.

3. Any business located in a quality jobs enterprise zone is ineligible to receive the economic development incentives under the program.

4. If the department finds that a business has a record of violations of the law, including but not limited to environmental and worker safety statutes, rules, and regulations, over a period of time that tends to show a consistent pattern, the business shall not qualify for economic development assistance under this part, unless the department finds that the violations did not seriously affect public health or safety, or the environment, or if it did that there were mitigating circumstances. In making the findings and determinations regarding violations, mitigating circumstances, and whether the business is disqualified for economic development assistance under this part, the department shall be exempt from chapter 17A.

5. The department shall also consider a variety of factors, including but not limited to the following in determining the eligibility of a business to participate in the program:

a. The quality of the jobs to be created. In rating the quality of the jobs the department shall place greater emphasis on those jobs that have a higher wage scale, have a lower turnover rate, are full-time or career-type positions, provide comprehensive health benefits, or have other related factors which could be considered to be higher in quality, than to other jobs. Businesses that have wage scales substantially below that of existing Iowa businesses in that area should be rated as providing the lowest quality of jobs and should therefore be given the lowest ranking for providing such assistance.

b. The impact of the proposed project on other businesses in competition with the business being considered for assistance. The department shall make a good faith effort to identify existing Iowa businesses within an industry in competition with the business being considered for assistance. The department shall make a good faith effort to determine the probability that the proposed financial assistance will displace employees of the existing businesses. In determining the impact on businesses in competition with the business being considered for assistance, jobs created as a result of other jobs being displaced elsewhere in the state shall not be considered direct jobs created.

c. The impact to the state of the proposed project. In measuring the economic impact the department shall place greater emphasis on projects

which have greater consistency with the state strategic plan than other projects. Greater consistency may include any or all of the following:

(1) A business with a greater percentage of sales out-of-state or of import substitution.

(2) A business with a higher proportion of in-state suppliers.

(3) A project which would provide greater diversification of the state economy.

(4) A business with fewer in-state competitors.

(5) A potential for future job growth.

(6) A project which is not a retail operation.

d. If a business has, within three years of application for assistance, acquired or merged with an Iowa corporation or company, whether the business has made a good faith effort to hire the workers of the acquired or merged company.

e. Whether a business provides for a preference for hiring residents of the state or of the economic development area, except for out-of-state employees offered a transfer to Iowa or to the economic development area.

f. Whether all known required environmental permits have been issued and regulations met before moneys are released.

99 Acts, ch 192, §33
Terminology change applied

15.333 Investment tax credit.

1. An eligible business may claim a corporate tax credit up to a maximum of ten percent of the new investment which is directly related to new jobs created by the location or expansion of an eligible business under the program. Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following seven years or until depleted, whichever occurs earlier. If the business is a partnership, subchapter S corporation, limited liability company, or estate or trust electing to have the income taxed directly to the individual, an individual may claim the tax credit allowed. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings of the partnership, subchapter S corporation, limited liability company, or estate or trust. For purposes of this section, "*new investment directly related to new jobs created by the location or expansion of an eligible business under the program*" means the cost of machinery and equipment, as defined in section 427A.1, subsection 1, paragraphs "e" and "j", purchased for use in the operation of the eligible business, the purchase price of which has been depreciated in accordance with generally accepted accounting principles, and the cost of improvements made to real property which is used in the operation of the eligible business and which receives a partial property tax exemption for the actual value added under section 15.332.

2. For purposes of this section, the purchase price of real property and any buildings and structures located on the real property will be consid-

ered a new investment in the location or expansion of an eligible business. However, if within five years of purchase, the eligible business sells, disposes of, razes, or otherwise renders unusable all or a part of the land, buildings, or other existing structures for which tax credit was claimed under this section, the income tax liability of the eligible business for the year in which all or part of the property is sold, disposed of, razed, or otherwise rendered unusable shall be increased by one of the following amounts:

a. One hundred percent of the tax credit claimed under this section if the property ceases to be eligible for the tax credit within one full year after being placed in service.

b. Eighty percent of the tax credit claimed under this section if the property ceases to be eligible for the tax credit within two full years after being placed in service.

c. Sixty percent of the tax credit claimed under this section if the property ceases to be eligible for the tax credit within three full years after being placed in service.

d. Forty percent of the tax credit claimed under this section if the property ceases to be eligible for the tax credit within four full years after being placed in service.

e. Twenty percent of the tax credit claimed under this section if the property ceases to be eligible for the tax credit within five full years after being placed in service.

99 Acts, ch 172, §1
Section amended

15.335 Research activities credit.

An eligible business may claim a corporate tax credit for increasing research activities in this state during the period the eligible business is participating in the program. 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. The credit allowed in this section is in addition to the credit authorized in section 422.33, subsection 5. If the eligible business is a partnership, subchapter S corporation, limited liability company, or estate or trust electing to have the income taxed directly to the individual, an individual may claim the tax credit allowed. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings of the partnership, subchapter S corporation, limited liability company, or estate or trust. For purposes of this section, "qualifying expenditures for increasing research activities" means the qualifying expenditures as defined for the federal credit for increasing research activities which would be

allowable under section 41 of the Internal Revenue Code in effect on January 1, 1999.

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 year.

99 Acts, ch 95, §1, 12, 13

1999 amendment to unnumbered paragraph 1 applies retroactively to tax years beginning on or after January 1, 1998; 99 Acts, ch 95, §12, 13
Unnumbered paragraph 1 amended

15.342A Workforce development fund account.

A workforce development fund account is established in the office of the treasurer of state under the control of the department. The account shall receive funds pursuant to section 422.16A up to a maximum of ten million dollars per year. The account shall also receive funds pursuant to section 15.251 with no dollar limitation.

99 Acts, ch 183, §2
Section amended

15.343 Workforce development fund.

1. A workforce development fund is created as a revolving fund in the state treasury under the control of the department consisting of any moneys appropriated by the general assembly for that purpose and any other moneys available to and obtained or accepted by the department from the federal government or private sources for placement in the fund. The fund shall also include all of the following:

a. Notwithstanding section 8.33, all unencumbered and unobligated funds from 1994 Iowa Acts, chapter 1201, section 1, subsection 6, except paragraph "d"; section 3, subsections 1 and 3; and section 10, remaining on July 1, 1995, and all unencumbered and unobligated funds in the Iowa conservation corps escrow account established in section 84A.7 and the job training fund established in section 260F.6.

b. Moneys appropriated to the fund from the workforce development fund account established in section 15.342A.

Notwithstanding section 8.33, moneys in the workforce development fund at the end of each fiscal year shall not revert to any other fund but shall remain in the workforce development fund for expenditure for subsequent fiscal years.

2. The assets of the fund shall be used by the department for the following programs and purposes:

a. Training and retraining programs for targeted industries.

b. Projects under chapter 260F. The department shall require a match from all businesses participating in a training project under chapter 260F.

c. Apprenticeship programs under section 260C.44, including new or statewide building trades apprenticeship programs.

d. Innovative skill development activities.

e. To cover the costs of the administration of workforce development programs and services available through the department. A portion of these funds may be used to support efforts by the community colleges to provide workforce services to Iowa employers.

3. The director shall submit not later than January 1 of each year at a regular or special meeting, for approval by the economic development board, the proposed allocation of funds from the workforce development fund to be made for the next fiscal year for the programs and purposes contained in subsection 2. The director shall also submit a copy of the proposed allocation to the chairpersons of the joint economic development appropriations subcommittee of the general assembly. Notwithstanding section 8.39, the plan may provide for increased or decreased allocations if the demand for a program indicates that the need is greater or lesser than the allocation for that program. The director shall report on a quarterly basis to the board on the status of the funds and may present proposed revisions for approval by the board in January and April of each year. The director shall also provide quarterly reports to the legislative fiscal bureau on the status of the funds. Unobligated and unencumbered moneys remaining in the workforce development fund or any of its accounts on June 30 of each year shall be considered part of the fund for purposes of the next year's allocation.

99 Acts, ch 183, §3
Subsection 2, NEW paragraph e

15.364 Certified program agreement.

The certified program shall be conducted pursuant to a signed written agreement between each participant and the employer which contains at least the following provisions:

1. The names and signatures of the participant and the sponsor or employer and the signature of a parent or guardian if the participant is a minor.

2. A description of the career field in which the participant is to be trained, and the beginning date and duration of the training.

3. The employer's agreement to provide paid employment, at a base wage, for the participant during the summer months after the participant's junior and senior years in high school and after the participant's first year of postsecondary education.

4. The participant and employer shall agree upon set minimum academic standards which must be maintained through the participant's secondary and postsecondary education.

5. This base wage paid to the participant shall not be less than the minimum wage prescribed by Iowa law or the federal Fair Labor Standards Act, whichever is applicable.

6. That in addition to the base wage paid to the participant, the employer shall pay an additional sum to be held in trust to be applied toward the participant's postsecondary education required for completion of the certified program. The additional amount must be not less than an amount determined by the department of economic development to be sufficient to provide payment of tuition expenses toward completion of not more than two academic years of the required postsecondary education component of the certified program at an Iowa community college or an Iowa public or private college or university. This amount shall be held in trust for the benefit of the participant pursuant to rules adopted by the department of economic development. Payment into an ERISA-approved fund for the benefit of the participant shall satisfy this requirement. The specific fund shall be specified in the agreement.

7. The participant's agreement to work for the employer for at least two years following the completion of the participant's postsecondary education required by the certified program. However, the agreement may provide for additional education and work commitments beyond the two years.

8. If the participant does not complete the two-year employment obligation, the participant's agreement to repay to the employer the amount paid by the employer toward the participant's postsecondary education expenses pursuant to subsection 6.

9. a. That if a participant does not complete the certified program contemplated by the agreement after entering a postsecondary education program, any unexpended funds being held in trust for the participant's postsecondary education shall be paid back to the employer. In addition the participant must repay to the employer amounts paid from the trust which were expended on the participant's behalf for postsecondary education.

b. That if a participant does not complete the certified program contemplated by the agreement prior to entering a postsecondary education program, one-half of the moneys being held in trust for the participant's postsecondary education shall be paid either to a postsecondary education institution as defined in section 261C.3 of the participant's choice or, notwithstanding any provision of this part to the contrary, to an apprenticeship program of the participant's choice which has been approved under 29 C.F.R., subtit. A, pt. 29, to pay tuition or expenses of the participant. The other one-half of the trust moneys shall be paid back to the employer. Any moneys to be transferred for the benefit of the participant which are not transferred within five years for purposes of education at the designated postsecondary institution, shall be paid back to the employer.

99 Acts, ch 24, §1
Subsection 9, paragraph b amended

15.365 Payroll expenditure refund.

1. An employer who employs a participant in a certified school to career program may claim a refund of twenty percent of the employer's payroll expenditures for each participant in the certified program. The refund is limited to the first four hundred hours of payroll expenditures per participant for each calendar year the participant is in the certified program, not to exceed three years per participant.

2. To receive a refund under subsection 1 for a calendar year, the employer shall file the claim by July 1 of the following calendar year. The claim shall be filed on forms provided by the department of economic development and the employer shall provide such information regarding the employer's participation in a certified school to career program as the department may require. Forms should be designed such that claims for refunds for more than one participant may be made on a single form.

3. For each fiscal year of the fiscal period beginning July 1, 1999, and ending June 30, 2004, there is appropriated up to five hundred thousand dollars annually from the general fund of the state to the department of economic development to pay refunds under this section. If the amount appropriated in a fiscal year is insufficient to pay all refund claims for the calendar year in full, each claimant shall receive a proportion of the claimant's refund claim equal to the ratio of the amount appropriated to the total amount of refund claims. Any unpaid portion of a claim shall not be paid from a subsequent fiscal year appropriation.

4. The department of economic development shall consult with the department of revenue and finance for purposes of this section. The department of economic development shall adopt rules as deemed necessary to carry out the purposes of the certified school to career program.

Reduced appropriation for fiscal year beginning July 1, 1999, for paying refunds under this section; 99 Acts, ch 197, §18
Section not amended; footnote added

15.368 through 15.370 Reserved.

PART 19

15.371 Community attraction and tourism development program.

1. The department shall establish and administer a community attraction and tourism development program to assist communities in the development and creation of multiple purpose attraction and tourism facilities.

2. A political subdivision of the state or a public organization may submit an application to the department for financial assistance for a project under the program. The assistance shall be in the form of grants, loans, forgivable loans, and loan

guarantees. The application shall include, but not be limited to, the following information:

- a. The total capital investment of the project.
- b. The amount or percentage of local and private matching moneys which will be or have been provided for the project.
- c. The total number of jobs to be created or retained by the project.
- d. The need of the community for the project and the financial assistance.
- e. The long-term tax generating impact of the project.

99 Acts, ch 204, §23
NEW section

15.372 Community attraction and tourism development fund.

1. The department shall establish a community attraction and tourism development fund consisting of any moneys appropriated by the general assembly for that purpose and any other moneys available to and obtained or accepted by the department for placement in the fund.

2. Payments of interest, repayments of moneys loaned pursuant to this part, and recaptures of awards shall be deposited in the fund.

3. The fund shall be used to provide grants, loans, forgivable loans, and loan guarantees under the community attraction and tourism development program established in section 15.371.

4. Moneys in the fund are not subject to section 8.33. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys in the fund shall be credited to the fund.

99 Acts, ch 204, §24
NEW section

15.373 Community attraction and tourism development program review committee — application review.

When reviewing the applications, the department shall consider, at a minimum, all of the following:

1. Whether the wages, benefits, including health benefits, safety, and other attributes of the project would improve the quality of attraction and tourism employment in the community.

2. The extent to which such a project would generate additional attraction and tourism opportunities.

3. The ability of the project to produce a long-term tax generating economic impact.

4. The location of the projects and geographic diversity of the applications.

5. The extent to which any part of the proposed project meets the definition of vertical infrastructure in section 8.57, subsection 5, paragraph "c".

99 Acts, ch 204, §25
Partial item veto applied
NEW section

CHAPTER 15A

USE OF PUBLIC FUNDS TO AID ECONOMIC DEVELOPMENT

15A.1 Economic development — public purpose — environmental protection and waste disposal requirements.

1. Economic development is a public purpose for which the state, a city, or a county may provide grants, loans, guarantees, tax incentives, and other financial assistance to or for the benefit of private persons.

For purposes of this chapter, “*economic development*” means private or joint public and private investment involving the creation of new jobs and income or the retention of existing jobs and income that would otherwise be lost.

2. Before public funds are used for grants, loans, tax incentives, or other financial assistance to private persons or on behalf of private persons for economic development, the governing body of the state, city, county, or other public body dispensing those funds or the governing body’s designee, shall determine that a public purpose will reasonably be accomplished by the dispensing or use of those funds. In determining whether the funds should be dispensed, the governing body or designee of the governing body shall consider any or all of the following factors:

a. Businesses that add diversity to or generate new opportunities for the Iowa economy should be favored over those that do not.

b. Development policies in the dispensing of the funds should attract, retain, or expand businesses that produce exports or import substitutes or which generate tourism-related activities.

c. Development policies in the dispensing or use of the funds should be targeted toward businesses that generate public gains and benefits, which gains and benefits are warranted in comparison to the amount of the funds dispensed.

d. Development policies in dispensing the funds should not be used to attract a business presently located within the state to relocate to another portion of the state unless the business is considering in good faith to relocate outside the state or unless the relocation is related to an expansion which will generate significant new job creation. Jobs created as a result of other jobs in similar Iowa businesses being displaced shall not be considered direct jobs for the purpose of dispensing funds.

3. In addition to the requirements of subsection 2, a state agency shall not provide a grant, loan, or other financial assistance to a private person or on behalf of a private person unless the business for whose benefit the financial assistance is to be provided meets, to the satisfaction of the state agency, all of the following:

a. The business makes a report detailing the circumstances of its violations, if any, of a federal or state environmental protection statute, regulation, or rule within the previous five years. The state agency shall take into consideration before allowing financial assistance this report of the business.

b. If the business generates solid or hazardous waste, that the business conducts in-house audits and management plans to reduce the amount of the waste and to safely dispose of the waste. For purposes of this paragraph, a business may, in lieu of conducting in-house audits, authorize the waste management assistance division of the department of natural resources or the Iowa waste reduction center established under section 268.4 to provide the audits.

4. A state agency shall disburse public moneys used for grants, loans, tax incentives, or other financial assistance for economic development without discrimination or without the use of terms or conditions which are more onerous than those regularly extended to persons of similar economic backgrounds and based on an applicant’s age, color, creed, national origin, race, religion, marital status, sex, physical disability, or familial status.

99 Acts, ch 197, §22
NEW subsection 4

15A.9 Quality jobs enterprise zone — state assistance.

1. *Findings — zone designation.*

a. The general assembly finds and declares that the designation of a quality jobs enterprise zone or zones and the provision of economic development assistance within the zone or zones are necessary to diversify the Iowa economy, enhance opportunities for Iowans to obtain quality industrial jobs, and provide significant economic benefits to the state through the expansion of Iowa’s economy. Establishment of the quality jobs enterprise zone or zones and the economic development assistance provided by the state or a local community will be for the well-being and benefit of the residents of the state and will be for a public purpose.

b. In order to assist a community or communities located within the state to secure new industrial manufacturing jobs, the state of Iowa makes economic development assistance available within the zone or zones, and the department of economic development shall designate a site or sites, which shall not be larger than two thousand five hundred acres, within thirty days of March 4, 1994, as a quality jobs enterprise zone or zones for the pur-

pose of attracting a primary business and supporting businesses to locate facilities within the state.

The primary business or a supporting business shall not be prohibited from participating in or receiving other economic development programs or services or electing to utilize other tax provisions to the extent authorized elsewhere by law.

2. *Definitions.* As used in this section:

a. "*Contractor or subcontractor*" means a person who contracts with the primary business or a supporting business or subcontracts with a contractor for the provision of property, materials, or services for the construction or equipping of a facility, located within the zone, of the primary business or a supporting business.

b. "*Primary business*" means a business which pays its full-time production employees at the facility average cash compensation, which shall not include the cost of the business's contribution to retirement or health benefit plans, equating to fifteen dollars per hour worked by the end of the second full year of operation following project completion, and which provides the department of economic development within thirty days of March 4, 1994, with notice of its intent to develop and operate a new manufacturing facility on a specific location within the state, including the legal description of the site which shall not contain more than two thousand five hundred acres, to invest at least two hundred fifty million dollars in the facility, and to commence construction of the facility by December 31, 1994, providing all necessary permits have been issued and zoning changes made in time for construction to begin by that date. The business shall also guarantee that it will create at least three hundred full-time jobs at the facility. The headquarters of the primary business need not be within the zone.

c. "*Project completion*" means the first date upon which the average annualized production of finished product for the preceding ninety-day period at the manufacturing facility operated by the primary business within the zone is at least fifty percent of the initial design capacity of the facility. The primary business shall inform the department of revenue and finance in writing within two weeks of project completion.

d. "*Supporting business*" means a business under contract with the primary business to provide property, materials, or services which are a necessary component of the operation of the manufacturing facility. To qualify as a supporting business, the business shall have a permanent facility or operations located within the zone and the revenue from fulfilling the contract with the primary business shall constitute at least seventy-five percent of the revenue generated by the business from all activities undertaken from the facility within the zone.

e. "*Zone or zones*" means a quality jobs enterprise zone or zones.

3. *New jobs credit.* At the request of the primary business or a supporting business, an agreement authorizing a supplemental new jobs credit from withholding from jobs within the zone may be entered into between the department of revenue and finance, a community college, and the primary business or a supporting business. The agreement shall be for program services for an additional job training project, as defined in chapter 260E. The agreement shall provide for the following:

a. That the project shall be administered in the same manner as a project under chapter 260E and that a supplemental new jobs credit from withholding in an amount equal to one and one-half percent of the gross wages paid by the primary business or a supporting business pursuant to section 422.16 is authorized to fund the program services for the additional project.

b. That the supplemental new jobs credit from withholding shall be collected, accounted for, and may be pledged by the community college in the same manner as described in section 260E.5.

c. That the community college shall not be allowed any expenses for administering the additional project except those expenses which are directly attributable to the additional project and which are in excess of the expenses allowed for the project under chapter 260E.

To provide funds for the payment of the costs of the additional project, a community college may borrow money, issue and sell certificates, and secure the payment of the certificates in the same manner as described in section 260E.6, including, but not limited to, providing the assessment of an annual levy as described in section 260E.6, subsection 4. The program and credit authorized by this subsection is in addition to, and not in lieu of, the program and credit authorized in chapter 260E.

4. *Investment tax credit.* The primary business and a supporting business shall be entitled to a corporate tax credit equal to ten percent of the new investment made within the zone by the primary business or a supporting business prior to project completion. A credit in excess of the tax liability for the tax year may be credited to the tax liability for the following twenty years or until depleted, whichever comes first.

For purposes of this section, "*new investment made within the zone*" means the capitalized cost of all real and personal property, including buildings and other improvements to real estate, purchased or otherwise acquired or relocated to the zone for use in the operation of the primary business or a supporting business within the zone. New investment in the zone does not include land, intangible property, or furniture and furnishings. The capitalized cost of property shall for the purposes of this section be determined in accordance with generally accepted accounting principles.

5. *Property tax exemption.*

a. All property, as defined in section 427A.1, subsection 1, paragraphs “e” and “j”, Code 1993, used by the primary business or a supporting business and located within the zone, shall be exempt from property taxation for a period of twenty years beginning with the year it is first assessed for taxation. In order to be eligible for this exemption, the property shall be acquired or leased by the primary business or a supporting business or relocated by the primary business or a supporting business to the zone from outside the state prior to project completion.

b. Property which is exempt for property tax purposes under this subsection is eligible for the sales and use tax exemption under section 422.45, subsection 27, notwithstanding that subsection or any other provision of the Code to the contrary.

6. *Sales, services, and use tax refund.* Taxes paid pursuant to chapter 422 or 423 on the gross receipts or rental price of property purchased or rented by the primary business or a supporting business for use by the primary business or a supporting business within the zone or on gas, electricity, water, and sewer utility services prior to project completion shall be refunded to the primary business or supporting business if the item was purchased or the service was performed or received prior to project completion. Claims under this section shall be submitted on forms provided by the department of revenue and finance not later than six months after project completion. The refund in this subsection shall not apply to furniture or furnishings, or intangible property.

7. *Sales, services, and use tax refund — contractor or subcontractor.* The primary business or a supporting business shall be entitled to a refund of the taxes paid under chapters 422 and 423 for gas, electricity, water, or sewer utility services, goods, wares, or merchandise, or on services rendered, furnished, or performed to or for a contractor or subcontractor and used in the fulfillment of a written contract relating to the construction or equipping of a facility within the zone of the primary business or a supporting business. Taxes attributable to intangible property and furniture and furnishings shall not be refunded.

To receive the refund a claim shall be filed by the primary business or a supporting business with the department of revenue and finance as follows:

a. The contractor or subcontractor shall state under oath, on forms provided by the department, the amount of the sales of goods, wares, or merchandise or services rendered, furnished, or performed including water, sewer, gas, and electric utility services for use in the zone upon which sales or use tax has been paid prior to the project completion, and shall file the forms with the primary business or supporting business before final settlement is made.

b. The primary business or a supporting business shall, not more than six months after project

completion, make application to the department for any refund of the amount of the taxes paid pursuant to chapter 422 or 423 upon any goods, wares, or merchandise, or services rendered, furnished, or performed, including water, sewer, gas, and electric utility services. The application shall be made in the manner and upon forms to be provided by the department, and the department shall audit the claim and, if approved, issue a warrant to the primary business or supporting business in the amount of the sales or use tax which has been paid to the state of Iowa under a contract. A claim filed by the primary business or a supporting business in accordance with this subsection shall not be denied by reason of a limitation provision set forth in chapter 421, 422, or 423.

c. A contractor or subcontractor who willfully makes a false report of tax paid under the provisions of this subsection is guilty of a simple misdemeanor and in addition is liable for the payment of the tax and any applicable penalty and interest.

8. *Corporate tax research credit.* A corporate tax credit shall be available to the primary business or a supporting business for increasing research activities in this state within the zone. The credit equals thirteen 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 within the zone to total qualified research expenditures. Any credit in excess of the tax liability for the tax year shall be refunded with interest computed under section 422.25. In lieu of claiming a refund, the primary business or a supporting business may elect to have the overpayment shown on its final return credited to its tax liability for the following tax year.

For the 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, 1999. The credit authorized in this subsection is in lieu of the credit authorized in section 422.33, subsection 5.

9. *Exemption from land ownership restrictions for nonresident aliens.*

a. The primary business and a supporting business, to the extent the primary business or the supporting business is not actively engaged in farming within the zone, may acquire, own, and lease land in the zone, notwithstanding the provisions of sections 9H.4, 9H.5, and 567.3, and shall be exempt from the requirements of section 567.4. The primary business and supporting business shall comply with the remaining provisions of chapters 9H and 567 to the extent they do not conflict with this subsection.

b. "Actively engaged in farming" means any of the following:

(1) Inspecting agricultural production activities within the zone periodically and furnishing at least half of the value of the tools and paying at least half the direct cost of production.

(2) Regularly and frequently making or taking an important part in making management decisions substantially contributing to or affecting the success of the farm operations within the zone.

(3) Performing physical work which significantly contributes to crop or livestock production.

10. *Limitation on assistance.* Economic development assistance under subsections 3 through 9 shall only be available to the primary business or a supporting business. However, if the department finds that a primary business or a supporting business has a record of violations of the law, including but not limited to environmental and worker safety statutes, rules, and regulations, over a period of time that tends to show a consistent pattern, the primary business or supporting business shall not qualify for economic development assistance under subsections 3 through 9, unless the department

finds that the violations did not seriously affect public health or safety or the environment, or if it did that there were mitigating circumstances. In making the findings and determinations regarding violations, mitigating circumstances, and whether a primary business or a supporting business is eligible for economic development assistance under subsections 3 through 9, the department shall be exempt from chapter 17A.

11. *Economic cost benefit analysis.* An economic cost benefit analysis shall be conducted by the legislative fiscal bureau for each zone established under this section for every five-year period through the duration of the zone. The analysis shall measure the impact upon both revenues and costs of the state and affected governmental subdivisions due to economic activities within the zone. The legislative fiscal bureau may contract for any services deemed necessary by the director to complete the analysis.

99 Acts, ch 95, §2, 12, 13

1999 amendment to subsection 8, unnumbered paragraph 2, applies retroactively to tax years beginning on or after January 1, 1998; 99 Acts, ch 95, §12, 13

Subsection 8, unnumbered paragraph 2 amended

CHAPTER 15E

DEVELOPMENT ACTIVITIES

DIVISION VIII

IOWA SEED CAPITAL CORPORATION

Dissolution of Iowa seed capital corporation and transfer of assets and liabilities; transition board; liquidation or sale of corporation, termination of board of directors, creation of new board, and report; see 97 Acts, ch 143, §5, 6; 98 Acts, ch 1225, §27, 32
Iowa seed capital corporation renamed as the ISCC liquidation corporation; annual report; 98 Acts, ch 1225, §27; 99 Acts, ch 197, §15

DIVISION XII

LOAN REPAYMENTS

15E.120 Loan repayments.

1. Cities which have received loans under the former Iowa community development loan program, sections 7A.41 through 7A.49, Code 1985, are still obligated to repay borrowed funds to the state and to comply with terms and conditions of existing promissory notes.

2. After July 1, 1986, loan repayments made by recipient cities are payable to the Iowa department of economic development in an amount and at the time required by existing promissory notes.

3. Loan agreements with cities receiving loans under the former Iowa community development loan program for projects which have not been completed as of July 1, 1986, shall be amended by sub-

stituting "Iowa department of economic development" for "office for planning and programming". The Iowa department of economic development shall assume the state's administrative responsibilities for these uncompleted projects.

4. All loan agreements and promissory notes with cities with completed projects shall, on July 1, 1986, be amended by substituting "Iowa department of economic development" for "office for planning and programming".

5. Loan repayments received by the Iowa department of economic development shall be deposited into a special account to be used at its discretion as matching funds to attract financial assistance from and to participate in programs with national rural development and finance corporations or as provided in subsection 6. Funds in this special account shall not revert to the state general fund at the end of any fiscal year. If the programs for which the funds in the special account are to be used are terminated or expire, the funds in the special account and funds that would be repaid, if any, to the special account shall be transferred or repaid to the community economic betterment account of the strategic investment fund established in section 15.313.

6. If the Iowa department of economic development determines that sufficient funds exist in the special account provided in subsection 5 for the purposes provided in subsection 5, up to twenty-

five percent of the loan repayments for the fiscal year received by the Iowa department of economic development may be deposited in the revolving loan fund to operate the self-employment loan program as both were established in section 15.241 under the department of economic development. Funds in this revolving loan fund shall not revert to the state general fund at the end of any fiscal year. Loan repayments from the self-employment loan program shall be deposited in the revolving loan fund. Deposits of funds under this subsection may occur for the fiscal years beginning July 1, 1986, July 1, 1987, July 1, 1988, and July 1, 1989.

7. Loan repayments made under this section and unallocated in the special account in subsection 5, shall be allocated to the revolving account of the rural community 2000 program created in section 15.287.

Funds available from the Iowa community development loan fund during fiscal year beginning July 1, 1999, appropriated for the community development program; 99 Acts, ch 197, §2

Section not amended; footnote added

DIVISION XIV

WALLACE TECHNOLOGY TRANSFER FOUNDATION

Wallace technology transfer foundation and related provisions repealed by 99 Acts, ch 208, §73

15E.152 through 15E.155 Repealed by 99 Acts, ch 208, § 73.

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

15E.157 through 15E.159 Repealed by 99 Acts, ch 208, § 73.

15E.160 Science and technology advisory council. Repealed by 99 Acts, ch 208, § 73.

15E.161 Wallace technology transfer foundation fund. Repealed by 99 Acts, ch 208, § 73.

15E.165 Manufacturing technology program — purpose — intent. Repealed by 99 Acts, ch 208, § 73.

15E.166 Regionally based manufacturing technology program. Repealed by 99 Acts, ch 208, § 73.

DIVISION XVII

IOWA CAPITAL INVESTMENT BOARD

Dissolution of Iowa seed capital corporation and transfer of assets and liabilities; transition board; liquidation or sale of corporation; termination of board of directors, creation of new board, and report; see 97 Acts, ch 143, §5, 6; 98 Acts, ch 1225, §27, 32

Iowa seed capital corporation renamed as the ISCC liquidation corporation; annual report; 98 Acts, ch 1225, §27; 99 Acts, ch 197, §15

DIVISION XVIII

ENTERPRISE ZONES

15E.196 Incentives — assistance.

For purposes of determining the incentives or assistance provided in this section, “*eligible business*” means a business which has been approved to receive incentives and assistance by the department of economic development pursuant to application as provided in section 15E.195. The incentives and assistance provided under this division for businesses located in enterprise zones shall be for a period not to exceed ten years and shall include all of the following:

1. *a.* New jobs credit from withholding, as provided in section 15.331.

b. (1) As an alternative to paragraph “*a*”, a business may provide a housing assistance program in the form of down payment assistance or rental assistance for employees in new jobs, as defined in section 260E.2, who buy or rent housing located within any certified enterprise zone. A business establishing a housing assistance program shall fund this program through a credit from withholding based on the wages paid to the employees participating in the housing assistance program. An amount equal to one and one-half percent of the gross wages paid by the employer to each employee participating in the housing assistance program shall be credited from the payment made by an employer pursuant to section 422.16. If the amount of the withholding by the employer is less than one and one-half percent of the gross wages paid to the employees, then the employer shall receive a credit against other withholding taxes due by the employer. The employer shall deposit the amount of the credit quarterly into a housing assistance fund created by the business out of which the business shall provide employees enrolled in the housing assistance program with down payment assistance or rental assistance.

(2) A business may enter into an agreement with the county or city designating the enterprise zone pursuant to section 15E.194 to borrow initial moneys to fund a housing assistance program. The county or city may appropriate from the general fund of the county or city for the assistance program an amount not to exceed an amount estimated by the department of revenue and finance to

be equal to the total amount of credit from withholding for employees determined by the business to be enrolled in the program during the first two years. The business shall pay the principal and interest on the loan out of moneys received from the credit from withholding provided for in subparagraph (1). The terms of the loan agreement shall include the principal amount, the interest rate, the terms of repayment, and the term of the loan. The terms of the loan agreement shall not extend beyond the period during which the enterprise zone is certified.

(3) The employer shall certify to the department of revenue and finance that the credit from withholding is in accordance with an agreement and shall provide other information the department may require.

(4) An employee participating in the housing assistance program will receive full credit for the amount withheld as provided in section 422.16.

2. Sales, services, and use tax refund, as provided in section 15.331A.

3. Investment tax credit, as provided in section 15.333.

4. Research activities credit, as provided in section 15.335.

5. The county or city for which an eligible enterprise zone is certified may exempt from all property taxation all or a portion of the value added to the property upon which an eligible business locates or expands in an enterprise zone and which is used in the operation of the eligible business. The amount of value added for purposes of this subsection shall be the amount of the increase in assessed valuation of the property following the location or expansion of the business in the enterprise zone. If an exemption provided pursuant to this subsection is made applicable to only a portion of the property within an enterprise zone, the definition of that subset of eligible property must be by uniform criteria which further some planning objective established by the city or county enterprise zone commission and approved by the eligible city or county. The exemption may be allowed for a period not to exceed ten years beginning the year the eligible business enters into an agreement with the county or city to locate or expand operations in an enterprise zone.

6. Insurance premium tax credit, as provided in section 15.333A.

99 Acts, ch 172, §2
NEW subsection 6

15E.205 Iowa agricultural industry finance corporations — requirements.

1. A corporation incorporated under chapter 490 is an Iowa agricultural industry finance corporation if the corporation complies with the requirements of this section and section 15E.206. In addition to the other requirements for a corporation

organized under chapter 490, all of the following shall apply:

a. Agricultural producers must hold at least fifty-one percent of the corporation's common stock and at least fifty-one percent of the corporation's voting stock. The status of an agricultural producer shall be determined at the time of the transfer of stock from the corporation to the shareholder in a manner and as provided in the corporation's articles of incorporation or bylaws.

b. A director of the corporation's board of directors shall not serve for more than seven consecutive years as a board director.

c. The purpose of the corporation must be limited to providing financing to eligible persons under section 15E.209 who are engaging in Iowa agricultural industry ventures limited to establishing a business structure in which agricultural producers produce agricultural commodities for processing and marketing as agricultural processed products.

2. The requirements of this section shall be memorialized in the corporation's articles of incorporation.

99 Acts, ch 66, §1
Subsection 1, paragraph a amended

15E.208 Qualified corporations — Iowa agricultural industry finance loans.

1. The department may award an Iowa agricultural industry finance loan to an Iowa agricultural industry finance corporation if the department in its discretion determines that the corporation is qualified under this section.

2. The corporation must apply for an Iowa agricultural industry finance loan on forms and according to procedures required by the department.

3. The department shall loan all of the amounts available to the department pursuant to this division to a qualified corporation with provisions and restrictions as determined by the department and contained in a loan agreement executed between the department and the qualified corporation.

a. The department may attach conditions to the granting of the loan as it deems desirable, including any restrictions on the subordination of the moneys loaned. The attorney general shall assist the department in drafting loan agreements and in collecting on the loan agreement.

b. The loan shall be repayable upon terms and conditions negotiated by the parties. The repayment period shall begin six years following the date when the loan is awarded and end twenty-five years after the date that the repayment period begins. At least four percent of the amount due shall be paid each year to the department. The corporation shall not be subject to a prepayment penalty.

c. The corporation shall not expend moneys originating from the state, including moneys

loaned under this section, on political activity or on any attempt to influence legislation.

4. A corporation shall not provide financing to support a person who is any of the following:

a. An agricultural producer, if any of the following applies:

(1) The agricultural producer is a party to a pending action for a violation of chapter 455B concerning a confinement feeding operation in which the person has a controlling interest and the action is commenced in district court by the attorney general.

(2) The agricultural producer or a confinement feeding operation in which the agricultural producer holds a controlling interest is classified as a habitual violator under section 455B.191.

b. An agricultural products processor, if the processor or a person owning a controlling interest in the processor has demonstrated, within the most recent consecutive three-year period prior to the application for financing, a continuous and flagrant disregard for the health and safety of its employees or the quality of the environment. Violations of environmental protection statutes, rules, or regulations shall be reported for the most recent five-year period prior to application. Evidence of such disregard shall include a history of serious or uncorrected violations of state or federal law protecting occupational health and safety or the environment, including but not limited to serious or uncorrected violations of occupational safety and health standards enforced by the division of labor services of the department of employment services pursuant to chapter 84A, or rules enforced by the environmental protection division of the department of natural resources pursuant to chapter 455B.

c. A member of the economic development board, an employee of the department of economic development, an elected state official, or any director or other officer or an employee of the corporation.

5. In order to be eligible as a qualified Iowa agricultural industry finance corporation, all of the following conditions must be satisfied:

a. The corporation must only provide financing to persons and ventures eligible under section 15E.209.

b. The corporation must demonstrate that it complies with guiding principles for the corporation as provided in section 15E.207.

c. The corporation must adopt policies and procedures which maximize public oversight into the affairs of the corporation, by providing a forum for public comment, an opportunity for public review of the corporation's actions, and methods to ensure accountability for the expenditure of public moneys loaned to the corporation.

d. The corporation's articles of incorporation must comply with requirements established by the department relating to the capacity and integrity of

the corporation to carry out the purposes of this division, including but not limited to all of the following:

(1) The capitalization of the corporation.

(2) The manner in which financing is provided by the corporation, including the manner in which an Iowa agricultural industry finance loan can be used by the corporation.

(3) The composition of the corporation's board of directors. The board must be composed of persons knowledgeable in Iowa agricultural industries including a representative number of individuals experienced and knowledgeable in financing new agricultural industries.

(4) The manner of oversight required by the department or the auditor of state. The articles must provide that the corporation shall submit a report to the governor, the general assembly, and the department. The report shall provide a description of the corporation's activities and a summary of its finances, including financial awards. The report shall be submitted not later than January 10 of each year. The articles shall provide that an audit of the corporation must be conducted each year for the preceding year by a certified public accountant licensed pursuant to chapter 542C. The auditor of state may audit the books and accounts of the corporation at any time. The results of the annual audit and any audit for the current year conducted by the auditor of state shall be included as part of the report.

(5) The execution of an agreement between the corporation and an eligible recipient as required by the department as a condition of providing financing, in which the eligible recipient agrees to become a shareholder in the corporation. If the eligible recipient is an agricultural producer as provided in section 15E.209, the agreement shall provide that the agricultural producer becomes a shareholder of voting common stock in the corporation equal to at least five percent of the financing provided to the agricultural producer pursuant to the agreement. The agreement shall be for a period of not less than ten years. An agreement shall at least provide all of the following:

(a) The establishment of a common stock pricing system. The stock shall be frozen against price appreciation for the first five years of the life of the corporation. The articles shall contain waivers for death and disability.

(b) The maintenance of stock ownership by an eligible recipient until a financial assistance obligation due the corporation is satisfied.

(c) A requirement that the par value of participating common stock be established prior to providing financial assistance to an eligible recipient.

e. To the extent feasible and fiscally prudent, the corporation must maintain a portfolio which is diversified among the various types of agricultural commodities and agribusiness.

f. Not more than seventy-five percent of moneys originating from the state, including moneys loaned to the corporation pursuant to this section, may be used to finance any one Iowa agricultural industry venture.

g. The corporation may only be terminated by the following methods, unless approved by the department:

(1) Merger or share exchange under chapter 490, division XI.

(2) Dissolution as provided in chapter 490, division XIV, part A.

(3) A sale, lease, exchange, mortgage, pledge, transfer, or other disposition, in one or more transactions of assets of the corporation which has an aggregate market value equal to fifty percent or more of either the aggregate market value of all of the assets of the corporation determined on a consolidated basis, or the aggregate market value of all the outstanding stock of the corporation.

6. The department shall provide for the default of the loan if the qualified corporation does any of the following:

a. Violates a provision of the articles of incorporation or an amendment to the articles of incorporation that is required by this division which violation is not approved by the department.

b. Violates the terms of the loan agreement executed between the department and the corporation, which violation is not approved by the department.

c. Fails to comply with the requirements of section 15E.205.

d. Completes a transaction, if all of the following apply:

(1) The transaction involves any of the following:

(a) A merger or share exchange under chapter 490, division XI.

(b) The sale, lease, exchange, mortgage, pledge, transfer, or other disposition, in one or more transactions of assets of the corporation which has an aggregate market value equal to fifty percent or more of either the aggregate market value of all of the assets of the corporation determined on a consolidated basis, or the aggregate market value of all the outstanding stock of the corporation.

(2) The surviving entity of a merger or share exchange, or the entity acquiring the assets of the corporation fails to meet the requirements of section 15E.205.

7. In an action to enforce a judgment against a qualified corporation, the interest of the state shall be subrogated to the interests of holders of bonds issued by the corporation.

8. Moneys repaid or collected by the department under this section shall be deposited into the road use tax fund created pursuant to section 312.1.

99 Acts, ch 66, §2
Subsection 5, paragraph d, subparagraph (5), unnumbered paragraph 1 amended

CHAPTER 16

IOWA FINANCE AUTHORITY

16.92 Real estate transfer — mortgage release certificate.

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

a. “*Division*” means the title guaranty division in the Iowa finance authority.

b. “*Mortgage*” means a mortgage or mortgage lien on an interest in real property in this state given to secure a loan in an original principal amount of five hundred thousand dollars or less.

c. “*Mortgagee*” means the grantee of a mortgage. If a mortgage has been assigned of record, the mortgagee is the last person to whom the mortgage is assigned of record.

d. “*Mortgage servicer*” means the mortgagee or a person other than the mortgagee to whom a mortgagor or the mortgagor’s successor in interest is instructed by the mortgagee to send payments on a loan secured by the mortgage. A person transmitting a payoff statement for a mortgage is the mortgage servicer for purposes of such mortgage.

e. “*Mortgagor*” means the grantor of a mortgage.

f. “*Payoff statement*” means a written statement furnished by the mortgage servicer which sets forth all of the following:

(1) The unpaid balance of the loan secured by a mortgage, including principal, interest, and any other charges properly due under or secured by the mortgage, or the amount required to be paid in order to release or partially release the mortgage.

(2) Interest on a per-day basis for an amount set forth pursuant to subparagraph (1).

(3) The address where payment is to be sent or other specific instructions for making a payment.

(4) If after payment of the unpaid balance of the loan secured by the mortgage, the mortgage continues to secure any unpaid obligation due the mortgagee or any unfunded commitment by the mortgagor to the mortgagee, the legal description of the property that will continue to be subject to the mortgage, and the legal description of the property that will be released from the mortgage.

g. “*Real estate lender or closer*” means a person licensed to regularly lend moneys to be secured by a

mortgage on real property in this state, a licensed real estate broker, or a licensed attorney.

2. *Execution of certificate of release.* A duly authorized officer or employee of the division may execute and record a certificate of release in the real property records of each county in which a mortgage is recorded as provided in this section if all of the following are satisfied:

a. The real estate lender or closer has certified in writing to the division all of the following:

(1) That the payoff statement satisfies one of the following:

(a) The statement does not indicate that the mortgage continues to secure an unpaid obligation due the mortgagee or an unfunded commitment by the mortgagor to the mortgagee.

(b) The statement contains the legal description of the property to be released from the mortgage and the legal description of the property that will continue to be subject to the mortgage.

(2) That payment was made in accordance with the payoff statement, including a statement as to the date the payment was received by the mortgagee or mortgage servicer, as evidenced by one or more of the following in the records of the real estate lender or closer or its agent:

(a) A bank check, certified check, escrow account check, real estate broker trust account check, or attorney trust account check that was negotiated by the mortgagee or mortgage servicer.

(b) Other documentary evidence of payment to the mortgagee or mortgage servicer.

(3) That more than thirty days have elapsed since the date the payment was sent.

b. The division determines that an effective satisfaction or release of the mortgage has not been executed and recorded within thirty days after the date payment was sent or otherwise made in accordance with a payoff statement.

c. The division, at least thirty days prior to executing the certificate of release, sends by certified mail, to the last known address of the mortgage servicer, written notice of its intention to execute and record a certificate of release pursuant to this section after expiration of the thirty-day period following the sending of such notice, including instructions to notify the division of any reason why the certificate of release should not be executed and recorded. If, prior to executing and recording the certificate of release, the division receives written notification setting forth a reason satisfactory to the division why the certificate of release should not be executed and recorded by the division, the division shall not execute and record the certificate of release.

3. *Contents.* A certificate of release executed under this section must contain substantially the information set forth as follows:

a. The name of the mortgagor; the name of the original mortgagee, and, if applicable, the mortgage servicer; the date of the mortgage; the date of

recording, including the volume and page or other applicable recording information in the real property records where the mortgage is recorded, and the same information for the last recorded assignment of the mortgage.

b. A statement that the original mortgage principal was in an amount of five hundred thousand dollars or less.

c. A statement that the person executing the certificate of release is a duly authorized officer or employee of the division.

d. A statement indicating one of the following:

(1) That the mortgage servicer provided a payoff statement that was used to make payment, and that does not indicate that the mortgage continues to secure any unpaid obligation due the mortgagee or any unfunded commitment by the mortgagor to the mortgagee.

(2) A statement that the certificate is a partial release of the mortgage, the legal description of the property that will be released from the mortgage, and the legal description of the property that will continue to be subject to the mortgage.

e. A statement that payment was made in accordance with the payoff statement, and the date the payment was received by the mortgagee or mortgage servicer, as evidenced by one or more of the following in the records of the real estate lender or closer or its agent:

(1) A bank check, certified check, escrow account check, real estate broker trust account check, or attorney trust account check that was negotiated by the mortgagee or mortgage servicer.

(2) Other documentary evidence of payment to the mortgagee or mortgage servicer.

f. A statement that more than thirty days have elapsed since the date payment in accordance with the payoff statement was sent.

g. A statement that the division has sent the thirty-day notice required under subsection 2, paragraph "c", and that thirty days have elapsed since the date the notice was sent.

h. A statement that the division has not received written notification of any reason satisfactory to the division why the certificate of release should not be executed and recorded after the expiration of the thirty-day notice period under subsection 2, paragraph "c".

4. *Execution.* A certificate of release under this section shall be executed and acknowledged in the same manner as required by law for the execution of a deed.

5. *Effect.*

a. For purposes of a release or partial release of the mortgage, a certificate of release executed under this section that contains the information and statements required under subsection 3 is prima facie evidence of the facts contained in such release or partial release, is entitled to be recorded with the county recorder where the mortgage is recorded, operates as a release or partial release of the mort-

gage described in the certificate of release, and may be relied upon by any person who owns or subsequently acquires an interest in the property released from the mortgage. The county recorder shall rely upon the certificate of release to release the mortgage.

b. Recording of a wrongful or erroneous certificate of release by the division shall not relieve the mortgagor, or the mortgagor's successors or assigns on the debt, from personal liability on the loan or on other obligations secured by the mortgage.

c. In addition to any other remedy provided by law, if the division wrongfully or erroneously records a certificate of release under this section, the division is liable to the mortgagee and mortgage servicer for actual damages sustained due to the recording of the certificate of release.

d. Upon payment of a claim relating to the recording of a certificate of release, the division is subrogated to the rights of the claimant against all persons relating to the claim.

6. *Recording.* If a mortgage is recorded in more than one county and a certificate of release or partial release is recorded in one of them, a certified copy of the certificate of release may be recorded in another county with the same effect as the original. In all cases, the certificate of release or partial release shall be entered and indexed in the manner that a satisfaction of mortgage is entered and indexed.

7. *Prior mortgages.* If the real estate lender or closer has notified the division that a mortgage has been paid in full by someone other than the real estate lender or closer, or was paid by the real estate lender or closer under a previous transaction, and an effective release has not been filed of record,

the division may execute and record a certificate of release without certification by the real estate lender or closer that payment was made pursuant to a payoff statement and the date payment was received by the mortgagee. A certificate of release filed pursuant to this subsection is subject to the requirements of subsection 2, paragraph "c".

8. *Application.* This section applies only to a mortgage in an original principal amount of five hundred thousand dollars or less.

99 Acts, ch 54, §1
NEW section

16.93 through 16.99 Reserved.

16.161 Authority to issue E911 program bonds and notes.

The authority shall assist the administrator, appointed pursuant to section 34A.2A, as provided in chapter 34A, subchapter II, and the authority shall have all of the powers delegated to it by a joint E911 service board or the department of public defense in a chapter 28E agreement with respect to the issuance and securing of bonds or notes and the carrying out of the purposes of chapter 34A.

The authority shall provide a mechanism for the pooling of funds of two or more joint E911 service boards to be used for the joint purchasing of necessary equipment and reimbursement of land-line and wireless service providers' costs for upgrades necessary to provide E911 service. When two or more joint E911 service boards have agreed to pool funds for the purpose of purchasing necessary equipment to be used in providing E911 service, the authority shall issue bonds and notes as provided in sections 34A.20 through 34A.22.

99 Acts, ch 96, §3
Unnumbered paragraph 1 amended

CHAPTER 17A

IOWA ADMINISTRATIVE PROCEDURE ACT

1998 amendments to chapter apply to agency proceedings commenced, or conducted on a remand from a court or other agency, on or after July 1, 1999; 98 Acts, ch 1202, §4-26, 45, 46

17A.2 Definitions.

As used in this chapter:

1. "*Agency*" means each board, commission, department, officer or other administrative office or unit of the state. "*Agency*" does not mean the general assembly, the judicial branch or any of its components, the office of consumer advocate, the governor, or a political subdivision of the state or its offices and units. Unless provided otherwise by statute, no less than two-thirds of the members eligible to vote of a multimember agency constitute a quorum authorized to act in the name of the agency.

2. "*Agency action*" includes the whole or a part of an agency rule or other statement of law or

policy, order, decision, license, proceeding, investigation, sanction, relief, or the equivalent or a denial thereof, or a failure to act, or any other exercise of agency discretion or failure to do so, or the performance of any agency duty or the failure to do so.

3. "*Agency member*" means an individual who is the statutory or constitutional head of an agency, or an individual who is one of several individuals who constitute the statutory or constitutional head of an agency.

4. "*ARC number*" means the identification number assigned by the governor's administrative rules coordinator to each rulemaking document.

5. "*Contested case*" means a proceeding including but not restricted to ratemaking, price fixing,

and licensing in which the legal rights, duties or privileges of a party are required by Constitution or statute to be determined by an agency after an opportunity for an evidentiary hearing.

6. "License" includes the whole or a part of any agency permit, certificate, approval, registration, charter, or similar form of permission required by statute.

7. "Licensing" includes the agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license.

8. "Party" means each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.

9. "Person" means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency.

10. "Provision of law" means the whole or part of the Constitution of the United States of America or the Constitution of the State of Iowa, or of any federal or state statute, court rule, executive order of the governor, or agency rule.

11. "Rule" means each agency statement of general applicability that implements, interprets, or prescribes law or policy, or that describes the organization, procedure, or practice requirements of any agency. Notwithstanding any other statute, the term includes an executive order or directive of the governor which creates an agency or establishes a program or which transfers a program between agencies established by statute or rule. The term includes the amendment or repeal of an existing rule, but does not include:

a. A statement concerning only the internal management of an agency and which does not substantially affect the legal rights of, or procedures available to, the public or any segment thereof.

b. A declaratory order issued pursuant to section 17A.9, or an interpretation issued by an agency with respect to a specific set of facts and intended to apply only to that specific set of facts.

c. An intergovernmental, interagency, or intra-agency memorandum, directive, manual, or other communication which does not substantially affect the legal rights of, or procedures available to, the public or any segment thereof.

d. A determination, decision, or order in a contested case.

e. An opinion of the attorney general.

f. Those portions of staff manuals, instructions, or other statements issued by an agency which set forth criteria or guidelines to be used by its staff in auditing, in making inspections, in settling commercial disputes or negotiating commercial arrangements, or in the selection or handling of cases, such as operational tactics or allowable tolerances or criteria for the defense, prosecution, or settlement of cases, when the disclosure of such statements would: (1) enable law violators to

avoid detection; or (2) facilitate disregard of requirements imposed by law; or (3) give a clearly improper advantage to persons who are in an adverse position to the state.

g. A specification of the prices to be charged for goods or services sold by an agency as distinguished from a license fee, application fee, or other fees.

h. A statement concerning only the physical servicing, maintenance, or care of publicly owned or operated facilities or property.

i. A statement relating to the use of a particular publicly owned or operated facility or property, the substance of which is indicated to the public by means of signs or signals.

j. A decision by an agency not to exercise a discretionary power.

k. A statement concerning only inmates of a penal institution, students enrolled in an educational institution, or patients admitted to a hospital, when issued by such an agency.

12. "Rulemaking" means the process for adopting, amending, or repealing a rule.

98 Acts, ch 1202, §4-6, 46

Subsection 10 and 1998 amendments to subsection 11 apply to agency proceedings commenced, or conducted on a remand from a court or other agency, on or after July 1, 1999; 98 Acts, ch 1202, §4-6, 46

NEW subsection 10 and former subsections 10 and 11 renumbered as 11 and 12

Subsection 11, unnumbered paragraph 1 and paragraph b amended

17A.3 Public information — adoption of rules — availability of rules and orders.

1. In addition to other requirements imposed by Constitution or statute, each agency shall:

a. Adopt as a rule a description of the organization of the agency which states the general course and method of its operations, the administrative subdivisions of the agency and the programs implemented by each of them, a statement of the mission of the agency, and the methods by which and location where the public may obtain information or make submissions or requests.

b. Adopt rules of practice setting forth the nature and requirements of all formal and informal procedures available to the public, including a description of all forms and instructions that are to be used by the public in dealing with the agency.

c. As soon as feasible and to the extent practicable, adopt rules, in addition to those otherwise required by this chapter, embodying appropriate standards, principles, and procedural safeguards that the agency will apply to the law it administers.

d. Make available for public inspection all rules, and make available for public inspection and index by subject, all other written statements of law or policy, or interpretations formulated, adopted, or used by the agency in the discharge of its functions. Except as otherwise required by Constitution or statute, or in the use of discovery under the Iowa rules of civil procedure or in criminal cases, an agency shall not be required to make available for public inspection those portions of its

staff manuals, instructions, or other statements excluded from the definition of “rule” by section 17A.2, subsection 11, paragraph “f”.

e. Make available for public inspection and index by name and subject all final orders, decisions, and opinions: Provided that to the extent required to prevent a clearly unwarranted invasion of personal privacy or trade secrets, an agency shall delete identifying details when it makes available for public inspection any final order, decision, or opinion; however, in each case the justification for the deletion shall be explained fully in writing.

2. No agency rule or other written statement of law or policy, or interpretation, order, decision, or opinion is valid or effective against any person or party, nor shall it be invoked by the agency for any purpose, until it has been made available for public inspection and indexed as required by subsection 1, paragraphs “d” and “e”. This provision is not applicable in favor of any person or party who has actual timely knowledge thereof and the burden of proving such knowledge shall be on the agency.

98 Acts, ch 1202, §7, 46
1998 amendment to subsection 1 applies to agency proceedings commenced, or conducted on a remand from a court or other agency, on or after July 1, 1999; 98 Acts, ch 1202, §7, 46
Subsection 1, NEW paragraph c, and former paragraphs c and d relettered as d and e

17A.4 Procedure for adoption of rules.

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

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

b. Afford all interested persons not less than twenty days to submit data, views, or arguments in writing. If timely requested in writing by twenty-five interested persons, by a governmental subdivision, by the administrative rules review committee, by an agency, or by an association having not less than twenty-five members, the agency must give interested persons an opportunity to make oral presentation. The opportunity for oral presentation must be held at least twenty days after publication of the notice of its time and place in the Iowa administrative bulletin. The agency shall consider fully all written and oral submissions respecting the proposed rule. Within one hundred eighty days following either the notice published according to the provisions of paragraph “a” or within one hundred eighty days after the last date

of the oral presentations on the proposed rule, whichever is later, the agency shall adopt a rule pursuant to the rulemaking proceeding or shall terminate the proceeding by publishing notice of termination in the Iowa administrative bulletin.

An agency shall include in a preamble to each rule it adopts a brief explanation of the principal reasons for its action and, if applicable, a brief explanation of the principal reasons for its failure to provide in that rule for the waiver of the rule in specified situations if no such waiver provision is included in the rule. This explanatory requirement does not apply when the agency adopts a rule that only defines the meaning of a provision of law if the agency does not possess delegated authority to bind the courts to any extent with its definition. In addition, if requested to do so by an interested person, either prior to adoption or within thirty days thereafter, the agency shall issue a concise statement of the principal reasons for and against the rule adopted, incorporating therein the reasons for overruling considerations urged against the rule. This concise statement shall be issued either at the time of the adoption of the rule or within thirty-five days after the agency receives the request.

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

2. When an agency for good cause finds that notice and public participation would be unnecessary, impracticable, or contrary to the public interest, the provisions of subsection 1 shall be inapplicable. The agency shall incorporate in each rule issued in reliance upon this provision either the finding and a brief statement of the reasons for the finding, or a statement that the rule is within a very narrowly tailored category of rules whose issuance has previously been exempted from subsection 1 by a special rule relying on this provision and including such a finding and statement of reasons for the entire category. If the administrative rules review committee by a two-thirds vote, the governor, or the attorney general files with the administrative code editor an objection to the adoption of any rule pursuant to this subsection, that rule shall cease to be effective one hundred eighty days after the date the objection was filed. A copy of the objection, properly dated, shall be forwarded to the agency at the time of filing the objection. In any action contesting a rule adopted pursuant to this subsection, the burden of proof shall be on the agency to show that the procedures of subsection 1 were impracticable, unnecessary, or contrary to the public interest and

that, if a category of rules was involved, the category was very narrowly tailored.

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

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

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

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

6. The governor may rescind an adopted rule by executive order within seventy days of the rule

becoming effective. The governor shall provide a copy of the executive order to the administrative code editor who shall include it in the next publication of the Iowa administrative bulletin.

98 Acts, ch 1202, §8, 9, 46

1998 amendments to subsection 1 apply to agency proceedings commenced, or conducted on a remand from a court or other agency, on or after July 1, 1999; 98 Acts, ch 1202, §8, 9, 46

Subsection 1, paragraph b amended

Subsection 1, paragraph c stricken and former paragraph d relettered as c

17A.4A Regulatory analysis.

1. An agency shall issue a regulatory analysis of a proposed rule that complies with subsection 2, paragraph "a", if, within thirty-two days after the published notice of proposed rule adoption, a written request for the analysis is submitted to the agency by the administrative rules review committee or the administrative rules coordinator. An agency shall issue a regulatory analysis of a proposed rule that complies with subsection 2, paragraph "b", if the rule would have a substantial impact on small business and if, within thirty-two days after the published notice of proposed rule adoption, a written request for analysis is submitted to the agency by the administrative rules review committee, the administrative rules coordinator, at least twenty-five persons signing that request who each qualify as a small business or by an organization representing at least twenty-five such persons. If a rule has been adopted without prior notice and an opportunity for public participation in reliance upon section 17A.4, subsection 2, the written request for an analysis that complies with subsection 2, paragraph "a" or "b", may be made within seventy days of publication of the rule.

2. *a.* Except to the extent that a written request for a regulatory analysis expressly waives one or more of the following, the regulatory analysis must contain all of the following:

(1) A description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.

(2) A description of the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons, including a description of the nature and amount of all of the different kinds of costs that would be incurred in complying with the proposed rule.

(3) The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

(4) A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.

(5) A determination of whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rule.

(6) A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule.

b. In the case of a rule that would have a substantial impact on small business, the regulatory analysis must contain a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rule on small business:

(1) Establish less stringent compliance or reporting requirements in the rule for small business.

(2) Establish less stringent schedules or deadlines in the rule for compliance or reporting requirements for small business.

(3) Consolidate or simplify the rule's compliance or reporting requirements for small business.

(4) Establish performance standards to replace design or operational standards in the rule for small business.

(5) Exempt small business from any or all requirements of the rule.

c. The agency shall reduce the impact of a proposed rule that would have a substantial impact on small business by using a method discussed in paragraph "b" if the agency finds that the method is legal and feasible in meeting the statutory objectives which are the basis of the proposed rule.

3. Each regulatory analysis must include quantifications of the data to the extent practicable and must take account of both short-term and long-term consequences.

4. Upon receipt by an agency of a timely request for a regulatory analysis, the agency shall extend the period specified in this chapter for each of the following until at least twenty days after publication in the administrative bulletin of a concise summary of the regulatory analysis:

a. The end of the period during which persons may make written submissions on the proposed rule.

b. The end of the period during which an oral proceeding may be requested.

c. The date of any required oral proceeding on the proposed rule.

In the case of a rule adopted without prior notice and an opportunity for public participation in reliance upon section 17A.4, subsection 2, the summary must be published within seventy days of the request.

5. The published summary of the regulatory analysis must also indicate where persons may obtain copies of the full text of the regulatory analysis and where, when, and how persons may present their views on the proposed rule and demand an oral proceeding thereon if one is not already provided. Agencies shall make available to the public, to the maximum extent feasible, the published

summary and the full text of the regulatory analysis described in this subsection in an electronic format, including, but not limited to, access to the documents through the internet.

6. If the agency has made a good faith effort to comply with the requirements of subsections 1 through 3, the rule may not be invalidated on the ground that the contents of the regulatory analysis are insufficient or inaccurate.

7. For the purpose of this section, "small business" means any entity including but not limited to an individual, partnership, corporation, joint venture, association, or cooperative, to which all of the following apply:

a. It is not an affiliate or subsidiary of an entity dominant in its field of operation.

b. It has either twenty or fewer full-time equivalent positions or less than one million dollars in annual gross revenues in the preceding fiscal year.

For purposes of this definition, "dominant in its field of operation" means having more than twenty full-time equivalent positions and more than one million dollars in annual gross revenues, and "affiliate or subsidiary of an entity dominant in its field of operation" means an entity which is at least twenty percent owned by an entity dominant in its field of operation, or by partners, officers, directors, majority stockholders, or their equivalent, of an entity dominant in that field of operation.

98 Acts, ch 1202, §10, 46
Section applies to agency proceedings commenced, or conducted on a remand from a court or other agency, on or after July 1, 1999; 98 Acts, ch 1202, §10, 46
NEW section

17A.7 Petition for adoption of rules and request for review of rules.

1. An interested person may petition an agency requesting the adoption, amendment, or repeal of a rule. Each agency shall prescribe by rule the form for petitions and the procedure for their submission, consideration, and disposition. Within sixty days after submission of a petition, the agency either shall deny the petition in writing on the merits, stating its reasons for the denial, or initiate rulemaking proceedings in accordance with section 17A.4, or issue a rule if it is not required to be issued according to the procedures of section 17A.4, subsection 1.

2. Any interested person, association, agency, or political subdivision may submit a written request to the administrative rules coordinator for an agency to conduct a formal review of a specified rule of that agency to determine whether the rule should be repealed or amended or a new rule adopted instead. The administrative rules coordinator shall determine whether the request is reasonable and does not place an unreasonable burden upon the agency.

If the agency has not conducted such a review of the specified rule within a period of five years prior to the filing of the written request, and upon a de-

termination by the administrative rules coordinator that the request is reasonable and does not place an unreasonable burden upon the agency, the agency shall prepare within a reasonable time a written report with respect to the rule summarizing the agency's findings, its supporting reasons, and any proposed course of action. The report must include, for the specified rule, a concise statement of all of the following:

a. The rule's effectiveness in achieving its objectives, including a summary of any available data supporting the conclusions reached.

b. Written criticisms of the rule received during the previous five years, including a summary of any petitions for waiver of the rule tendered to the agency or granted by the agency.

c. Alternative solutions regarding the subject matter of the criticisms and the reasons they were rejected or the changes made in the rule in response to those criticisms and the reasons for the changes.

A copy of the report shall be sent to the administrative rules review committee and the administrative rules coordinator and shall be made available for public inspection.

98 Acts, ch 1202, §11, 46

1998 amendments apply to agency proceedings commenced, or conducted on a remand from a court or other agency, on or after July 1, 1999; 98 Acts, ch 1202, §11, 46

Section amended

17A.8 Administrative rules review committee.

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

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

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

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

3. A committee member shall be paid the per diem specified in section 2.10, subsection 5, for each day in attendance and shall be reimbursed for actual and necessary expenses. There is appropriated from money in the general fund not otherwise appropriated an amount sufficient to pay costs incurred under this section.

4. The committee shall choose a chairperson from its membership and prescribe its rules of procedure. The committee may employ a secretary or

may appoint the administrative code editor or a designee to act as secretary.

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

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

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

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

9. Upon a vote of two-thirds of its members, the administrative rules review committee may delay the effective date of a rule until the adjournment of the next regular session of the general assembly. The committee shall refer a rule whose effective date has been delayed to the speaker of the house of representatives and the president of the senate who shall refer the rule to the appropriate standing committees of the general assembly. A standing committee shall review a rule within twenty-one days after the rule is referred to the committee by the speaker of the house of representatives or the president of the senate and shall take formal committee action by sponsoring a joint resolution to disapprove the rule, by proposing legislation relating to the rule, or by refusing to propose a joint resolution or legislation concerning the rule. The standing committee shall inform the administrative rules review committee of the committee action taken concerning the rule. If the general as-

sembly has not disapproved of the rule by a joint resolution, the rule shall become effective. The speaker of the house of representatives and the president of the senate shall notify the administrative code editor of the final disposition of each rule delayed pursuant to this subsection. If a rule is disapproved, it shall not become effective and the agency shall rescind the rule. This section shall not apply to rules made effective under section 17A.5, subsection 2, paragraph "b".

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

98 Acts, ch 1202, §12, 46
1998 amendments to subsection 9 apply to agency proceedings commenced, or conducted on a remand from a court or other agency, on or after July 1, 1999; 98 Acts, ch 1202, §12, 46
Subsection 9 amended

17A.9 Declaratory orders.

1. Any person may petition an agency for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the agency. An agency shall issue a declaratory order in response to a petition for that order unless the agency determines that issuance of the order under the circumstances would be contrary to a rule adopted in accordance with subsection 2.

However, an agency shall not issue a declaratory order that would substantially prejudice the rights of a person who would be a necessary party and who does not consent in writing to the determination of the matter by a declaratory order proceeding.

2. Each agency shall adopt rules that provide for the form, contents, and filing of petitions for declaratory orders, the procedural rights of persons in relation to the petitions, and the disposition of the petitions. The rules must describe the classes of circumstances in which the agency will not issue a declaratory order and must be consistent with the public interest and with the general policy of this chapter to facilitate and encourage agency issuance of reliable advice.

3. Within fifteen days after receipt of a petition for a declaratory order, an agency shall give notice of the petition to all persons to whom notice is required by any provision of law and may give notice to any other persons.

4. Persons who qualify under any applicable provision of law as an intervenor and who file timely petitions for intervention according to agency rules may intervene in proceedings for declaratory orders. The provisions of sections 17A.10 through 17A.18 apply to agency proceedings for declaratory orders only to the extent an agency so provides by rule or order.

5. Within thirty days after receipt of a petition for a declaratory order, an agency, in writing, shall do one of the following:

a. Issue an order declaring the applicability of the statute, rule, or order in question to the specified circumstances.

b. Set the matter for specified proceedings.
c. Agree to issue a declaratory order by a specified time.

d. Decline to issue a declaratory order, stating the reasons for its action.

6. A copy of all orders issued in response to a petition for a declaratory order must be mailed promptly to the petitioner and any other parties.

7. A declaratory order has the same status and binding effect as any final order issued in a contested case proceeding. A declaratory order must contain the names of all parties to the proceeding on which it is based, the particular facts on which it is based, and the reasons for its conclusion.

8. If an agency has not issued a declaratory order within sixty days after receipt of a petition therefor, or such later time as agreed by the parties, the petition is deemed to have been denied. Once a petition for a declaratory order is deemed denied or if the agency declines to issue a declaratory order pursuant to subsection 5, paragraph "d", a party to that proceeding may either seek judicial review or await further agency action with respect to its petition for a declaratory order.

98 Acts, ch 1202, §13, 46
1998 amendments to this section apply to agency proceedings commenced, or conducted on a remand from a court or other agency, on or after July 1, 1999; 98 Acts, ch 1202, §13, 46
Section stricken and rewritten

17A.10A Contested cases — no factual dispute.

Upon petition by a party in a matter that would be a contested case if there was a dispute over the existence of material facts, all of the provisions of this chapter applicable to contested cases, except those relating to presentation of evidence, shall be applicable even though there is no factual dispute in the particular case.

98 Acts, ch 1202, §14, 46
Section applies to agency proceedings commenced, or conducted on a remand from a court or other agency, on or after July 1, 1999; 98 Acts, ch 1202, §14, 46
NEW section

17A.11 Presiding officer, disqualification, substitution.

1. *a.* If the agency or an officer of the agency under whose authority the contested case is to take place is a named party to that proceeding or a real party in interest to that proceeding the presiding officer may be, in the discretion of the agency, either the agency, one or more members of a multi-member agency, or one or more administrative law judges assigned by the division of administrative hearings in accordance with the provisions of section 10A.801. However, a party may, within a time period specified by rule, request that the presiding officer be an administrative law judge assigned by the division of administrative hearings. Except as otherwise provided by statute, the agency shall grant a request by a party for an administrative law judge unless the agency finds, and states reasons for the finding, that any of the following conditions exist:

(1) There is a compelling need to expedite issuance of a final decision in order to protect the public health, safety, or welfare.

(2) A qualified administrative law judge is unavailable to hear the case within a reasonable time.

(3) The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented.

(4) The demeanor of the witnesses is likely to be dispositive in resolving the disputed factual issues.

(5) Funds are unavailable to pay the costs of an administrative law judge and an intra-agency appeal.

(6) The request was not timely filed.

(7) There is other identified good cause, as specified by rule, for denying the request.

b. If the agency or an officer of the agency under whose authority the contested case is to take place is not a named party to that proceeding or a real party in interest to that proceeding the presiding officer may be, in the discretion of the agency, either the agency, one or more members of a multi-member agency, an administrative law judge assigned by the division of administrative hearings in accordance with the provisions of section 10A.801, or any other qualified person designated as a presiding officer by the agency. Any other person designated as a presiding officer by the agency may be employed by and officed in the agency for which that person acts as a presiding officer, but such a person shall not perform duties inconsistent with that person's duties and responsibilities as a presiding officer.

c. For purposes of paragraph "a", the division of administrative hearings established in section 10A.801 shall be treated as a wholly separate agency from the department of inspections and appeals.

2. Any person serving or designated to serve alone or with others as a presiding officer is subject to disqualification for bias, prejudice, interest, or any other cause provided in this chapter or for which a judge is or may be disqualified.

3. Any party may timely request the disqualification of a person as a presiding officer by filing a motion supported by an affidavit asserting an appropriate ground for disqualification, after receipt of notice indicating that the person will preside or upon discovering facts establishing grounds for disqualification, whichever is later.

4. A person whose disqualification is requested shall determine whether to grant the request, stating facts and reasons for the determination.

5. If a substitute is required for a person who is disqualified or becomes unavailable for any other reason, the substitute shall be appointed by either of the following:

a. The governor, if the disqualified or unavailable person is an elected official.

b. The appointing authority, if the disqualified or unavailable person is an appointed official.

6. Any action taken by a duly-appointed substitute for a disqualified or unavailable person is as effective as if taken by the latter.

98 Acts, ch 1202, §15, 46

1998 amendments to this section apply to agency proceedings commenced, or conducted on a remand from a court or other agency, on or after July 1, 1999; 98 Acts, ch 1202, §15, 46

Section stricken and rewritten

17A.12 Contested cases — notice — hearing — records.

1. In a contested case, all parties shall be afforded an opportunity for hearing after reasonable notice in writing delivered either by personal service as in civil actions or by certified mail return receipt requested. However, an agency may provide by rule for the delivery of such notice by other means. Delivery of the notice referred to in this subsection shall constitute commencement of the contested case proceeding.

2. The notice shall include:

a. A statement of the time, place and nature of the hearing.

b. A statement of the legal authority and jurisdiction under which the hearing is to be held.

c. A reference to the particular sections of the statutes and rules involved.

d. A short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter upon application a more definite and detailed statement shall be furnished.

3. If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and make a decision in the absence of the party. The parties shall be duly notified of the decision, together with the presiding officer's reasons for the decision, which is the final decision of the agency, unless within fifteen days, or such period of time as otherwise specified by statute or rule, after the date of notification or mailing of the decision, further appeal is initiated. If a decision is rendered against a party who failed to appear for the hearing and the presiding officer is timely requested by that party to vacate the decision for good cause, the time for initiating a further appeal is stayed pending a determination by the presiding officer to grant or deny the request. If adequate reasons are provided showing good cause for the party's failure to appear, the presiding officer shall vacate the decision and, after proper service of notice, conduct another evidentiary hearing. If adequate reasons are not provided showing good cause for the party's failure to appear, the presiding officer shall deny the motion to vacate.

4. Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved and to be represented by counsel at their own expense.

5. Unless precluded by statute, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order or default or by another method agreed upon by the parties in writing.

6. The record in a contested case shall include:

a. All pleadings, motions and intermediate rulings.

b. All evidence received or considered and all other submissions.

c. A statement of all matters officially noticed.

d. All questions and offers of proof, objections and rulings thereon.

e. All proposed findings and exceptions.

f. Any decision, opinion or report by the officer presiding at the hearing.

7. Oral proceedings shall be open to the public and shall be recorded either by mechanized means or by certified shorthand reporters. Oral proceedings or any part thereof shall be transcribed at the request of any party with the expense of the transcription charged to the requesting party. The recording or stenographic notes of oral proceedings or the transcription thereof shall be filed with and maintained by the agency for at least five years from the date of decision.

8. Findings of fact shall be based solely on the evidence in the record and on matters officially noticed in the record.

9. Unless otherwise provided by statute, a person's request or demand for a contested case proceeding shall be in writing, delivered to the agency by United States postal service or personal service and shall be considered as filed with the agency on the date of the United States postal service postmark or the date personal service is made.

98 Acts, ch 1202, §16, 46
1998 amendments to subsection 3 apply to agency proceedings commenced, or conducted on a remand from a court or other agency, on or after July 1, 1999; 98 Acts, ch 1202, §16, 46
Subsection 3 stricken and rewritten

17A.15 Final decisions — proposed decisions — conclusiveness — review by the agency.

1. When the agency presides at the reception of the evidence in a contested case, the decision of the agency is a final decision.

2. When the agency did not preside at the reception of the evidence in a contested case, the presiding officer shall make a proposed decision. Findings of fact shall be prepared by the officer presiding at the reception of the evidence in a contested case unless the officer becomes unavailable to the agency. If the officer is unavailable, the findings of fact may be prepared by another person qualified to be a presiding officer who has read the record, unless demeanor of witnesses is a substantial factor. If demeanor is a substantial factor and

the presiding officer is unavailable, the portions of the hearing involving demeanor shall be heard again or the case shall be dismissed.

3. When the presiding officer makes a proposed decision, that decision then becomes the final decision of the agency without further proceedings unless there is an appeal to, or review on motion of, the agency within the time provided by rule. On appeal from or review of the proposed decision, the agency has all the power which it would have in initially making the final decision except as it may limit the issues on notice to the parties or by rule. The agency may reverse or modify any finding of fact if a preponderance of the evidence will support a determination to reverse or modify such a finding, or may reverse or modify any conclusion of law that the agency finds to be in error. In cases where there is an appeal from a proposed decision or where a proposed decision is reviewed on motion of the agency, an opportunity shall be afforded to each party to file exceptions, present briefs and, with the consent of the agency, present oral arguments to the agency members who are to render the final decision.

4. This section shall not preclude an agency from instituting a system whereby the proposed decision of a presiding officer in a contested case may be appealed to, or reviewed on motion of, a body consisting of one or more persons that is between the presiding officer and the agency. If an agency institutes such a system of intermediate review, the proposed decision of the presiding officer becomes the final decision of the agency without further proceedings unless there is an appeal to, or review on motion of, the intermediate reviewing body within the time provided by rule. An intermediate reviewing body may be vested with all or a part of the power which it would have in initially making the decision. A decision of such an intermediate reviewing body is also a proposed decision and shall become the final decision of the agency without further proceedings unless there is an appeal to, or review on motion of, the agency within the time provided by rule. In cases where there is an appeal from a proposed decision rendered by a presiding officer to an intermediate reviewing body, or where such a proposed decision is reviewed on motion of an intermediate reviewing body, an opportunity shall be afforded to each party to file exceptions, present briefs and, with the consent of the intermediate reviewing body, present oral arguments to those who are to render the decision.

5. When an appeal from an agency decision in a contested case may be taken to another agency pursuant to statute, or a second agency may according to statute review on its own motion the decision in a contested case by the first agency, the appeal or review shall be deemed a continuous proceeding as though before one agency. A decision of the first agency in such a case is a proposed decision and shall become the final decision without further pro-

ceedings unless there is an appeal to, or review on motion of, the second agency within the time provided by statute or rule. In deciding an appeal from or review of a proposed decision of the first agency, the second agency shall have all those powers conferred upon it by statute and shall afford each party an opportunity to file exceptions, present briefs and, with its consent, present oral arguments to agency members who are to render the final decision.

98 Acts, ch 1202, §17, 46
1998 amendments to subsection 3 apply to agency proceedings commenced, or conducted on remand from a court or other agency, on or after July 1, 1999; 98 Acts, ch 1202, §17, 46
Subsection 3 amended

17A.16 Decisions and orders — rehearing.

1. A proposed or final decision or order in a contested case shall be in writing or stated in the record. A proposed or final decision 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 underlying facts supporting the findings. The decision shall include an explanation of why the relevant evidence in the record supports each material finding of fact. If, in accordance with agency rules, a party submitted proposed findings of fact, the decision shall include a ruling upon each proposed finding. Each conclusion of law shall be supported by cited authority or by a reasoned opinion. Parties shall be promptly notified of each proposed or final decision or order by the delivery to them of a copy of such decision or order in the manner provided by section 17A.12, subsection 1.

2. Except as expressly provided otherwise by another statute referring to this chapter by name, any party may file an application for rehearing, stating the specific grounds for the rehearing and the relief sought, within twenty days after the date of the issuance of any final decision by the agency in a contested case. A copy of the application for rehearing shall be timely mailed by the presiding officer to all parties of record not joining in the application. An application for rehearing shall be deemed to have been denied unless the agency grants the application within twenty days after its filing.

98 Acts, ch 1202, §18, 46
1998 amendments to subsection 1 apply to agency proceedings commenced, or conducted on remand from a court or other agency, on or after July 1, 1999; 98 Acts, ch 1202, §18, 46
Subsection 1 amended

17A.17 Ex parte communications and separation of functions.

1. Unless required for the disposition of ex parte matters specifically authorized by statute, a presiding officer in a contested case, shall not communicate, directly or indirectly, in connection with any issue of fact or law in that contested case, with any person or party, except upon notice and opportunity for all parties to participate as shall be provided for by agency rules.

However, without such notice and opportunity for all parties to participate, a presiding officer in a contested case may communicate with members of the agency, and may have the aid and advice of persons other than those with a personal interest in, or those engaged in personally investigating, prosecuting or advocating in, either the case under consideration or a pending factually related case involving the same parties so long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.

2. Unless required for the disposition of ex parte matters specifically authorized by statute, parties or their representatives in a contested case and persons with a direct or indirect interest in such a case shall not communicate, directly or indirectly, in connection with any issue of fact or law in that contested case, with a presiding officer in that contested case, except upon notice and opportunity for all parties to participate as shall be provided for by agency rules.

3. If, before serving as the presiding officer in a contested case, a person receives an ex parte communication relating directly to the merits of the proceeding over which that person subsequently presides, the person, promptly after starting to serve, shall disclose to all parties any material factual information so received and not otherwise disclosed to those parties pursuant to section 17A.13, subsection 2, or through discovery.

4. A presiding officer who receives an ex parte communication in violation of this section shall place on the record of the pending matter all such written communications received, all written responses to the communications, and a memorandum stating the substance of all such oral and other communications received, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication, and shall advise all parties that these matters have been placed on the record. Any party desiring to rebut the prohibited ex parte communication must be allowed to do so, upon requesting the opportunity for rebuttal within ten days after notice of the communication.

5. If the effect of an ex parte communication received in violation of this section is so prejudicial that it cannot be cured by the procedure in subsection 4, a presiding officer who receives the communication shall be disqualified and the portions of the record pertaining to the communication shall be sealed by protective order.

6. The agency and any party may report any violation of this section to appropriate authorities for any disciplinary proceedings provided by law. In addition, each agency by rule shall provide for appropriate sanctions, including default, suspending

or revoking a privilege to practice before the agency, and censuring, suspending, or dismissing agency personnel, for any violations of this section.

7. A party to a contested case proceeding may file a timely and sufficient affidavit alleging a violation of any provision of this section. The agency shall determine the matter as part of the record in the case. When an agency in these circumstances makes such a determination with respect to an agency member, that determination shall be subject to de novo judicial review in any subsequent review proceeding of the case.

8. An individual who participates in the making of any proposed or final decision in a contested case shall not have personally investigated, prosecuted, or advocated in connection with that case, the specific controversy underlying that case, or another pending factually related contested case, or pending factually related controversy that may culminate in a contested case, involving the same parties. In addition, such an individual shall not be subject to the authority, direction, or discretion of any person who has personally investigated, prosecuted, or advocated in connection with that contested case, the specific controversy underlying that contested case, or a pending factually related contested case or controversy, involving the same parties. However, this section shall not be construed to preclude a person from serving as a presiding officer solely because that person determined there was probable cause to initiate the proceeding.

98 Acts, ch 1202, §19, 46
1998 amendments to this section apply to agency proceedings commenced, or conducted on a remand from a court or other agency, on or after July 1, 1999; 98 Acts, ch 1202, §19, 46
Section amended

17A.18 Licenses.

1. When the grant, denial, or renewal of a license is required by Constitution or statute to be preceded by notice and opportunity for an evidentiary hearing, the provisions of this chapter concerning contested cases apply.

2. When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency, and, in case the application is denied or the terms of the new license limited, until the last day for seeking judicial review of the agency order or a later date fixed by order of the agency or the reviewing court.

3. No revocation, suspension, annulment or withdrawal, in whole or in part, of any license is lawful unless, prior to the institution of agency proceedings, the agency gave written, timely notice by personal service as in civil actions or by restricted certified mail to the licensee of facts or conduct and the provision of law which warrants the intended action, and the licensee was given an opportunity to show, in an evidentiary hearing conducted ac-

ording to the provisions of this chapter for contested cases, compliance with all lawful requirements for the retention of the license.

98 Acts, ch 1202, §20, 46
1998 amendment to subsection 3 applies to agency proceedings commenced, or conducted on remand from a court or other agency, on or after July 1, 1999; 98 Acts, ch 1202, §20, 46
Subsection 3 amended

17A.18A Emergency adjudicative proceedings.

1. Notwithstanding any other provision of this chapter and to the extent consistent with the Constitution, an agency may use emergency adjudicative proceedings in a situation involving an immediate danger to the public health, safety, or welfare requiring immediate agency action.

2. The agency may take only such action as is necessary to prevent or avoid the immediate danger to the public health, safety, or welfare that justifies use of emergency adjudication.

3. The agency shall issue an order, including a brief statement of findings of fact, conclusions of law, and policy reasons for the decision if it is an exercise of the agency's discretion, to justify the determination of an immediate danger and the agency's decision to take the specific action.

4. The agency shall give such notice as is practicable to persons who are required to comply with the order. The order is effective when issued.

5. After issuing an order pursuant to this section, the agency shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger.

6. The agency record consists of any documents regarding the matter that were considered or prepared by the agency. The agency shall maintain these documents as its official record.

7. Unless otherwise required by a provision of law, the agency record need not constitute the exclusive basis for agency action in emergency adjudicative proceedings or for judicial review thereof.

98 Acts, ch 1202, §21, 46
Section applies to agency proceedings commenced, or conducted on remand from a court or other agency, on or after July 1, 1999; 98 Acts, ch 1202, §21, 46
NEW section

17A.19 Judicial review.

Except as expressly provided otherwise by another statute referring to this chapter by name, the judicial review provisions of this chapter shall be the exclusive means by which a person or party who is aggrieved or adversely affected by agency action may seek judicial review of such agency action. However, nothing in this chapter shall abridge or deny to any person or party who is aggrieved or adversely affected by any agency action the right to seek relief from such action in the courts.

1. A person or party who has exhausted all adequate administrative remedies and who is aggrieved or adversely affected by any final agency action is entitled to judicial review thereof under this chapter. When agency action is pursuant to

rate regulatory powers over public utilities or common carriers and the aggrievement or adverse effect is to the rates or charges of a public utility or common carrier, the agency action shall not be final until all agency remedies have been exhausted and a decision prescribing rates which satisfy the requirements of those provisions of the Code has been rendered. A preliminary, procedural or intermediate agency action is immediately reviewable if all adequate administrative remedies have been exhausted and review of the final agency action would not provide an adequate remedy. If a declaratory order has not been rendered within sixty days after the filing of a petition therefor under section 17A.9, or by such later time as agreed by the parties, or if the agency declines to issue such a declaratory order after receipt of a petition therefor, any administrative remedy available under section 17A.9 shall be deemed inadequate or exhausted.

2. Proceedings for judicial review shall be instituted by filing a petition either in Polk county district court or in the district court for the county in which the petitioner resides or has its principal place of business. When a proceeding for judicial review has been commenced, a court may, in the interest of justice, transfer the proceeding to another county where the venue is proper. Within ten days after the filing of a petition for judicial review the petitioner shall serve by the means provided in the Iowa rules of civil procedure for the personal service of an original notice, or shall mail copies of the petition to all parties named in the petition and, if the petition involves review of agency action in a contested case, all parties of record in that case before the agency. Such personal service or mailing shall be jurisdictional. The delivery by personal service or mailing referred to in this subsection may be made upon the party's attorney of record in the proceeding before the agency. A mailing shall be addressed to the parties or their attorney of record at their last known mailing address. Proof of mailing shall be by affidavit. Any party of record in a contested case before an agency wishing to intervene and participate in the review proceeding must file an appearance within forty-five days from the time the petition is filed.

3. If a party files an application under section 17A.16, subsection 2, for rehearing with the agency, the petition for judicial review must be filed within thirty days after that application has been denied or deemed denied. If a party does not file an application under section 17A.16, subsection 2, for rehearing, the petition must be filed within thirty days after the issuance of the agency's final decision in that contested case. If an application for rehearing is granted, the petition for review must be filed within thirty days after the issuance of the agency's final decision on rehearing. In cases involving a petition for judicial review of agency action other than the decision in a contested case, the

petition may be filed at any time petitioner is aggrieved or adversely affected by that action.

4. The petition for review shall name the agency as respondent and shall contain a concise statement of:

- a. The nature of the agency action which is the subject of the petition.
- b. The particular agency action appealed from.
- c. The facts on which venue is based.
- d. The grounds on which relief is sought.
- e. The relief sought.

5. a. The filing of the petition for review does not itself stay execution or enforcement of any agency action. Unless precluded by law, the agency may grant a stay on appropriate terms or other temporary remedies during the pendency of judicial review.

b. A party may file an interlocutory motion in the reviewing court, during the pendency of judicial review, seeking review of the agency's action on an application for stay or other temporary remedies.

c. If the agency refuses to grant an application for stay or other temporary remedies, or application to the agency for a stay or other temporary remedies is an inadequate remedy, the court may grant relief but only after a consideration and balancing of all of the following factors:

(1) The extent to which the applicant is likely to prevail when the court finally disposes of the matter.

(2) The extent to which the applicant will suffer irreparable injury if relief is not granted.

(3) The extent to which the grant of relief to the applicant will substantially harm other parties to the proceedings.

(4) The extent to which the public interest relied on by the agency is sufficient to justify the agency's action in the circumstances.

d. If the court determines that relief should be granted from the agency's action on an application for stay or other temporary remedies, the court may remand the matter to the agency with directions to deny a stay, to grant a stay on appropriate terms, or to grant other temporary remedies, or the court may issue an order denying a stay, granting a stay on appropriate terms, or granting other temporary remedies.

6. Within thirty days after filing of the petition, or within further time allowed by the court, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of any contested case which may be the subject of the petition. By stipulation of all parties to the review proceedings, the record of such a case may be shortened. A party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record.

7. In proceedings for judicial review of agency action a court may hear and consider such evidence

as it deems appropriate. In proceedings for judicial review of agency action in a contested case, however, a court shall not itself hear any further evidence with respect to those issues of fact whose determination was entrusted by Constitution or statute to the agency in that contested case proceeding. Before the date set for hearing a petition for judicial review of agency action in a contested case, application may be made to the court for leave to present evidence in addition to that found in the record of the case. If it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the contested case proceeding before the agency, the court may order that the additional evidence be taken before the agency upon conditions determined by the court. The agency may modify its findings and decision in the case by reason of the additional evidence and shall file that evidence and any modifications, new findings, or decisions with the reviewing court and mail copies of the new findings or decisions to all parties.

8. Except to the extent that this chapter provides otherwise, in suits for judicial review of agency action all of the following apply:

a. The burden of demonstrating the required prejudice and the invalidity of agency action is on the party asserting invalidity.

b. The validity of agency action must be determined in accordance with the standards of review provided in this section, as applied to the agency action at the time that action was taken.

9. The court shall make a separate and distinct ruling on each material issue on which the court's decision is based.

10. The court may affirm the agency action or remand to the agency for further proceedings. The court shall reverse, modify, or grant other appropriate relief from agency action, equitable or legal and including declaratory relief, if it determines that substantial rights of the person seeking judicial relief have been prejudiced because the agency action is any of the following:

a. Unconstitutional on its face or as applied or is based upon a provision of law that is unconstitutional on its face or as applied.

b. Beyond the authority delegated to the agency by any provision of law or in violation of any provision of law.

c. Based upon an erroneous interpretation of a provision of law whose interpretation has not clearly been vested by a provision of law in the discretion of the agency.

d. Based upon a procedure or decision-making process prohibited by law or was taken without following the prescribed procedure or decision-making process.

e. The product of decision making undertaken by persons who were improperly constituted as a decision-making body, were motivated by an improper purpose, or were subject to disqualification.

f. Based upon a determination of fact clearly vested by a provision of law in the discretion of the agency that is not supported by substantial evidence in the record before the court when that record is viewed as a whole. For purposes of this paragraph, the following terms have the following meanings:

(1) "*Substantial evidence*" means the quantity and quality of evidence that would be deemed sufficient by a neutral, detached, and reasonable person, to establish the fact at issue when the consequences resulting from the establishment of that fact are understood to be serious and of great importance.

(2) "*Record before the court*" means the agency record for judicial review, as defined by this chapter, supplemented by any additional evidence received by the court under the provisions of this chapter.

(3) "*When that record is viewed as a whole*" means that the adequacy of the evidence in the record before the court to support a particular finding of fact must be judged in light of all the relevant evidence in the record cited by any party that detracts from that finding as well as all of the relevant evidence in the record cited by any party that supports it, including any determinations of veracity by the presiding officer who personally observed the demeanor of the witnesses and the agency's explanation of why the relevant evidence in the record supports its material findings of fact.

g. Action other than a rule that is inconsistent with a rule of the agency.

h. Action other than a rule that is inconsistent with the agency's prior practice or precedents, unless the agency has justified that inconsistency by stating credible reasons sufficient to indicate a fair and rational basis for the inconsistency.

i. The product of reasoning that is so illogical as to render it wholly irrational.

j. The product of a decision-making process in which the agency did not consider a relevant and important matter relating to the propriety or desirability of the action in question that a rational decision maker in similar circumstances would have considered prior to taking that action.

k. Not required by law and its negative impact on the private rights affected is so grossly disproportionate to the benefits accruing to the public interest from that action that it must necessarily be deemed to lack any foundation in rational agency policy.

l. Based upon an irrational, illogical, or wholly unjustifiable interpretation of a provision of law whose interpretation has clearly been vested by a provision of law in the discretion of the agency.

m. Based upon an irrational, illogical, or wholly unjustifiable application of law to fact that has clearly been vested by a provision of law in the discretion of the agency.

n. Otherwise unreasonable, arbitrary, capricious, or an abuse of discretion.

11. In making the determinations required by subsection 10, paragraphs “a” through “n”, the court shall do all of the following:

a. Shall not give any deference to the view of the agency with respect to whether particular matters have been vested by a provision of law in the discretion of the agency.

b. Should not give any deference to the view of the agency with respect to particular matters that have not been vested by a provision of law in the discretion of the agency.

c. Shall give appropriate deference to the view of the agency with respect to particular matters that have been vested by a provision of law in the discretion of the agency.

12. A defendant in a suit for civil enforcement of agency action may defend on any of the grounds specified in subsection 10, paragraphs “a” through “n”, if that defendant, at the time the enforcement suit was filed, would have been entitled to rely upon any of those grounds as a basis for invalidating the agency action in a suit for judicial review of that action brought at the time the enforcement suit was filed. If a suit for civil enforcement of agency action in a contested case is filed within the time period in which the defendant could have filed a petition for judicial review of that agency action, and the agency subsequently dismisses its suit for civil enforcement of that agency action against the defendant, the defendant may, within thirty days of that dismissal, file a petition for judicial review of the original agency action at issue if the defendant relied upon any of the grounds for judicial review in subsection 10, paragraphs “a” through “n”, in a responsive pleading to the enforcement action, or if the time to file a responsive pleading had not yet expired at the time the enforcement action was dismissed.

98 Acts, ch 1202, §22–24, 46
1998 amendments to subsections 1, 5, and 8 apply to agency proceedings commenced, or conducted on remand from a court or other agency, on or after July 1, 1999; 98 Acts, ch 1202, §22–24, 46
Subsections 1 and 5 amended
Subsection 8 stricken and rewritten
NEW subsections 9–12

17A.23 Construction.

Except as expressly provided otherwise by this chapter or by another statute referring to this chapter by name, the rights created and the requirements imposed by this chapter shall be in

addition to those created or imposed by every other statute in existence on July 1, 1975, or enacted after that date. If any other statute in existence on July 1, 1975, or enacted after that date diminishes a right conferred upon a person by this chapter or diminishes a requirement imposed upon an agency by this chapter, this chapter shall take precedence unless the other statute expressly provides that it shall take precedence over all or some specified portion of this named chapter.

The Iowa administrative procedure Act shall be construed broadly to effectuate its purposes. This chapter shall also be construed to apply to all agencies not expressly exempted by this chapter or by another statute specifically referring to this chapter by name; and except as to proceedings in process on July 1, 1975, this chapter shall be construed to apply to all covered agency proceedings and all agency action not expressly exempted by this chapter or by another statute specifically referring to this chapter by name.

An agency shall have only that authority or discretion delegated to or conferred upon the agency by law and shall not expand or enlarge its authority or discretion beyond the powers delegated to or conferred upon the agency.

98 Acts, ch 1202, §25, 46

1998 amendments to this section apply to agency proceedings commenced, or conducted on remand from a court or other agency, on or after July 1, 1999; 98 Acts, ch 1202, §25, 46

NEW unnumbered paragraph 3

17A.31 Small business regulatory flexibility analysis. Repealed by 98 Acts, ch 1202, § 45, 46.

17A.32 Time limit applicable to emergency rules. Repealed by 98 Acts, ch 1202, § 45, 46.

17A.33 Review by administrative rules review committee.

The administrative rules review committee shall review existing rules, as time permits, to determine if there are adverse or beneficial effects from these rules. The committee shall give a high priority to rules that are referred to it by small business as defined in section 17A.4A. The review of these rules shall be forwarded to the appropriate standing committees of the house and senate.

98 Acts, ch 1202, §26, 46

1998 amendment applies to agency proceedings commenced, or conducted on remand from a court or other agency, on or after July 1, 1999; 98 Acts, ch 1202, §26, 46

Section amended

CHAPTER 18

DEPARTMENT OF GENERAL SERVICES

18.6 Competitive bidding — preferences — reciprocal application — direct purchasing.

The director shall promulgate rules establishing competitive bidding procedures.

1. All equipment, supplies, or services procured by the department shall be purchased by a competitive bidding procedure. However, the director may exempt by regulation purchases of non-competitive items and purchases in lots or quantities too small to be effectively purchased by competitive bidding. Preference shall be given to purchasing Iowa products and purchases from Iowa based businesses if the bids submitted therefor are comparable in price to bids submitted by out-of-state businesses and otherwise meet the required specifications. If the laws of another state mandate a percentage preference for businesses or products from that state and the effect of the preference is that bids of Iowa businesses or products that are otherwise low and responsive are not selected in the other state, the same percentage preference shall be applied to Iowa businesses and products when businesses or products from that other state are bid to supply Iowa requirements.

2. The director may also exempt the purchase of an item or service from a competitive bidding procedure when the director determines that the best interests of the state will be served by the exemption which shall be based on one of the following:

a. An immediate or emergency need existing for the item or service.

b. A need to protect the health, safety, or welfare of persons occupying or visiting a public improvement or property located adjacent to the public improvement.

3. The director shall have the power to contract for the purchase of items or services by the department. Contracts for the purchase of items shall be awarded on the basis of the lowest competent bid. Contracts not based on competitive bidding shall be awarded on the basis of bidder competence and reasonable price.

The director may enter into an agreement with the government of another state or with the federal government to provide for the cooperative purchase of an item or service of general use in this state.

4. The director may refuse all bids on any item or service and institute a new bidding procedure.

5. The director shall establish by regulation the amount of security, if any, to accompany a bid or as a condition precedent to the awarding of any contract and the circumstances under which a security will be returned to the bidder or forfeited to the state.

6. The director shall promulgate rules providing a method for the various state agencies to file with the department of general services a list of those supplies, equipment, machines, and all items needed to properly perform their governmental duties and functions.

7. The director shall furnish a list of specifications, prices, and discounts of contract items to any governmental subdivision which shall be responsible for payment to the vendor under the terms and conditions outlined in the state contract.

8. The director shall establish rules providing that any state agency may, upon request, purchase directly from a vendor if the direct purchasing is as economical or more economical than purchasing through the department, or upon a showing that direct purchasing by the state agency would be in the best interests of the state due to an immediate or emergency need. The rules shall include a provision permitting a state agency to purchase directly from a vendor, on the agency's own authority, if the purchase will not exceed five thousand dollars and the purchase will contribute to the agency complying with or exceeding the targeted small business procurement goals under sections 73.15 through 73.21.

Any member of the executive council may bring before the council for review a decision of the director granting a state agency request for direct purchasing. The executive council shall hear and review the director's decision in the same manner as an appeal filed by an aggrieved bidder, except that the three-day period for filing for review shall not apply.

9. *a.* When the estimated total cost of construction, erection, demolition, alteration, or repair of a public improvement exceeds twenty-five thousand dollars, the department shall solicit bids on the proposed improvement by publishing an advertisement in a print format. The advertisement shall appear in two publications in a newspaper published in the county in which the work is to be done. The first advertisement for bids appearing in a newspaper shall be not less than fifteen days prior to the date set for receiving bids. The department may publish an advertisement in an electronic format as an additional method of soliciting bids under this paragraph.

b. In awarding a contract, the department shall let the work to the lowest responsible bidder submitting a sealed proposal. However, if the department considers the bids received not to be acceptable, all bids may be rejected and new bids requested. A bid shall be accompanied by a certified or cashier's check or bid bond in an amount designated in the advertisement for bids as security that the bidder will enter into a contract for the work re-

quested. The department shall establish the bid security in an amount equal to at least five percent, but not more than ten percent of the estimated total cost of the work. The certified or cashier's checks or bid bonds of unsuccessful bidders shall be returned as soon as the successful bidder is determined. The certified or cashier's check or bid bond of the successful bidder shall be returned upon execution of the contract. This section does not apply to the construction, erection, demolition, alteration, or repair of a public improvement when the contracting procedure for the work requested is otherwise provided for in law.

10. The state and its political subdivisions shall give preference to purchasing Iowa products and purchasing from Iowa based businesses if the bids submitted are comparable in price to those submitted by other bidders and meet the required specifications.

11. The director shall adopt rules which require that each bid received for the purchase of items purchased by the department includes a product content statement which provides the percentage of the content of the item which is reclaimed material.

12. The director shall review and, where necessary, revise specifications used by state agencies to procure products in order to ensure that all of the following occur:

a. The procurement of products containing recovered materials, including but not limited to lubricating oils, retread tires, building insulation materials, and recovered materials from waste tires. The specifications shall be revised if they restrict the use of alternative materials, exclude recovered materials, or require performance standards which exclude products containing recovered materials unless the agency seeking the product can document that the use of recovered materials will hamper the intended use of the product.

b. The procurement of biodegradable hydraulic fluids in accordance with the requirements of section 18.22.

13. A bidder awarded a state construction contract shall disclose the names of all subcontractors, who will work on the project being bid, within forty-eight hours after the award of the contract.

If a subcontractor named by a bidder awarded a state construction contract is replaced, or if the cost of work to be done by a subcontractor is reduced, the bidder shall disclose the name of the new subcontractor or the amount of the reduced cost.

14. The state shall purchase those products produced for sale by sheltered workshops, work activity centers, and other special programs funded in whole or in part by public moneys that employ persons with mental retardation or other developmental disabilities or mental illness if the products meet the required specifications.

15. The state shall make every effort to purchase products produced for sale by employers of persons in supported employment.

99 Acts, ch 121, §1
Subsection 9, paragraph b amended

18.8 Capitol buildings and grounds — services.

The director shall provide necessary 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; section 2.43, unnumbered paragraph 1; and any buildings under the custody and control of the Iowa public employees' retirement system, 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.

99 Acts, ch 207, §9
Unnumbered paragraph 1 amended

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

In addition to other duties the director shall:

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

2. Have at all times, charge of and supervision over the janitors, and other employees of the department in and about the capitol and other state buildings, except the buildings and grounds referred to in section 216B.3, subsection 6, at the seat of government.

3. Institute, in the name of the state, and with the advice and consent of the attorney general, civil and criminal proceedings against any person for injury or threatened injury to any public property, including but not limited to intangible and intellectual property, under the person's control.

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

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

6. At the time provided by law, make a verified report which shall cover all transactions for the preceding annual, fiscal or calendar period and show in detail:

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

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

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

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

e. Any other matter ordered by the governor.

7. Contract, with the approval of the executive council, for the repair, remodeling or, if the condition warrants, demolition of all buildings and grounds of the state at the seat of government and the institutions of the department of human services and the department of corrections for which no specific appropriation has been made, if the cost of repair, remodeling or demolition will not exceed one hundred thousand dollars when completed. The cost of repair projects for which no specific appropriation has been made shall be paid from the fund provided in section 7D.29.

8. Dispose of all personal property of the state under the director's control when it becomes unnecessary or unfit for further use by the state. If the director concludes that the personal property is contaminated, contains hazardous waste, or is haz-

ardous waste, the director may charge the state agency responsible for the property for removal and disposal of the personal property.

The director may dispose of personal property by any of the following means:

a. The director may dispose of unfit or unnecessary personal property by sale. Proceeds from the sale of personal property shall be deposited in the general fund of the state. However, in lieu of depositing in the general fund of the state, the director may deposit the receipts from the sale of personal property located on the state capitol complex, except receipts from the sale of motor vehicles or printing equipment, in the art restoration and preservation revolving fund created in section 18.16B.

b. If the director concludes that the personal property has little or no value, the director may enter into an agreement with a not-for-profit organization or governmental agency to dispose of the personal property. The not-for-profit organization or governmental agency may charge the state agency in control of the property with the cost of removing and transporting the property. Title to the personal property shall transfer when the personal property is in the possession of the not-for-profit organization or governmental agency. If a governmental agency adds value to the property transferred to it and sells it, the proceeds from the sale shall be deposited with the governmental agency and not in the general fund of the state.

c. The director may dispose of presses, printing equipment, printing supplies, and other machinery or equipment used in the printing operation, as provided in section 18.59.

The director shall adopt rules establishing the procedures for inspecting, selecting, and removing personal property from state agencies or from state storage.

9. a. Lease all buildings and office space necessary to carry out the provisions of this chapter or necessary for the proper functioning of any state agency at the seat of government. For state agencies at the seat of government, the director may lease buildings and office space in Polk county or in a county contiguous to Polk county. If no specific appropriation has been made, the proposed lease shall be submitted to the executive council for approval. The cost of any lease for which no specific appropriation has been made shall be paid from the fund provided in section 7D.29.

b. When the general assembly is not in session, the director may request moneys from the executive council for moving state agencies located at the seat of government from one location to another. The request may include moving costs, telecommunications costs, repair costs, or any other costs relating to the move. The executive council may approve and shall pay the costs from funds provided in section 7D.29 if it determines the agency or de-

partment has no available funds for these expenses.

c. Coordinate the leasing of buildings and office space by state agencies throughout the state and develop cooperative relationships with the state board of regents in order to promote the colocation of state agencies.

10. Unless otherwise provided by law, the director shall coordinate the location, design, plans and specifications, construction, and ultimate use of the real or personal property to be purchased by a state agency for whose benefit and use the property is being obtained. If the purchase of real or personal property is to be financed pursuant to section 12.28, the department shall cooperate with the treasurer of state in providing the information necessary to complete the financing of the property. Upon awarding the contract for construction of a building or for site development, the director shall have sole authority to administer the contract.

A contract for acquisition, construction, erection, demolition, alteration, or repair by a private person of real or personal property to be lease-purchased by the treasurer of state pursuant to section 12.28 is exempt from section 18.6, subsections 1 and 9, unless the lease-purchase contract is funded in advance by a deposit of the lessor's moneys to be administered by the treasurer of state under a lease-purchase contract which requires rent payments to commence upon delivery of the lessor's moneys to the lessee.

Unless the context otherwise requires, for purposes of this subsection and subsection 12, "state agency" means a board, commission, bureau, division, office, department, or branch of state government.

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

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

12. With the authorization of a constitutional majority of each house of the general assembly and approval by the governor, dispose of real property belonging to the state and its state agencies upon terms, conditions, and consideration as the director may recommend. If real estate subject to sale under this subsection has been purchased or acquired from appropriated funds, the proceeds of the sale shall be deposited with the treasurer of state and

credited to the general fund of the state or other fund from which appropriated. There is appropriated from that same fund, with the prior approval of the executive council and in cooperation with the director, a sum equal to the proceeds so deposited and credited to the state agency to which the disposed property belonged or by which it was used, for purposes of the state agency.

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

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

15. Call upon any state agency, as defined in section 8.3A, for assistance the director may require in performing the director's duties under subsection 15 regarding capital project status reports. All state agencies, upon the request of the director and with the approval of the director of the department of management, shall assist the director and are authorized to make available to the director any existing studies, surveys, plans, data, and other materials in the possession of the state agencies which are relevant to the director's duties.

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

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

18. Establish a monument maintenance account in the state treasury under the control of the department. Funds for the maintenance of a state monument, whether received by gift, devise, bequest, or otherwise, shall be deposited in the account. Funds in the account shall be deposited in an interest-bearing account. Notwithstanding section 12C.7, interest earned on the account shall be deposited in the account and shall be used to maintain the designated monument. Any maintenance funds for a state monument held by the state as of July 1, 1996, shall immediately be transferred to the account and the funds and interest earned on the funds shall be used to maintain the designated

monument. Notwithstanding section 8.33, unencumbered or unobligated receipts in the monument maintenance account at the end of a fiscal year shall not revert to the general fund of the state.

19. Perform all other duties required by law.

99 Acts, ch 121, §2

Subsection 9, paragraph a amended

18.18 State purchases — recycled products — soybean-based inks.

1. When purchasing paper products other than printing and writing paper, the department shall, when the price is reasonably competitive and the quality as intended, purchase the recycled product. The department 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 plastic products with recycled content including but not limited to plastic garbage can liners.

a. One hundred percent of the purchases of inks which are used for newsprint printing services performed internally or contracted for by the department shall be soybean-based.

b. One hundred 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, shall be soybean-based to the extent formulations for such inks are available.

c. A minimum of ten percent of the purchases of garbage can liners made by the department shall be plastic garbage can liners with recycled content. The percentage shall increase by ten percent annually until fifty percent of the purchases of garbage can liners are plastic garbage can liners with recycled content.

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

(1) A listing of plastic products which are regularly purchased by the department and other state agencies for which recycled content product alternatives are available, including the cost of the plastic products purchased and the cost of the recycled content product alternatives.

(2) Information relating to soybean-based inks and plastic garbage can liners with recycled content regularly purchased by the department and other state agencies, including the cost of purchasing soybean-based inks and plastic garbage can liners with recycled content and the percentages of soybean-based inks and plastic garbage can liners with recycled content that have been purchased.

e. For purposes of this subsection “*recycled content*” means that the content of the product contains a minimum of thirty percent postconsumer material.

2. *a.* Except as otherwise provided in this section, the department shall purchase and use recycled printing and writing paper so that ninety percent by January 1, 2000, of the volume of printing and writing paper purchased is recycled paper.

The recycled printing and writing paper shall meet the requirements for procuring recycled printing and writing paper set forth in 40 C.F.R., pt. 247, and in related recovered materials advisory notices issued by the United States environmental protection agency.

b. 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.

c. 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.

d. Notwithstanding the requirements of this subsection regarding the purchase of recycled printing and writing 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 and soybean-based inks.

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

5. Information on recycled content shall be requested on all bids for paper products other than printing and writing paper 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 compost materials, aggregate, solvents, soybean-based inks, and rubber products. Except for purchases of printing and writing paper made pursuant to subsection 2, paragraphs “*c*” and “*d*”, the department of general services shall require persons submitting bids for printing and writing paper to certify that the printing and writing paper proposed complies with the requirements referred to in subsection 2, paragraph “*a*”.

6. The department of general services, in conjunction with the department of natural resources, shall adopt rules to administer 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, whenever technically feasible, shall 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.

99 Acts, ch 121, §3
Section amended

18.27 Duties.

The director of the department of general services shall:

1. Let contracts, except as provided in section 18.49, for all printing for all state offices, departments, boards, and commissions when the cost of the printing is payable out of any taxes, fees, licenses, or funds collected for state purposes.
2. Direct the manner, form, style, and quantity of all public printing when not otherwise expressly prescribed by law.*
3. Employ and discharge all assistants necessary to enable the director to perform the director’s duties and determine the compensation of the assistants when not otherwise determined by law.
4. Prescribe rules, not inconsistent with law.
5. Perform all other duties required by law.

99 Acts, ch 121, §4

*Style of Code, session laws, and administrative code and bulletin, §2B.10, 2B.12, 17A.6

Subsection 5 stricken and former subsection 6 renumbered as 5

18.28 “Printing” defined.

As used in chapter 7A and sections 18.26 to 18.103, “*printing*” means the reproduction of an image from a printing surface made generally by a contact impression that causes a transfer of ink, the reproduction of an impression by a photographic process, or the reproduction of an image by electronic means and shall include binding and may include material, processes, or operations necessary to produce a finished printed product, but shall not include binding, rebinding or repairs of books, journals, pamphlets, magazines and literary articles by any library of the state or any of its offices, departments, boards and commissions held as a part of their library collection.

99 Acts, ch 121, §5
Section amended

18.37 Deposit with bid or yearly bond.

When a bidder submits a bid to the department, the director may require the bidder to file a bid bond or a certified or cashier’s check payable to the state treasurer in an amount to be fixed in the bid specifications, either covering all classes or items or services, or separate certified or cashier’s checks for each bid in case the bidder makes more than one bid. In lieu of a certified or cashier’s check, the bidder may furnish a yearly bond in an amount to be established by the director. Certified or cashier’s checks deposited by unsuccessful bidders, and by

successful bidders when they have entered into the contract, shall be returned to them.

99 Acts, ch 121, §6
Section amended

18.43 Duty to enter into contract — forfeiture.

If the department requires a bid bond or certified or cashier’s check as provided in section 18.37, a successful bidder shall, within ten days after the award, enter into a contract in accordance with the bid. Unless this is done, or the delay is for reasons satisfactory to the director, the bid bond or certified or cashier’s check submitted with the bid shall be forfeited to the state. The bid specifications on which the bid is made constitute a part of the contract.

99 Acts, ch 121, §7
Section amended

18.183 Powers and responsibilities vested in individual government agencies.

1. The government agency that is the lawful custodian of a public record shall be responsible for determining whether a record is required by state statute to be confidential. The transmission of a record by a government agency by use of electronic means established, maintained, or managed by the division of information technology services shall not constitute a transfer of the legal custody of the record from the individual government agency to the division of information technology services or to any other person or entity.

2. The division of information technology services shall not have authority to determine whether an individual government agency should automate records of which the individual government agency is the lawful custodian. However, the division may encourage governmental agencies to implement electronic access to government records.

3. A government agency shall not limit access to a record by requiring a citizen to receive the record electronically as the only means of providing the record. A person shall have the right to examine and copy a printed form of a public record as provided in section 22.2, unless the public record is confidential.

4. A person who contracts with a government agency to provide access or disseminate public records by electronic or other means shall pay the same fee which would be charged to the public under chapter 22 for any public record that is in any manner utilized by the person in a venture that is not part of the contract with the government agency.

99 Acts, ch 96, §4

Creation of information technology department effective July 1, 2000; link to lowAccess; transition provisions; 99 Acts, ch 207, §6, 7, 22

Establishment of permanent governing board for lowAccess and implementation of a fee-for-service-based model of operation for lowAccess network; 99 Acts, ch 207, §15

Subsection 2 amended

18.187 LowAccess revolving fund.

An LowAccess revolving fund is created in the state treasury. The revolving fund shall be administered by the division and shall consist of moneys collected by the division as fees, moneys appropriated by the general assembly, and any other moneys obtained or accepted by the division for deposit in the revolving fund. The proceeds of the revolving fund are appropriated to and shall be used by the division to maintain, develop, operate, and expand the LowAccess network consistent with

this chapter. The division shall submit an annual report not later than January 31, to the members of the general assembly and the legislative fiscal bureau, of the activities funded by and expenditures made from the revolving fund during the preceding fiscal year. Section 8.33 does not apply to any moneys in the revolving fund and, notwithstanding section 12C.7, subsection 2, earnings or interest on moneys deposited in the revolving fund shall be credited to the revolving fund.

99 Acts, ch 207, §11
NEW section

CHAPTER 19A**DEPARTMENT OF PERSONNEL****19A.1A Director of department.**

1. The chief administrative officer of the department is the director. The director shall be appointed by the governor, subject to confirmation by the senate. The director serves at the pleasure of the governor and is subject to reconfirmation after four years in office. The person appointed shall be professionally qualified by education and experience in the field of public personnel administration, including the application of merit principles in public employment, and the appointment shall be made without regard for political affiliation. The director shall not be a member of any local, state, or national committee of a political party, an officer or member of a committee in any partisan political club or organization, or hold or be a candidate for a paid elective public office. The director is subject to the restrictions on political activity provided in section 19A.18 for employees in the classified service. The governor shall set the salary of the director within a range established by the general assembly.

2. The director shall plan, direct, coordinate, and execute the powers, duties, and functions of the department. The director's powers and duties include those specifically set forth in this chapter and other provisions of law.

3. The director may establish by rule divisions and other subunits as necessary for the organization of the department. The director may also establish regional field service offices staffed by employees of the executive departments in which they are located. The functions and staffs of the regional offices are subject to policies set by the director of the department of personnel.

4. Reduction in force appeals shall be subject to review by the director.

98 Acts, ch 1202, §27, 46

1998 amendment adding subsection 4 is effective July 1, 1999, and applies to agency proceedings commenced, or conducted on remand from a court or other agency, on or after that date; 98 Acts, ch 1202, §27, 46

NEW subsection 4

19A.8 Director's duties.

The director, as executive head of the department, shall direct and supervise all of the administrative and technical activities of the department. In addition to the duties imposed by the director elsewhere in this chapter, it shall be the director's duty:

1. To apply and carry out this law and the rules adopted thereunder.

2. To establish and maintain a roster of all employees in the executive branch of state government, excluding employees of the state board of regents, in which there shall be set forth, as to each employee, the class title, pay or status, and other pertinent data.

3. To appoint such employees of the department and such experts and special assistants as may be necessary to carry out effectively the provisions of this chapter. Staff employees shall be appointed in accordance with the provisions of this chapter.

4. To foster and develop, in cooperation with appointing authorities and others, programs for the improvement of employee effectiveness, including training, safety, health, counseling, and welfare.

5. To encourage and exercise leadership in the development of effective personnel administration within the several departments of state government, and to make available the facilities of the department of personnel to this end.

6. To investigate the operation and effect of this chapter and of the rules made under it and to report semiannually the director's findings and recommendations to the governor.

7. To make an annual report to the governor regarding the work of the department and special reports as the director considers desirable.

8. To perform any other lawful acts which the director may consider necessary or desirable to

carry out the purposes and provisions of this chapter.

The director shall designate an employee of the department to act for the director in the director's absence or inability from any cause to discharge the powers and duties of this office.

The director shall utilize appropriate persons, including officers and employees in the executive branch of state government, to assist in the preparation and rating of tests. The director shall confer with agency personnel to assist in preparing examinations for professional and technical classes. An appointing authority may excuse any employee under the appointing authority's jurisdiction from the employee's regular duties for the time required for work as an examiner. These officers and employees are not entitled to extra pay for their services as examiners but shall be paid their necessary traveling and other expenses.

The director shall quarterly render a statement to each department or agency which operates in whole or in part from other than general fund appropriations for a pro rata share of the cost of administration of the department of personnel. The expense shall be paid by the state department or agency in the same manner as other expenses of that department or agency are paid and all moneys received shall be deposited in the general fund of the state.

The director shall render monthly a statement to each state department or agency for a pro rata share of the cost of administration of the state employee flexible spending accounts*. The expense shall be paid by the state department or agency in the same manner as other expenses of that state department or agency are paid and all moneys received for administration costs shall be deposited in the appropriate fund.

99 Acts, ch 200, §17

*"State employee health flexible spending accounts" probably intended; corrective legislation is pending
NEW unnumbered paragraph 5

19A.9 Rules adopted.

The director shall adopt and may amend rules for the administration and implementation of this chapter in accordance with chapter 17A. Rulemaking shall be carried out with due regard to the terms of collective bargaining agreements. A rule shall not supersede a provision of a collective bargaining agreement negotiated under chapter 20. The rules shall provide:

1. For the preparation, maintenance, and revision of a job classification plan that encompasses each job in the executive branch, excluding job classifications under the state board of regents, based upon assigned duties and responsibilities, so that the same general qualifications may reasonably be required for and the same pay plan may be equitably applied to all jobs in the same job classification. The director shall classify the position of every employee in the executive branch, excluding employees of the state board of regents, into one of the

classes in the plan. An appointing authority or employee adversely affected by a job classification or reclassification may file an appeal with the director. The classification or reclassification of a position that would cause the expenditure of additional salary funds shall not become effective if the expenditure of funds would be in excess of the total amount budgeted for the department of the appointing authority until budgetary approval has been obtained from the director of the department of management.

When the public interest requires a diminution or increase of employees in any position or type of employment not otherwise provided by law, or the creation or abolishment of any position or type of employment, the director, acting in good faith, shall so notify the governor. Thereafter, the position or type of employment shall stand abolished or created and the number of employees therein reduced or increased.

2. For pay plans covering all employees in the executive branch of state government, excluding employees of the state board of regents, after consultation with the governor and appointing authorities, and consistent with the terms of collective bargaining agreements negotiated under chapter 20.

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

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

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

4. For promotions which shall give appropriate consideration to the applicant's qualifications, record of performance, and conduct. Vacancies shall be filled by promotion whenever practicable and in the best interest of the system and shall be by competitive or noncompetitive examination. Such examinations shall be of the same nature and content

as those used in establishing competitive registers for the class. A promotion means a change in the status of an employee, from a position in one class to a position in another class having a higher entrance salary.

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

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

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

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

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

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

11. For transfer from a position in one department to a similar position in another department involving similar qualifications, duties, responsibilities, and salary ranges. Whenever an employee transfers or is transferred from one state depart-

ment or agency to another state department or agency, the employee's seniority rights, any accumulated sick leave, and accumulated vacation time, as provided in the law, shall be transferred to the new place of employment and credited to the employee. Employees who are subject to contracts negotiated under chapter 20 which include transfer provisions shall be governed by the contract provisions.

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

13. For establishing in cooperation with the appointing authorities a system of service records of all employees in the executive branch of state government, excluding employees of the state board of regents, which service records shall be considered in determining salary increases provided in the pay plan; as a factor in promotion tests; as a factor in determining the order of layoffs because of lack of funds or work and in reinstatement; as a factor in demotions, discharges, or transfers; and for the regular evaluation, at least annually, of the qualifications and performance of those employees.

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

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

16. For discharge, suspension, or reduction in job classification or pay grade for any of the following causes: failure to perform assigned duties; inadequacy in performing assigned duties; negligence; inefficiency; incompetence; insubordination; unrehabilitated alcoholism or narcotics addiction; dishonesty; unlawful discrimination; failure to maintain a license, certificate, or qualification necessary for a job classification or position; any act or conduct which adversely affects the employee's performance or the employing agency; or any other good cause for discharge, suspension, or reduction. The person discharged, suspended, or reduced shall be given a written statement of the reasons for the discharge, suspension, or reduction within twenty-four hours after the dis-

charge, suspension, or reduction. All persons concerned with the administration of this chapter shall use their best efforts to insure that this chapter and the rules adopted hereunder shall not be a means of protecting or retaining unqualified or unsatisfactory employees, and shall discharge, suspend, or reduce in job classification or pay grade all employees who should be discharged, suspended, or reduced for any of the causes stated in this subsection.

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

18. For attendance regulations, and special leaves of absence, with or without pay, or reduced pay, in the various classes of positions in the executive branch, excluding positions under the state board of regents. Employees who are subject to contracts negotiated under chapter 20 which include leave of absence provisions shall be governed by the contract provisions. Annual sick leave and vacation time shall be granted in accordance with section 70A.1.

19. For the development and operation of programs to improve the work effectiveness and morale of employees in the executive branch, excluding employees of the state board of regents, including training, safety, health, welfare, counseling, recreation, and employee relations.

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

21. For veterans preference through a provision that veterans as defined in section 35.1 shall have five points added to the grade or score attained in qualifying examinations for appointment to jobs.

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

22. For acceptance of the qualifications, requirements, regulations, and general provisions established under other sections of the Code per-

taining to professional registration, certification, and licensing.

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

99 Acts, ch 180, §1

Subsection 21, unnumbered paragraph 1 amended

19A.33 and 19A.34 Reserved.

HEALTH FLEXIBLE SPENDING ACCOUNT PLAN

19A.35 State employee health flexible spending account trust fund.

1. The director shall establish for state employees a health flexible spending account plan which offers multiple benefits to state employees. The state's health flexible spending account plan shall be established to meet the conditions of section 125 of the Internal Revenue Code of 1986.

2. There is created in the state treasury a special trust fund known as the Iowa state employee health flexible spending account trust fund. The trust fund consists of all moneys appropriated to the fund and any other assets directed to be held in trust for the exclusive benefit of participants in the state's health flexible spending account plan. Notwithstanding section 12C.7, interest and earnings from moneys in the trust fund shall be credited to the trust fund and shall be used exclusively for the benefit of plan participants.

3. The director shall serve as trustee of the trust fund and has the authority to direct expenditures as deemed appropriate to the exclusive benefit of the plan participants.

99 Acts, ch 200, §18

Cost of administration, see §19A.8

Authority of governing body, see §509A.1

NEW section

CHAPTER 20

PUBLIC EMPLOYMENT RELATIONS (COLLECTIVE BARGAINING)

20.6 General powers and duties of the board.

The board shall:

1. Administer the provisions of this chapter.
2. Collect, for public employers other than the state and its boards, commissions, departments, and agencies, data and conduct studies relating to wages, hours, benefits and other terms and conditions of public employment and make the same available to any interested person or organization.
3. Establish minimum qualifications for arbitrators and mediators, establish procedures for appointing, maintaining, and removing from a list persons representative of the public to be available to serve as arbitrators and mediators, and establish compensation rates for arbitrators and mediators.
4. Hold hearings and administer oaths, examine witnesses and documents, take testimony

and receive evidence, issue subpoenas to compel the attendance of witnesses and the production of records, and delegate such power to a member of the board, persons appointed or employed by the board, including administrative law judges, or administrative law judges employed by the division of administrative hearings created by section 10A.801, for the performance of its functions. The board may petition the district court at the seat of government or of the county where a hearing is held to enforce a board order compelling the attendance of witnesses and production of records.

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

98 Acts, ch 1202, §28, 46

1998 amendment to subsection 4 is effective July 1, 1999, and applies to agency proceedings commenced, or conducted on remand from a court or other agency, on or after that date; 98 Acts, ch 1202, §28, 46

Subsection 4 amended

CHAPTER 21

OFFICIAL MEETINGS OPEN TO PUBLIC (OPEN MEETINGS)

21.6 Enforcement.

1. The remedies provided by this section against state governmental bodies shall be in addition to those provided by section 17A.19. Any aggrieved person, taxpayer to, or citizen of, the state of Iowa, or the attorney general or county attorney, may seek judicial enforcement of the requirements of this chapter. Suits to enforce this chapter shall be brought in the district court for the county in which the governmental body has its principal place of business.

2. Once a party seeking judicial enforcement of this chapter demonstrates to the court that the body in question is subject to the requirements of this chapter and has held a closed session, the burden of going forward shall be on the body and its members to demonstrate compliance with the requirements of this chapter.

3. Upon a finding by a preponderance of the evidence that a governmental body has violated any provision of this chapter, a court:

a. Shall assess each member of the governmental body who participated in its violation damages in the amount of not more than five hundred dollars nor less than one hundred dollars. These damages shall be paid by the court imposing it to the state of Iowa, if the body in question is a state gov-

ernmental body, or to the local government involved if the body in question is a local governmental body. A member of a governmental body found to have violated this chapter shall not be assessed such damages if that member proves that the member did any of the following:

- (1) Voted against the closed session.
- (2) Had good reason to believe and in good faith believed facts which, if true, would have indicated compliance with all the requirements of this chapter.
- (3) Reasonably relied upon a decision of a court or a formal opinion of the attorney general or the attorney for the governmental body.

b. Shall order the payment of all costs and reasonable attorney fees in the trial and appellate courts to any party successfully establishing a violation of this chapter. The costs and fees shall be paid by those members of the governmental body who are assessed damages under paragraph "a". If no such members exist because they have a lawful defense under that paragraph to the imposition of such damages, the costs and fees shall be paid to the successful party from the budget of the offending governmental body or its parent.

c. Shall void any action taken in violation of this chapter, if the suit for enforcement of this chap-

ter is brought within six months of the violation and the court finds under the facts of the particular case that the public interest in the enforcement of the policy of this chapter outweighs the public interest in sustaining the validity of the action taken in the closed session. This paragraph shall not apply to an action taken regarding the issuance of bonds or other evidence of indebtedness of a governmental body if a public hearing, election or public sale has been held regarding the bonds or evidence of indebtedness.

d. Shall issue an order removing a member of a governmental body from office if that member has engaged in two prior violations of this chapter for which damages were assessed against the member during the member's term.

e. May issue a mandatory injunction punishable by civil contempt ordering the members of the offending governmental body to refrain for one year from any future violations of this chapter.

4. Ignorance of the legal requirements of this chapter shall be no defense to an enforcement proceeding brought under this section. A governmental body which is in doubt about the legality of closing a particular meeting is authorized to bring suit at the expense of that governmental body in the district court of the county of the governmental body's principal place of business to ascertain the propriety of any such action, or seek a formal opinion of the attorney general or an attorney for the governmental body.

99 Acts, ch 9, §1
Subsection 3, paragraph b amended

CHAPTER 22

EXAMINATION OF PUBLIC RECORDS (OPEN RECORDS)

22.2 Right to examine public records — exceptions.

1. Every person shall have the right to examine and copy a public record and to publish or otherwise disseminate a public record or the information contained in a public record. Unless otherwise provided for by law, the right to examine a public record shall include the right to examine a public record without charge while the public record is in the physical possession of the custodian of the public record. The right to copy a public record shall include the right to make photographs or photographic copies while the public record is in the possession of the custodian of the public record. All rights under this section are in addition to the right to obtain a certified copy of a public record under section 622.46.

2. A government body shall not prevent the examination or copying of a public record by contracting with a nongovernment body to perform any of its duties or functions.

3. However, notwithstanding subsections 1 and 2, a government body is not required to permit access to or use of the following:

a. A geographic computer data base by any person except upon terms and conditions acceptable to the governing body. The governing body shall establish reasonable rates and procedures for the retrieval of specified records, which are not confidential records, stored in the data base upon the request of any person.

b. Data processing software developed by the government body, as provided in section 22.3A.

Information and other communications in custody or control of state government entities and necessary to protect the life, safety, or property of government employees or persons in care or custody of government entities considered confidential records; repeal; 99 Acts, ch 207, §19

22.3A Access to data processing software.

1. As used in this section:

a. "Access" means the instruction of, communication with, storage of data in, or retrieval of data from a computer.

b. "Computer" means an electronic device which performs logical, arithmetical, and memory functions by manipulations of electronic or magnetic impulses, and includes all input, output, processing, storage, and communication facilities which are connected or related to the computer including a computer network. As used in this paragraph, "computer" includes any central processing unit, front-end processing unit, miniprocessor, or microprocessor, and related peripheral equipment such as data storage devices, document scanners, data entry terminal controllers, and data terminal equipment and systems for computer networks.

c. "Computer network" means a set of related, remotely connected devices and communication facilities including two or more computers with capability to transmit data among them through communication facilities.

d. "Data" means a representation of information, knowledge, facts, concepts, or instructions that has been prepared or is being prepared in a formalized manner and has been processed, or is intended to be processed, in a computer. Data may be stored in any form, including but not limited to a printout, magnetic storage media, disk, compact disc, punched card, or as memory of a computer.

e. "Data processing software" means an ordered set of instructions or statements that, when executed by a computer, causes the computer to process data, and includes any program or set of

programs, procedures, or routines used to employ and control capabilities of computer hardware. As used in this paragraph “*data processing software*” includes but is not limited to an operating system, compiler, assembler, utility, library resource, maintenance routine, application, or computer networking program.

2. A government body may provide, restrict, or prohibit access to data processing software developed by the government body, regardless of whether the data processing software is separated or combined with a public record. A government body shall establish policies and procedures to provide access to public records which are combined with its data processing software. A public record shall not be withheld from the public because it is combined with data processing software. A government body shall not acquire any electronic data processing system for the storage, manipulation, or retrieval of public records that would impair the government body’s ability to permit the examination of a public record and the copying of a public record in either written or electronic form. If it is necessary to separate a public record from data processing software in order to permit the examination or copying of the public record, the government body shall bear the cost of separation of the public record from the data processing software. The electronic public record shall be made available in a format useable with commonly available data processing or data base management software. The cost chargeable to a person receiving a public record separated from data processing software under this subsection shall not be in excess of the charge under this chapter unless the person receiving the public record requests that the public record be specially processed. A government body may establish payment rates and procedures required to provide access to data processing software, regardless of whether the data processing software is separated from or combined with a public record. Proceeds from payments may be considered repayment receipts, as defined in section 8.2. The payment amount shall be calculated as follows:

a. The amount charged for access to a public record shall be not more than that required to recover direct publication costs, including but not limited to editing, compilation, and media production costs, incurred by the government body in developing the data processing software, and preparing the data processing software for transfer to the person. The amount shall be in addition to any other fee required to be paid under this chapter for the examination and copying of a public record. If a person accesses a public record stored in an electronic format that does not require formatting, editing, or compiling to access the public record, the charge for providing the accessed public record shall not exceed the reasonable cost of accessing that public record. The government body shall, if

requested, provide documentation which explains and justifies the amount charged. This paragraph shall not apply to any publication for which a price has been established pursuant to another section, including section 7A.22.

b. If access to the data processing software is provided to a person for a purpose other than provided in paragraph “*a*”, the amount may be established according to the discretion of the government body, and may be based upon competitive market considerations as determined by the government body.

3. A government body is granted and may apply for and receive any legal protection necessary to secure a right to or an interest in data processing software developed by the government body, including but not limited to federal copyright, patent, and trademark protections, and any trade secret protection available under chapter 550. The government body may enter into agreements for the sale or distribution of its data processing software, including marketing and licensing agreements. The government body may impose conditions upon the use of the data processing software that is otherwise consistent with state and federal law.

99 Acts, ch 207, §12
Subsection 2, paragraph a amended

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 915.20A. However, the Iowa department of public health shall adopt rules which provide for the sharing of information among agencies and providers concerning the maternal and child health program including but not limited to the statewide child immunization information system, 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 surround-

ing 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 and criminal history data 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 or juvenile 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. 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.

21. 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.

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

23. 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.

24. 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.

25. 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 department of agriculture and land stewardship for the purpose of obtaining assistance in business planning.

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

27. 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.

28. 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.

29. 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 is not a confidential record unless otherwise provided by law.

30. Information contained in a declaration of paternity completed and filed with the state registrar of vital statistics pursuant to section 144.12A, except to the extent that the information may be provided to persons in accordance with section 144.12A.

31. Memoranda, work products, and case files of a mediator and all other confidential communications in the possession of a mediator, as provided in chapters 86 and 216. Information in these confidential communications is subject to disclosure only as provided in sections 86.44 and 216.15B, notwithstanding any other contrary provision of this chapter.

32. Social security numbers of the owners of unclaimed property reported to the treasurer of state pursuant to section 556.11, subsection 2, included on claim forms filed with the treasurer of state pursuant to section 556.19, included in outdated warrant reports received by the treasurer of state pursuant to section 25.2, or stored in record systems maintained by the treasurer of state for purposes of administering chapter 556, or social security numbers of payees included on state warrants included in records systems maintained by the department of revenue and finance for the purpose of documenting and tracking outdated warrants pursuant to section 25.2.

33. Data processing software, as defined in section 22.3A, which is developed by a government body.

34. A record required under the Iowa financial transaction reporting Act listed in section 529.2, subsection 9.

35. Records of the Iowa department of public health pertaining to participants in the gambling treatment program except as otherwise provided in this chapter.

36. Records of a law enforcement agency or the state department of transportation regarding the issuance of a driver's license under section 321.189A.

37. Mediation documents as defined in section 679C.1, except written mediation agreements that resulted from a mediation which are signed on behalf of a governing body. However, confidentiality of mediation documents resulting from mediation conducted pursuant to chapter 216 shall be governed by chapter 216.

38. *a.* Records containing information that would disclose, or might lead to the disclosure of, private keys as provided in chapter 554C.

b. Records which if disclosed might jeopardize the security of an issued certificate or a certificate to be issued pursuant to chapter 554C.

99 Acts, ch 146, §43

For future amendments effective July 1, 2000, see 99 Acts, ch 88, §1, 11, 13

NEW subsection 38

CHAPTER 23A

NONCOMPETITION BY GOVERNMENT

23A.2 State agencies and political subdivisions not to compete with private enterprise.

1. A state agency or political subdivision shall not, unless specifically authorized by statute, rule, ordinance, or regulation:

a. Engage in the manufacturing, processing, sale, offering for sale, rental, leasing, delivery, dispensing, distributing, or advertising of goods or services to the public which are also offered by private enterprise unless such goods or services are for use or consumption exclusively by the state agency or political subdivision.

b. Offer or provide goods or services to the public for or through another state agency or political subdivision, by intergovernmental agreement or otherwise, in violation of this chapter.

2. The state board of regents or a school corporation may, by rule, provide for exemption from the application of this chapter for the following activities:

a. Goods and services that are directly and reasonably related to the educational mission of an institution or school.

b. Goods and services offered only to students, employees, or guests of the institution or school and which cannot be provided by private enterprise at the same or lower cost.

c. Use of vehicles owned by the institution or school for charter trips offered to the public, full or part-time, or temporary students.

d. Durable medical equipment or devices sold or leased for use off premises of an institution, school, or university of Iowa hospitals or clinics.

e. Goods or services which are not otherwise available in the quantity or quality required by the institution or school.

f. Telecommunications other than radio or television stations.

g. Sponsoring or providing facilities for fitness and recreation.

h. Food service and sales.

i. Sale of books, records, tapes, software, educational equipment, and supplies.

3. After July 1, 1988, before a state agency is permitted to continue to engage in an existing practice specified in subsection 1, that state agency must prepare for public examination documentation showing that the state agency can provide the goods or services at a competitive price. The documentation required by this subsection shall be in accordance with that required by generally accepted accounting principles.

4. If a state agency is authorized by statute to compete with private enterprise, or seeks to gain authorization to compete, the state agency shall

prepare for public inspection documentation of all actual costs of the project as required by generally accepted accounting principles.

5. Subsections 1 and 3 do not apply to activities of community action agencies under community action programs, as both are defined in section 216A.91.

6. The director of the department of corrections, with the advice of the state prison industries advisory board, may, by rule, provide for exemptions from this chapter.

7. However, this chapter shall not be construed to impair cooperative agreements between Iowa state industries and private enterprise.

8. The director of the department of corrections, with the advice of the board of corrections, may by rule, provide for exemption from this chapter for vocational-educational programs and farm operations of the department.

9. The state department of transportation may, in accordance with chapter 17A, provide for exemption from the application of subsection 1 for the activities related to highway maintenance, highway design and construction, publication and distribution of transportation maps, state aircraft pool operations, inventory sales to other state agencies and political subdivisions, equipment management and disposal, vehicle maintenance and repair services for other state agencies, and other similar essential operations.

10. This chapter does not apply to any of the following:

a. The operation of a city enterprise, as defined in section 384.24, subsection 2.

b. The performance of an activity that is an essential corporate purpose of a city, as defined in section 384.24, subsection 3, or which carries out the essential corporate purpose, or which is a general corporate purpose of a city as defined in section 384.24, subsection 4, or which carries out the general corporate purposes.

c. The operation of a city utility, as defined by section 390.1, subsection 3.

d. The performance of an activity by a city that is intended to assist in economic development or tourism.

e. The operation of a county enterprise, as defined in section 331.461, subsection 1, or 331.461, subsection 2.

f. The performance of an activity that is an essential county purpose, as defined in section 331.441, subsection 2, or which carries out the essential county purpose, or which is a general county purpose as defined in section 331.441, subsection 2, or which carries out the general county purpose.

g. The performance of an activity listed as a duty relating to a county service in section 331.381.

h. The performance of an activity listed in section 331.424, as a service for which a supplemental levy may be certified.

i. The performance of an activity by a county that is intended to assist in economic development or tourism.

j. The operation of a public transit system, as defined in chapter 324A, except that charter services, outside of a public transit system's normal service area, shall be conducted in Iowa intrastate commerce under the same conditions, restrictions, and obligations as those contained in 49 C.F.R., Part 604. For purposes of this chapter, the definition and conduct of charter services shall be the same as those contained in 49 C.F.R., Part 604.

k. The following on-campus activities of an institution or school under the control of the state board of regents or a school corporation:

- (1) Residence halls.
- (2) Student transportation, except as specifically listed in subsection 2, paragraph "c".
- (3) Overnight accommodations for participants in programs of the institution or school, visitors to the institution or school, parents, and alumni.
- (4) Sponsoring or providing facilities for cultural and athletic events.
- (5) Items displaying the emblem, mascot, or logo of the institution or school, or that otherwise promote the identity of the institution or school and its programs.
- (6) Souvenirs and programs relating to events sponsored by or at the institution or school.
- (7) Radio and television stations.
- (8) Services to patients and visitors at the university of Iowa hospitals and clinics, except as specifically listed in subsection 2, paragraph "d".
- (9) Goods, products, or professional services which are produced, created, or sold incidental to the schools' teaching, research, and extension missions.
- (10) Services to the public at the Iowa state university college of veterinary medicine.

l. The offering of goods and services to the public as part of a client training program operated by a state hospital-school under the control of the department of human services provided that all of the following conditions are met:

- (1) Any off-campus vocational or employment training program developed or operated by the department of human services for clients of a state hospital-school is a supported vocational training program or a supported employment program offered by a community-based provider of services or other employer in the community.
- (2) (a) If a resident of a state hospital-school is to participate in an employment or training program which pays a wage in compliance with the

federal Fair Labor Standards Act, the state hospital-school shall develop a community placement plan for the resident. The community placement plan shall identify the services and supports the resident would need in order to be discharged from the state hospital-school and to live and work in the community. The state hospital-school shall make reasonable efforts to implement the community placement plan including referring the resident to community-based providers of services.

(b) If a community-based provider of services is unable to accept a resident who is referred by the state hospital-school, the state hospital-school shall request and the provider shall indicate in writing to the state hospital-school the provider's reasons for its inability to accept the resident and describe what is needed to accept the resident.

(c) A resident who cannot be placed in a community placement plan with a community-based provider of services may be placed by the state hospital-school in an on-campus or off-campus vocational or employment training program. However, prior to placing a resident in an on-campus vocational or employment training program, the state hospital-school shall seek an off-campus vocational or employment training program offered by a community-based provider who serves the county in which the state hospital-school is based or the counties contiguous to the county, provided that the resident will not be required to travel for more than thirty minutes one way to obtain services.

If off-campus services cannot be provided by a community-based provider, the state hospital-school shall offer the resident an on-campus vocational or employment training program. The on-campus program shall be operated in compliance with the federal Fair Labor Standards Act. At least semiannually, the state hospital-school shall seek an off-campus community-based vocational or employment training option for each resident placed in an on-campus program. The state hospital-school shall not place a resident in an off-campus program in which the cost to the state hospital-school would be in excess of the provider's actual cost as determined by purchase of service rules or if the service would not be reimbursed under the medical assistance program.

(3) The price of any goods and services offered to anyone other than a state agency or a political subdivision shall be at a minimum sufficient to cover the cost of any materials and supplies used in the program and to cover client wages as established in accordance with the federal Fair Labor Standards Act.

(4) Nothing in this paragraph shall be construed to prohibit a state hospital-school from providing a service a resident needs for compliance with accreditation standards for intermediate care facilities for persons with mental retardation.

m. The repair, calibration, or maintenance of radiological detection equipment by the emergency management division of the department of public

defense.

99 Acts, ch 86, §1
Subsection 10, NEW paragraph m

CHAPTER 25B

STATE MANDATES — FUNDING REQUIREMENTS

25B.7 Funding property tax credits and exemptions.

1. Beginning with property taxes due and payable in the fiscal year beginning July 1, 1998, the cost of providing a property tax credit or property tax exemption which is enacted by the general assembly on or after January 1, 1997, shall be fully funded by the state. If a state appropriation made to fund a credit or exemption which is enacted on or after January 1, 1997, is not sufficient to fully fund the credit or exemption, the political subdivision shall be required to extend to the taxpayer only that portion of the credit or exemption estimated by the department of revenue and finance to be funded by the state appropriation. The department of revenue and finance shall determine by June 15 the estimated portion of the credit or exemption which will be funded by the state appropriation.

2. The requirement for fully funding and the consequences of not fully funding credits and exemptions under subsection 1 also apply to all of the following:

a. Homestead tax credit pursuant to sections 425.1 through 425.15.

b. Low-income property tax credit and elderly and disabled property tax credit pursuant to sections 425.16 through 425.40.

c. Military service property tax credit and exemption pursuant to chapter 426A, to the extent of six dollars and ninety-two cents per thousand dollars of assessed value of the exempt property.

3. *a.* For purposes of this subsection, “*base reimbursement amount*” means the amount in dollars received for the fiscal year beginning July 1, 1996, by a city, county, or school district from the state as a reimbursement for the homestead tax credit, military service property tax credit, low-income property tax credit, or the elderly and disabled property tax credit, as appropriate. The county treasurer shall determine the base reimbursement amount for the cities, county, and school districts for each credit. The treasurer shall notify

the department of management of the base reimbursement amounts for each credit of each school district.

b. The amount of state reimbursement received for a fiscal year beginning on or after July 1, 1997, and ending on or before June 30, 2002, by a city, county, or school district for the homestead tax credit, military service property tax credit, low-income property tax credit, or elderly and disabled property tax credit in excess of the base reimbursement amount for that credit shall be used as follows:

(1) In the case of a city, at least fifty percent shall be used for property tax relief with the remaining amount used for infrastructure. The county treasurer shall provide to each city located in the county the total amount of excess tax credit reimbursement received by the city.

(2) In the case of a county, at least fifty percent shall be used for property tax relief with the remaining amount used for infrastructure or for paying the expenses incurred in providing the statement and receipt required under section 445.5. The county treasurer shall provide the county auditor with the total amount of excess tax credit reimbursement received by the county.

(3) In the case of a school district, one hundred percent shall be used for property tax relief through the reduction in the additional levy under section 257.4. Each county treasurer shall provide the department of management with the total amount of excess tax credit reimbursement received by each school district in the county.

c. The requirements of paragraph “*b*” do not constitute a state mandate under this chapter.

d. This subsection is repealed June 30, 2002, for fiscal years beginning after that date.

99 Acts, ch 180, §22, 24

1999 amendment to subsection 2, paragraph c, applies to the military service property tax exemption claims allowed on or after January 1, 2000; 99 Acts, ch 180, §24

Internal reference changes applied
Subsection 2, paragraph c amended

CHAPTER 28

COMMUNITY EMPOWERMENT ACT

Purposes of Act; 98 Acts, ch 1206, §1
 Legislative findings and intent; 98 Acts, ch 1206, §12
 Chapter transferred from chapter 71 pursuant to Code
 editor directive; 99 Acts, ch 190, §19, 20

28.1 Definitions.

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

1. “*Community empowerment area*” means a geographic area designated in accordance with this chapter.

2. “*Community empowerment area board*” or “*community board*” means the board for a community empowerment area created in accordance with this chapter.

3. “*Decategorization project*” means a decategorization of child welfare and juvenile justice funding project operated under section 232.188.

4. “*Innovation zone*” means a local jurisdiction implementing an innovation zone plan in accordance with section 8A.2, Code 1997.

5. “*Iowa empowerment board*” or “*Iowa board*” means the Iowa empowerment board created in section 28.3.

99 Acts, ch 190, §1, 19, 20
 Section transferred from §71.1 in Code Supplement 1999 pursuant to directive in 99 Acts, ch 190, §19
 Subsection 5 amended

28.2 Purpose and scope.

1. The purpose of creating the community empowerment initiative is to empower individuals and their communities to achieve desired results for improving the quality of life in the communities in this state. It is expected that the empowerment of individuals will strengthen the individuals’ sense of responsibility for their neighbors and promote partnerships in order for all to succeed. It is believed that the desired results identified by individuals and their communities, with the support of the state, will be achieved as individuals, governments, and agencies work collaboratively within communities. It is believed that local individuals in local communities working together will identify and implement the best means for attaining the desired results for themselves and their neighbors. The role of the Iowa empowerment board, the state, and local governments is to support and facilitate growth of individual and community responsibility in place of the directive role that the public has come to expect of government.

2. It is intended that through the community empowerment initiative, by June 30, 2005, every community in Iowa will have developed the capacity and commitment for using local decision making to achieve the following initial set of desired results:

- a. Healthy children.
- b. Children ready to succeed in school.

- c. Safe and supportive communities.
- d. Secure and nurturing families.
- e. Secure and nurturing child care environments.

3. To achieve the initial set of desired results, the initiative’s primary focus shall first be on the efforts of the state and communities to work together to improve the efficiency and effectiveness of education, health, and human services provided to families with children from birth through age five years.

4. It is anticipated that the scope of the initiative will expand as additional desired results are identified and agreed upon by communities and the state. It is the intent of the general assembly to identify from time to time the additional desired results in statute.

99 Acts, ch 190, §2, 19, 20
 NEW section

28.3 Iowa empowerment board created.

1. An Iowa empowerment board is created to facilitate state and community efforts involving community empowerment areas, including strategic planning, funding identification, and guidance, and to promote collaboration among state and local education, health, and human services programs.

2. The Iowa board shall consist of fifteen voting members with twelve citizen members and three state agency members. The three state agency members shall be the directors of the following departments: education, human services, and public health. The twelve citizen members shall be appointed by the governor, subject to confirmation by the senate. The governor’s appointments of citizen members shall be made in a manner so that each of the state’s congressional districts is represented by two citizen members and so that all the appointments as a whole reflect the ethnic, cultural, social, and economic diversity of the state. The governor’s appointees shall be selected from individuals nominated by community empowerment area boards. The nominations shall reflect the range of interests represented on the community boards so that the governor is able to appoint one or more members each for education, health, human services, business, faith, and public interests. At least one of the citizen members shall be a service consumer or the parent of a service consumer. Terms of office of all citizen members are three years. A vacancy on the board shall be filled in the same manner as the original appointment for the balance of the unexpired term.

3. Citizen members shall be reimbursed for actual and necessary expenses incurred in performance of their duties. Members shall be paid a per diem as specified in section 7E.6.

4. In addition to the voting members, the Iowa board shall include six members of the general assembly with not more than two members from each chamber being from the same political party. The three senators shall be appointed by the majority leader of the senate after consultation with the president of the senate and the minority leader of the senate. The three representatives shall be appointed by the speaker of the house of representatives after consultation with the majority and minority leaders of the house of representatives. Legislative members shall serve in an ex officio, nonvoting capacity. A legislative member is eligible for per diem and expenses as provided in section 2.10.

5. A community empowerment assistance team or teams of state agency representatives shall be designated to provide technical assistance and other support to community empowerment areas. A technical assistance system shall be developed using local representatives of the state agencies represented on the Iowa board and other state agencies and individuals involved with local community empowerment areas. The technical assistance shall be available in at least three levels of support as follows:

a. Support to areas experienced in operating an innovation zone or decategorization project with an extensive record of success in collaboration between education, health, or human services interests.

b. Support to areas experienced in operating an innovation zone or decategorization project.

c. Support to areas forming an initial community empowerment area with no previous experience operating an innovation zone or decategorization project.

6. a. Staffing services to the Iowa board shall be provided by the state agencies which are represented on the Iowa board and by other state agencies making staffing available to the Iowa board.

b. In addition, a community empowerment office is established as a division of the department of management to provide a center for facilitation, communication, and coordination for community empowerment activities and funding. Staffing for the community empowerment office shall be provided by a facilitator appointed by the governor, subject to confirmation by the senate, and who serves at the pleasure of the governor. A deputy and support staff may be designated, subject to appropriation made for this purpose. The facilitator shall submit reports to the governor, the Iowa board, and the general assembly. The facilitator shall provide primary staffing to the board, coordinate state technical assistance activities and implementation of the technical assistance system,

and other communication and coordination functions to move authority and decision-making responsibility from the state to communities and individuals.

7. The Iowa board may designate an advisory council consisting of representatives from community empowerment area boards.

8. The Iowa board shall elect a chairperson from among the citizen board members and may select other officers from among the citizen board members as determined to be necessary by the board. The board shall meet regularly as determined by the board, upon the call of the board's chairperson, or upon the call of a majority of voting members.

99 Acts, ch 190, §3-6, 19, 20

Duties related to community empowerment areas and boards and school ready children grant program; 98 Acts, ch 1206, §13; 98 Acts, ch 1223, §32
Transition board; emergency rules; initial board appointments; 98 Acts, ch 1206, §15, 16, 18

Gubernatorial appointment of additional citizen members pursuant to 1999 amendment; 99 Acts, ch 190, §19, 20

Section transferred from §71.2 in Code Supplement 1999 pursuant to directive in 99 Acts, ch 190, §19

Subsections 1, 2, and 4 amended

Subsection 5, unnumbered paragraph 1 amended

Subsection 6 amended

28.4 Iowa empowerment board duties.

The Iowa board shall perform the following duties:

1. Perform duties relating to community empowerment areas.

2. Manage and coordinate the provision of grant funding and other moneys made available to community empowerment areas by combining all or portions of appropriations or other revenues as authorized by law.

3. Develop advanced community empowerment area arrangements for those community empowerment areas which were formed in transition from an innovation zone or from a decategorization governance board or which otherwise provide evidence of extensive successful experience in managing services and funding with high levels of community support and input.

4. Identify boards, commissions, committees, and other bodies in state government with overlapping and similar purposes which contribute to redundancy and fragmentation in education, health, and human services programs provided to the public. The board shall also make recommendations to the governor and general assembly as appropriate for increasing coordination between these bodies, for eliminating bureaucratic duplication, for consolidation where appropriate, and for integration of functions to achieve improved results.

5. Assist with the linkage of child welfare and juvenile justice decategorization projects with community empowerment areas.

6. Integrate the duties relating to innovation zones in the place of the innovation zone board created in section 8A.2, Code 1997, until the Iowa board determines the innovation zones have been replaced with community empowerment areas.

7. Coordinate and respond to any requests from a community board relating to any of the following:

- a. Waiver of existing rules, federal regulation, or amendment of state law, or removal of other barriers.
- b. Pooling and redirecting of existing federal, state, or other public or private funds.
- c. Seeking of federal waivers.
- d. Consolidating community-level committees, planning groups, and other bodies with common memberships formed in response to state requirements.

In coordinating and responding to the requests, the Iowa board shall work with state agencies and submit proposals to the governor and general assembly as necessary to fulfill requests deemed appropriate by the Iowa board.

8. Provide for maximum flexibility and creativity in the designation and administration of the responsibilities and authority of community empowerment areas.

9. Adopt rules pursuant to chapter 17A as necessary for the designation, governance, and oversight of community empowerment areas and the administration of this chapter. The Iowa board shall provide for community board input in the rules adoption process. The rules shall include but are not limited to the following:

- a. Performance indicators for community empowerment areas, community boards, and the services provided under the auspices of the community boards. The performance indicators shall be developed with input from community boards and shall build upon the core indicators of performance for the school ready grant program, as described in section 28.8.
- b. Minimum standards to further the provision of equal access to services subject to the authority of community boards.
- c. Core functions for home visitation, parent support, and preschool services provided under a school ready children grant.

10. Implement a process for community empowerment areas to identify desired results for improving the quality of life in this state. The process shall allow for consideration of updates, additions, and deletions on a regular basis. The identified desired results shall be submitted to the governor and general assembly.

11. Develop guidelines for recommended coverage and take other actions to assist community empowerment area boards in acquiring necessary insurance or other liability coverage at a reasonable cost. Moneys expended by a community empowerment area board to acquire necessary insurance or other liability coverage shall be considered an administrative cost and implementation expense.

12. a. With extensive community involvement, develop and annually update a five-year plan

for consolidating, blending, and redistributing state-administered funding streams for children from birth through age five made available to community empowerment area boards.

b. With extensive community involvement, develop and annually update a ten-year plan for consolidating, blending, and redistributing state-administered funding streams for other age groups made available to community empowerment area boards. The focus for the early years of the initial ten-year plan shall be on the efforts of the Iowa board and affected state agencies to facilitate implementation of individual community empowerment area board requests for pooling, consolidating, blending, and redistributing state-administered funding streams for other age groups.

c. Submit plans and plan updates developed under paragraphs "a" and "b" to the community empowerment areas, the governor, and the general assembly annually in December.

d. The Iowa empowerment board shall regularly make information available identifying community empowerment funding and funding distributed through the funding streams listed under this paragraph "d" to communities. It is the intent of the general assembly that the community empowerment area boards and the administrators of the programs located within the community empowerment areas that are supported by the listed funding streams shall fully cooperate with one another on or before the indicated fiscal years, in order to avoid duplication, enhance efforts, combine planning, and take other steps to best utilize the funding to meet the needs of the families in the areas. The community empowerment area boards and the administrators shall annually submit a report concerning such efforts to the community empowerment office. If a community empowerment area is receiving a school ready children grant, this report shall be an addendum to the annual report required under section 28.8. The state community empowerment facilitator shall compile and summarize the reports which shall be submitted to the governor, general assembly, and Iowa board. The funding streams shall include all of the following:

(1) Moneys for the healthy families Iowa program under section 135.106 by the fiscal year beginning July 1, 2000, and ending June 30, 2001.

(2) Moneys for parent education appropriated in section 279.51 and distributed through the child development coordinating council, by the fiscal year beginning July 1, 2000, and ending June 30, 2001.

(3) Moneys for the preschool children at-risk program appropriated in section 279.51 and distributed through the child development coordinating council, by the fiscal year beginning July 1, 2001, and ending June 30, 2002.

(4) Moneys for home visitation and parent support annually appropriated to the department of

human services and distributed or expended through child abuse prevention grants and the family preservation program, by the fiscal year beginning July 1, 2000, and ending June 30, 2001.

99 Acts, ch 190, §7-9, 19, 20

Duties related to community empowerment areas and board and school ready children grant program; submission of grant distribution funding formula; 98 Acts, ch 1206, §13; 98 Acts, ch 1223, §32

Reallocation of appropriations and categorical program funding for specified programs to community empowerment areas; 98 Acts, ch 1206, §17

Emergency rules; community input in adoption of rules regarding school ready children grant services; 99 Acts, ch 190, §20

Section transferred from §71.3 in Code Supplement 1999 pursuant to directive in 99 Acts, ch 190, §19

Subsection 2 amended

Subsection 9, NEW paragraph c

NEW subsections 10, 11, and 12

28.5 Community empowerment areas.

1. The purpose of a community empowerment area is to enable local citizens to lead collaborative efforts involving education, health, and human services programs on behalf of the children, families, and other citizens residing in the area. Leadership functions may include but are not limited to strategic planning for and oversight and managing of such programs and the funding made available to the community empowerment area for such programs from federal, state, local, and private sources. The initial focus of the purpose is to improve results for families with young children.

2. Each county and school district in the state shall have the option of participating in a community empowerment area. A community empowerment area shall be designated by using existing school district and county boundaries to the extent possible.

3. The designation of a community empowerment area and the creation of a community empowerment area board are subject to the approval of the Iowa empowerment board. Criteria used by the Iowa empowerment board in approving the designation of a community empowerment area shall include but are not limited to the existence of a large enough geographic area and population to efficiently and effectively administer the responsibilities and authority of the community empowerment area. The Iowa empowerment board shall adopt rules pursuant to chapter 17A providing procedures for the initial designation of community empowerment areas and for later changing the initially designated areas.

99 Acts, ch 190, §19, 20

Iowa empowerment board to provide assistance in the designation of community empowerment areas and enabling the timely submission of school ready children grant plans; 98 Acts, ch 1206, §13; 98 Acts, ch 1223, §32

Section not amended; section transferred from §71.4 in Code Supplement 1999 pursuant to directive in 99 Acts, ch 190, §19

28.6 Community empowerment area boards created.

1. *a.* Community empowerment area functions shall be performed under the authority of a community empowerment area board. A majority of the members of a community board shall be elected officials and members of the public who are not employed by a provider of services to or for the community board. At least one member shall be a

service consumer or the parent of a service consumer. Terms of office of community board members shall be not more than three years and the terms shall be staggered. The membership of a community empowerment area board shall include members with education, health, human services, business, faith, and public interests.

b. If a disagreement arises within a community empowerment area regarding the interests represented on the community board, board decisions, or other disputes that cannot be locally resolved, upon request, state or regional technical assistance may be provided to assist the area in resolving the disagreement.

2. A community board may designate representatives of service providers or public agency staff to provide technical assistance to the community board.

3. A community board may designate a professional advisory council consisting of persons employed by or otherwise paid to represent an entity listed in subsection 1 or other provider of service.

4. The community board shall elect a chairperson from among the members who are citizens, elected officials, or volunteers.

5. A community empowerment area board is a unit of local government for purposes of chapter 670, relating to tort liability of governmental subdivisions. For purposes of implementing a formal organizational structure, a community empowerment board may utilize recommended guidelines and bylaws established for this purpose by the Iowa board. All meetings of a community empowerment area board or any committee or other body established by a community board at which public business is discussed or formal action taken shall comply with the requirements of chapter 21. A community board shall maintain its records in accordance with chapter 22.

99 Acts, ch 190, §10, 11, 19, 20; 99 Acts, ch 192, §33

Initial community empowerment areas and boards; 98 Acts, ch 1206, §14

Section transferred from §71.5 in Code Supplement 1999 pursuant to directive in 99 Acts, ch 190, §19

See Code editor's note to §10A.202

Subsection 1 stricken and rewritten

NEW subsection 5

28.7 Community empowerment area board responsibilities and authority.

1. A community empowerment area board shall do the following:

a. Designate a public agency of this state, as defined in section 28E.2, a community action agency as defined in section 216A.91, or nonprofit corporation, to be the fiscal agent for grant moneys and for other moneys administered by the community board.

b. Administer community empowerment grant moneys available from the state to the community board as provided by law and other federal, state, local, and private moneys made available to the community board. Eligibility for receipt of community empowerment grant moneys shall be limited to those community boards that have developed an

approved school ready children grant plan in accordance with this chapter. A community board may apply to the Iowa empowerment board to receive as a community empowerment grant those moneys which would otherwise only be available within the geographic area through categorical funding sources or programs.

c. If a community empowerment area includes a decategorization project, coordinate planning and budgeting with the decategorization governing board. By mutual agreement between the community board and the decategorization governance board, the community board may assume the duties of the decategorization governance board or the decategorization governance board may continue as a committee of the community board.

d. Assume other responsibilities established by law or administrative rule.

2. A community board may do any of the following:

a. Designate one or more committees for oversight of grant moneys awarded to the community empowerment area.

b. Function as a coordinating body for services offered by different entities directed to similar purposes within the community empowerment area.

c. Develop neighborhood bodies for community-level input to the community board and implementation of services.

99 Acts, ch 190, §12, 19, 20

Reallocation of appropriations and categorical program funding for specified programs to community empowerment areas; 98 Acts, ch 1206, §17

Section transferred from §71.6 in Code Supplement 1999 pursuant to directive in 99 Acts, ch 190, §19

Subsection 1, paragraph a amended

28.8 School ready children grant program — establishment and administration.

1. The departments of education, human services, and public health shall jointly develop and promote a school ready children grant program which shall provide for all of the following components:

a. Identify the core indicators of performance that will be used to assess the effectiveness of the school ready children grants, including encouraging early intellectual stimulation of very young children, increasing the basic skill levels of students entering school, increasing the health status of children, reducing the incidence of child abuse and neglect, increasing the access of children to an adult mentor, increasing parental involvement with their children, and increasing the quality and accessibility of child care.

b. Identify guidelines and a process to be used for determining the readiness of a community empowerment area for administering school ready children grants.

c. Provide for technical assistance concerning funding sources, program design, and other pertinent areas.

2. The program developed and components identified under subsection 1 are subject to approv-

al by the Iowa empowerment board. The Iowa empowerment board shall provide maximum flexibility to grantees for the use of the grant moneys included in a school ready children grant.

3. A school ready children grant shall, at a minimum, be used to provide the following:

a. Preschool services provided on a voluntary basis to children deemed at risk of not succeeding in elementary school as determined by the community board and specified in the grant plan developed in accordance with this section.

b. Parent support and education programs promoted to parents of children from birth through five years of age. Parent support and education programs shall be offered in a flexible manner to accommodate the varying schedules, meeting place requirements, and other needs of working parents.

c. A comprehensive school ready children grant plan developed by a community board for providing services for children from birth through five years of age including but not limited to child development services, child care services, training child care providers to encourage early intellectual stimulation of very young children, children's health and safety services, assessment services to identify chemically exposed infants and children, and parent support and education services. At a minimum, the plan shall do all of the following:

(1) Describe community needs for children from birth through five years of age as identified through ongoing assessments.

(2) Describe the current and desired levels of community coordination of services for children from birth through five years of age, including the involvement and specific responsibilities of all related organizations and entities.

(3) Identify all federal, state, local, and private funding sources available in the community empowerment area that will be used to provide services to children from birth through five years of age.

(4) Describe how funding sources will be used collaboratively and the degree to which the moneys can be combined to provide necessary services to children.

(5) Identify the results the community board expects to achieve through implementation of the school ready children grant program, and identify community-specific quantifiable performance indicators to be reported in the annual report.

4. The community board shall submit an annual report on the effectiveness of the grant program in addressing school readiness and children's health and safety needs to the Iowa empowerment board and to the local governing bodies. The annual report shall indicate the effectiveness of the community board in achieving state and locally determined goals.

5. a. A school ready children grant shall be awarded to a community board for a three-year period, with annual payments made to the communi-

ty board. The Iowa empowerment board may grant an extension from the award date and any application deadlines based upon the award date, to allow for a later implementation date in the initial year in which a community board submits a comprehensive school ready grant plan to the Iowa empowerment board. However, receipt of continued funding is subject to submission of the required annual report and the Iowa board's determination that the community board is measuring, through the use of performance indicators developed by the Iowa board with input from community boards, progress toward and is achieving the desired results identified in the grant plan. If progress is not measured through the use of performance indicators toward achieving the identified results, the Iowa board may request a plan of corrective action or may withdraw grant funding.

b. The Iowa board shall distribute school ready children grant moneys to community boards with approved comprehensive school ready children grant plans based upon a determination of readiness of the community empowerment area to effectively utilize the moneys, with the grant moneys being adjusted for other federal and state grant moneys to be received by the area for services to children from birth through five years of age.

c. A community board's readiness shall be ascertained by evidence of successful collaboration among public or private education, human services, or health interests or a documented program design evincing a strong likelihood of leading to a successful collaboration between these interests. Other criteria which may be used by the Iowa board to ascertain readiness and to determine funding amounts include one or more of the following:

(1) Experience or other evidence of capacity to successfully implement the services in the plan.

(2) Local public and private funding and other resources committed to implementation of the plan.

(3) Adequacy of plans for commitment of local funding and other resources for implementation of the plan.

d. The Iowa board's provisions for distribution of school ready grant moneys shall take into account contingencies for possible increases and decreases in the provision of state and local funding in future fiscal years which may be used for purposes of school ready children grants and for early childhood programs grants and for differences in local capacity for program implementation and provision of local funding. In developing these provisions, the Iowa board shall consider equity concerns; options for making capacity adjustments by restricting grant amounts based on service population size groupings to accommodate small, medium, and large population groupings; and options

for making adjustments to accommodate varying amounts of time and assistance needed for implementation, such as extending the grant period to more than one year.

6. The priorities for school ready children grant funds shall include providing preschool services on a voluntary basis to children deemed at risk of not succeeding in elementary school, training child care providers and others to encourage early intellectual stimulation of very young children, and offering parent support and education programs on a voluntary basis to parents of children from birth through five years of age. The grant funds also may be used to provide other services to children from birth through five years of age as specified in the comprehensive school ready children grant plan.

99 Acts, ch 190, §13, 18-20; 99 Acts, ch 192, §33

Establishment of initial timeline for grant plan submission; 98 Acts, ch 1206, §13; 98 Acts, ch 1223, §32

Revision of application and application process for school ready children grants; distribution formula for allocation of grant funding; 99 Acts, ch 190, §18-20

Section transferred from §71.5 in Code Supplement 1999 pursuant to directive in 99 Acts, ch 190, §19

Terminology change applied

Subsection 5, paragraphs b and c amended

28.9 Iowa empowerment fund.

1. An Iowa empowerment fund is created in the state treasury. The moneys in the Iowa empowerment fund are not subject to section 8.33 and shall not be transferred, used, obligated, appropriated, or otherwise encumbered except as provided by law. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys deposited in the Iowa empowerment fund shall be credited to the fund.

2. A school ready children grants account is created in the Iowa empowerment fund under the authority of the director of the department of education. Moneys credited to the account shall be distributed by the department of education in the form of grants to community empowerment areas pursuant to criteria established by the Iowa board in accordance with law.

3. An early childhood programs grant account is created in the Iowa empowerment fund under the authority of the director of human services. Moneys credited to the account shall be distributed by the department of human services in the form of grants to community empowerment areas pursuant to criteria established by the Iowa board in accordance with law. The criteria shall include but are not limited to a requirement that a community empowerment area must be designated by the Iowa board in accordance with section 28.5, in order to be eligible to receive an early childhood programs grant.

4. Beginning July 1, 1999, unless a different amount is authorized by law, up to three percent, not to exceed sixty thousand dollars, of the school ready children grant moneys distributed under the

auspices of the Iowa board to a community empowerment area board may be used by the community board for administrative costs and other implementation expenses.

99 Acts, ch 190, §14, 15, 19, 20

Maximum grant amount formula; criteria for use of funds; 98 Acts, ch

1218, §2; 99 Acts, ch 190, §17; 99 Acts, ch 203, §2; 99 Acts, ch 205, §7
 Section transferred from §71.8 in Code Supplement 1999 pursuant to directive in 99 Acts, ch 190, §19
 Subsection 3 amended
 NEW subsection 4

CHAPTER 28E

JOINT EXERCISE OF GOVERNMENTAL POWERS

28E.19 Joint county indigent defense fund.

Two or more counties may execute an agreement under this chapter to create a joint county indigent defense fund to be used to compensate attorneys appointed to represent indigents. In addition to other requirements of an agreement under this chapter, the agreement shall provide for the amount to be paid by each county based on its population to establish and maintain an appropriate balance in the joint fund, and for a method of repayment if a county withdraws more funds than it has contributed.

99 Acts, ch 135, §12
 Section amended

LOCAL GOVERNMENT BOND FINANCING

28E.41 Joint county, city, fire district, and school district buildings.

1. A county, city, fire district, or school district, which has areas within its boundaries which overlap areas within the boundaries of another county, city, fire district, or school district, or whose boundaries are contiguous with another county, city, fire district, or school district, may execute an agreement pursuant to this section for the joint construction or acquisition, furnishing, operation, and maintenance of a public building or buildings for their common use. Noncontiguous cities located within the same county, or cities located in contiguous counties, may also execute an agreement for the joint construction or acquisition, furnishing, operation, and maintenance of a joint public building or buildings for their common use. Such an agreement regarding a joint public building may allow for, but is not limited to, any of the following:

- a. Acquisition of a construction site and construction of a public building for common use.
- b. Purchase of an existing building for joint public use, or conversion of a building previously owned and maintained by a county, city, fire district, or school district for joint public use.
- c. Equipping or furnishing a new or existing building for joint public use.
- d. Operation, maintenance, or improvement of a joint public building.
- e. Any other aspect of joint public building construction, acquisition, furnishing, operation, or

maintenance mutually agreed upon by the county, city, fire district, or school district and not otherwise prohibited by law.

2. An agreement pursuant to subsection 1 shall be approved by resolution of the governing bodies of each of the participating counties, cities, fire districts, or school districts and shall specify the purposes for which the joint public building shall be used, the estimated cost thereof, the estimated amount of the cost to be allocated to each of the participating counties, cities, fire districts, or school districts, the proportion and method of allocating the expenses of the operation and maintenance of the building or improvement, and the disposition to be made of any revenues to be derived therefrom, in addition to the provisions of sections 28E.5 and 28E.6, and any other applicable provision of this chapter.

3. a. A county, city, fire district, or school district may expend funds or issue general obligation bonds for the payment of its share of the cost of constructing, acquiring, furnishing, operating, or maintaining a joint public building pursuant to subsection 1. Section 28E.16 shall apply regarding a single election to be authorized by the board of supervisors, city council, governing body of a fire district, and board of directors of a school district, in the event that a single bond issue throughout the overlapping or contiguous areas, or noncontiguous cities located in the same county or cities located in contiguous counties, is contemplated. If separate bond issues are authorized by the governing body of a county, city, fire district, or school district for its respective share of the cost of the joint public building, the applicable bonding provisions of chapters 74, 75, 296, 298, 331, 357B, 359, and 384 shall apply. With regard to any issuance of bonds pursuant to this section, a proposition to authorize an issuance of bonds by a county, city, fire district, or school district shall be deemed carried or adopted if the vote in favor of the proposition is equal to at least sixty percent of the vote cast for and against the proposition in each participating county, city, fire district, or school district.

b. Bonds shall not be issued by a county, city, fire district, or school district until provision has been made by each of the other participating counties, cities, fire districts, or school districts to the

agreement for the payment of their shares of the cost of the joint public building. In the event that the cost of the construction or acquisition, furnishing, operation, and maintenance of the joint public building exceeds that which was originally estimated and agreed to, the governing body of a county, city, fire district, or school district shall have the authority, jointly or individually, as appropriate, to expend additional moneys or issue additional bonds to pay their respective portions of the increased costs.

c. The governing body of a county, city, fire district, or school district is authorized to enter into an agreement under this section to construct, acquire, furnish, operate, or maintain the public building which is the subject of the agreement for its own purposes to the same extent and in the same manner as if the public building were wholly owned by and devoted to the uses of the county, city, fire district, or school district.

d. The authority granted to a county, city, fire district, or school district pursuant to this section shall be in addition to, and not in derogation of, any other powers conferred by law upon a county, city, fire district, or school district to make agreements, appropriate and expend moneys, and to issue bonds for the same or similar purposes.

4. For purposes of this section, “*fire district*”

means any governmental entity which provides fire protection services.

99 Acts, ch 145, §1
NEW section

28E.42 Joint issuance of school district or fire district bonds.

It is the intent of the general assembly to encourage school districts or fire districts to jointly issue general obligation bonds to fund separate projects proposed in each district and, by pooling their debt obligations, to realize a savings for taxpayers in each of the participating districts.

1. Two or more school districts may enter an agreement pursuant to this chapter for the purpose of financing projects for which debt obligations may be or have been incurred pursuant to chapter 296 or 298. For purposes of this section, “*school district*” means a public school district described in chapter 274.

2. Two or more fire districts may enter an agreement pursuant to this chapter for the purpose of financing projects for which debt obligations may be or have been incurred pursuant to chapter 74, 75, 331, 357B, 359, or 384. For purposes of this section, “*fire district*” means any governmental entity which provides fire protection services.

99 Acts, ch 145, §2
NEW section

CHAPTER 28K

MID-AMERICA PORT COMMISSION

28K.3 Jurisdiction.

The Iowa counties which shall be included in the jurisdiction of the mid-America port commission agreement are Jefferson, Van Buren, Wapello, Lee, Henry, and Des Moines counties.

99 Acts, ch 27, §1
Section amended

28K.5 County election of port commission members.

The chairpersons of the Jefferson, Van Buren, Wapello, Lee, Henry, and Des Moines county boards of supervisors shall jointly elect two members to serve on the port commission.

99 Acts, ch 27, §2
Section amended

CHAPTER 29A

MILITARY CODE

29A.27 Pay and allowances — injury or death benefit boards — judicial review — damages.

Officers and enlisted persons while in active state service shall receive the same pay, per diem, and allowances as are paid for the same rank or grade for service in the armed forces of the United States. However, a person shall not be paid at a base rate of pay of less than one hundred dollars per calendar day of active state service.

In the event any officer or enlisted person shall be killed while on duty or in active state service, in line of duty, or shall die as the result of injuries received or as a result of illness or disease contracted while on duty or in active state service, in line of duty, dependents, as defined by the workers' compensation law of the state, shall receive the maximum compensation provided by the said law.

Any officer or enlisted person who suffers injuries or contracts a disease causing disability, in line

of duty, while on duty or in active state service, shall receive hospitalization and medical treatment, and during the period that the officer or enlisted person is totally disabled from returning to military duty the officer or enlisted person shall also receive the pay and allowances of the officer's or enlisted person's grade. In the event of partial disability, the officer or enlisted person shall be allowed partial pay and allowances as determined by an evaluation board of three officers to be appointed by the adjutant general. At least one member of the board shall be a medical officer.

Any claim for death, illness, or disease contracted in line of duty while on duty or in active state service, shall be filed with the adjutant general within six months from the date of death or contraction of the illness or disease.

Where the provisions of this section may be applicable or at other times as considered necessary, but at least once a year, the adjutant general shall appoint a state review board consisting of three officers, one of whom shall be a medical officer, for the purpose of determining the continuation of benefits for individuals who have established their eligibility under this section. Once established, benefits shall be paid until terminated by the review board and shall continue for the duration of the disability even though the individual may no longer be medically qualified for military service and may have been discharged from the national guard.

Judicial review of any decision of the evaluation or state review board 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 must be filed within a period of thirty days from date of mailing by the adjutant general by cer-

tified mail of notice of the board's decision. Within thirty days after the filing of a petition for judicial review, the adjutant general shall make, certify, and file in the office of the clerk of the district court in which the judicial review is sought a full and complete transcript of all documents in the proceeding. The transcript shall include any depositions and a transcript or certification of the evidence, if reported. The attorney general of Iowa, upon the request of the adjutant general, shall represent the board appointed by the adjutant general against whom any such appeal has been instituted.

The provisions herein provided shall apply to all individuals receiving benefits under this section or who subsequently may become entitled to such benefits.

All payments herein provided for shall be paid on the approval of the adjutant general from the contingent fund of the executive council.

In the event benefits for death, injuries or illness are paid in part by the federal government, the state shall pay only the balance necessary to constitute the above designated amounts.

No payment received by any officer or enlisted person under the provisions of this section shall bar the right of such officer or enlisted person, or their heirs or representatives, to recover damages from any partnership, corporation, firm or persons whomsoever who otherwise would be liable, nor shall any such sums received under the provisions of this section reduce the amount of damages recoverable by such officer, enlisted person, or their heirs or representatives, against any partnership, corporation, firm or persons whomsoever who otherwise would be liable.

99 Acts, ch 99, §1
Unnumbered paragraph 1 amended

CHAPTER 29C

EMERGENCY MANAGEMENT

29C.6 Proclamation of disaster emergency by governor.

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

1. After finding a disaster exists or is threatened, proclaim a state of disaster emergency. This proclamation shall be in writing, indicate the area affected and the facts upon which it is based, be signed by the governor, and be filed with the secretary of state. A state of disaster emergency shall continue for thirty days, unless sooner terminated or extended in writing by the governor. The general assembly may, by concurrent resolution, rescind this proclamation. If the general assembly is not in session, the legislative council may, by majority vote, rescind this proclamation. Rescission shall be

effective upon filing of the concurrent resolution or resolution of the legislative council with the secretary of state. A proclamation of disaster emergency shall activate the disaster response and recovery aspect of the state, local and interjurisdictional disaster emergency plans applicable to the political subdivision or area in question and be authority for the deployment and use of any forces to which the plan applies, and for use or distribution of any supplies, equipment, and materials and facilities assembled, stockpiled, or arranged to be made available.

2. When, at the request of the governor, the president of the United States has declared a major disaster to exist in this state, enter into purchase, lease, or other arrangements with any agency of the United States for temporary housing units to

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

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

4. When a disaster emergency is proclaimed, notwithstanding any other provision of law, through the use of state agencies or the use of any of the political subdivisions of the state, clear or remove from publicly or privately owned land or water, debris and wreckage which may threaten public health or safety or public or private property. The governor may accept funds from the federal

government and utilize such funds to make grants to any local government for the purpose of removing debris or wreckage from publicly or privately owned land or water. Authority shall not be exercised by the governor unless the affected local government, corporation, organization or individual shall first present an additional authorization for removal of such debris or wreckage from public and private property and, in the case of removal of debris or wreckage from private property, such corporation, organization or individual shall first agree to hold harmless the state or local government against any claim arising from such removal. When the governor provides for clearance of debris or wreckage, employees of the designated state agencies or individuals appointed by the state may enter upon private land or waters and perform any tasks necessary to the removal or clearance operation. Any state employee or agent complying with orders of the governor and performing duties pursuant to such orders under this chapter shall be considered to be acting within the scope of employment within the meaning specified in chapter 669.

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

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

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

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

9. Cooperate with the president of the United States and the heads of the armed forces, the emer-

gency management agencies of the United States and other appropriate federal officers and agencies and with the officers and agencies of other states in matters pertaining to emergency management of the state and nation.

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

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

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

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

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

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

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

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

ancial assistance authorized, not to exceed fifty percent of the total eligible expenses. If state funds are not otherwise available to the governor, an advance of the state share may be accepted from the federal government to be repaid when the state is able to do so.

For future amendment effective July 1, 2000, see 99 Acts, ch 86, §3, 4

29C.8 Powers and duties of administrator.

1. The emergency management division shall be under the management of an administrator appointed by the governor.

2. The administrator shall be vested with the authority to administer emergency management affairs in this state and shall be responsible for preparing and executing the emergency management programs of this state subject to the direction of the adjutant general.

3. The administrator, upon the direction of the governor and supervisory control of the director of the department of public defense, shall:

a. Prepare a comprehensive plan and emergency management program for disaster preparedness, response, recovery, mitigation, emergency operation, and emergency resource management of this state. The plan and program shall be integrated into and coordinated with the emergency plans of the federal government and of other states to the fullest possible extent and coordinate the preparation of plans and programs for emergency management of the political subdivisions and various state departments of this state. The plans shall be integrated into and coordinated with a comprehensive state emergency program for this state as coordinated by the administrator of the emergency management division to the fullest possible extent.

b. Make such studies and surveys of the industries, resources and facilities in this state as may be necessary to ascertain the capabilities of the state for disaster recovery, disaster planning and operations, and emergency resource management, and to plan for the most efficient emergency use thereof.

c. Provide technical assistance to any local emergency commission or joint commission requiring the assistance in the development of an emergency management program.

d. Implement planning and training for emergency response teams as mandated by the federal government under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. § 9601 et seq.

4. The administrator, with the approval of the governor and upon recommendation of the adjutant general, may employ a deputy administrator and such technical, clerical, stenographic, and other personnel and make such expenditures within the appropriation or from other funds made avail-

able to the department of public defense for purposes of emergency management, as may be necessary to administer this chapter.

5. The emergency management division may charge fees for the repair, calibration, or maintenance of radiological detection equipment and may expend funds in addition to funds budgeted for the servicing of the radiological detection equipment. The division shall adopt rules pursuant to chapter 17A providing for the establishment and collection

of fees for radiological detection equipment repair, calibration, or maintenance services and for entering into agreements with other public and private entities to provide the services. Fees collected for repair, calibration, or maintenance services shall be treated as repayment receipts as defined in section 8.2 and shall be used for the operation of the division's radiological maintenance facility or radiation incident response training.

99 Acts, ch 86, §2
NEW subsection 5

CHAPTER 34A

ENHANCED 911 EMERGENCY TELEPHONE SYSTEMS

34A.2A Administrator — appointment — duties.

The administrator of the division of emergency management of the department of public defense shall appoint an E911 administrator to administer this chapter. The E911 administrator shall act under the supervisory control of the administrator of the division of emergency management of the department of public defense, and in consultation with the E911 communications council, and perform the duties specifically set forth in this chapter.

Transition provisions; authorization of full-time equivalent positions; 98 Acts, ch 1101, §15; 99 Acts, ch 202, §25
Section not amended; footnote added

34A.7A Wireless communications surcharge — fund established — distribution and permissible expenditures.

1. *a.* Notwithstanding section 34A.6, the administrator shall adopt by rule a monthly surcharge of up to fifty cents to be imposed on each wireless communications service number provided in this state. The surcharge shall be imposed uniformly on a statewide basis and simultaneously on all wireless communications service numbers as provided by rule of the administrator.

b. The administrator shall provide no less than one hundred days' notice of the surcharge to be imposed to each wireless communications service provider. The administrator, subject to the fifty cent limit in paragraph "a", may adjust the amount of the surcharge as necessary, but no more than once in any calendar year.

c. The surcharge shall be collected as part of the wireless communications service provider's periodic billing to a subscriber. In compensation for the costs of billing and collection, the provider may retain one percent of the gross surcharges collected. The surcharges shall be remitted quarterly by the provider to the administrator for deposit into the fund established in subsection 2. A provider is not liable for an uncollected surcharge for which the provider has billed a subscriber but which has not been paid. The surcharge shall appear as a single line item on a subscriber's periodic billing in-

dicating that the surcharge is for E911 emergency telephone service. The E911 service surcharge is not subject to sales or use tax.

2. Moneys collected pursuant to subsection 1 shall be deposited in a separate wireless E911 emergency communications fund within the state treasury under the control of the administrator. Section 8.33 shall not apply to moneys in the fund. Moneys earned as income, including as interest, from the fund shall remain in the fund until expended as provided in this section. Moneys in the fund shall be expended and distributed annually as follows:

a. An amount as appropriated by the general assembly to the administrator for implementation, support, and maintenance of the functions of the administrator.

b. (1) The administrator shall retain funds necessary to reimburse wireless carriers for their costs to deliver E911 services. The administrator shall assure that wireless carriers recover all eligible costs associated with the implementation and operation of E911 services, including but not limited to hardware, software, and transport costs. The administrator shall adopt rules defining eligible costs which are consistent with federal law, regulations, and any order of a federal agency.

(2) The administrator shall provide for the reimbursement of wireless carriers on a quarterly basis. If the total amount of moneys available in the fund for the reimbursement of wireless carriers pursuant to subparagraph (1) is insufficient to reimburse all wireless carriers for such carriers' eligible expenses, the administrator shall remit an amount to each wireless carrier equal to the percentage of such carrier's eligible expenses as compared to the total of all eligible expenses for all wireless carriers for the calendar quarter during which such expenses were submitted.

c. (1) The remainder of the surcharge collected shall be remitted to the administrator for distribution to the joint E911 service boards and the department of public safety pursuant to subpara-

graph (2) to be used for the implementation of enhanced wireless communications capabilities.

(2) The administrator, in consultation with the E911 communications council, shall adopt rules pursuant to chapter 17A governing the distribution of the surcharge collected and distributed pursuant to this lettered paragraph. The rules shall include provisions that all joint E911 service boards and the department of public safety which answer or service wireless E911 calls are eligible to receive an equitable portion of the receipts.

A joint E911 service board or the department of public safety, to receive funds from the wireless E911 emergency communications fund, must submit a written request for such funds to the administrator in a form as approved by the administrator. A request shall be for funding under an approved E911 service plan for equipment which is directly related to the reception and disposition of incoming wireless E911 calls. The administrator may approve the distribution of funds pursuant to such request if the administrator finds that the requested funding is for equipment necessary for the reception and disposition of such calls and that sufficient funds are available for such distribution.

If insufficient funds are available to fund all requests, the administrator shall fund requests in an order deemed appropriate by the administrator after considering factors including, but not limited to, all of the following:

- (a) Documented volume of wireless E911 calls received by each public safety answering point.
- (b) The population served by each public safety answering point.
- (c) The number of wireless telephones in the public safety answering point jurisdiction.
- (d) The public safety of the citizens of this state.
- (e) Any other factor deemed appropriate by the administrator, in consultation with the E911 communications council, and adopted by rule.

(3) The administrator shall submit an annual report by January 15 of each year advising the general assembly of the status of E911 implementation and operations, including both land-line and wireless services, and the distribution of surcharge receipts.

3. The amount collected from a wireless service provider and deposited in the fund, pursuant to section 22.7, subsection 6, information provided by a wireless service provider to the administrator consisting of trade secrets, pursuant to section 22.7, subsection 3, and other financial or commercial operations information provided by a wireless service provider to the administrator, shall be kept confidential as provided under section 22.7. This subsection does not prohibit the inclusion of information in any report providing aggregate amounts and information which does not identify numbers of accounts or customers, revenues, or expenses attributable to an individual wireless communications service provider.

4. For purposes of this section, “*wireless communications service*” means commercial mobile radio service, as defined under sections 3(27) and 332(d) of the federal Telecommunications Act of 1996, 47 U.S.C. § 151 et seq.; federal communications commission rules; and the Omnibus Budget Reconciliation Act of 1993. “*Wireless communications service*” includes any wireless two-way communications used in cellular telephone service, personal communications service, or the functional or competitive equivalent of a radio-telephone communications line used in cellular telephone service, a personal communications service, or a network access line. “*Wireless communications service*” does not include services whose customers do not have access to 911 or a 911-like service, a communications channel utilized only for data transmission, or a private telecommunications system.

99 Acts, ch 96, §5
Determination and appropriation of initial surcharge amount; transition provisions; 98 Acts, ch 1101, §15; 99 Acts, ch 202, §25
Subsection 2, paragraph c, subparagraph (2), unnumbered paragraph 2 amended

CHAPTER 35

VETERANS AFFAIRS

35.1 Definitions.

As used in this chapter and chapters 35A through 35D:

1. “*Commission*” means the commission of veterans affairs created in section 35A.2.

2. a. “*Veteran*” means a resident of this state who served in the armed forces of the United States at any time during the following dates and who was discharged under honorable conditions:

- (1) World War I from April 6, 1917, through November 11, 1918.
- (2) Occupation of Germany from November 12, 1918, through July 11, 1923.

(3) American expeditionary forces in Siberia from November 12, 1918, through April 30, 1920.

(4) Second Haitian suppression of insurrections from 1919 through 1920.

(5) Second Nicaragua campaign with marines or navy in Nicaragua or on combatant ships from 1926 through 1933.

(6) Yangtze service with navy and marines in Shanghai or in the Yangtze valley from 1926 through 1927 and 1930 through 1932.

(7) China service with navy and marines from 1937 through 1939.

(8) World War II from December 7, 1941, through December 31, 1946.

(9) Korean conflict from June 25, 1950, through January 31, 1955.

(10) Vietnam conflict from February 28, 1961, through May 7, 1975.

(11) Lebanon or Grenada service from August 24, 1982, through July 31, 1984.

(12) Panama service from December 20, 1989, through January 31, 1990.

(13) Persian Gulf conflict from August 2, 1990, through the date the president or the Congress of the United States declares a cessation of hostilities. However, if the United States Congress enacts a date different from August 2, 1990, as the beginning of the Persian Gulf conflict for purposes of determining whether a veteran is entitled to receive military benefits as a veteran of the Persian Gulf conflict, that date shall be substituted for August 2, 1990.

b. "Veteran" includes the following persons:

(1) Former members of the reserve forces of the United States who served at least twenty years in the reserve forces after January 28, 1973, and who were discharged under honorable conditions. However, a member of the reserve forces of the United States who completed a minimum aggregate of ninety days of active federal service, other than training, and was discharged under honorable conditions, or was retired under Title X of the United States Code shall be included as a veteran.

(2) Former members of the Iowa national guard who served at least twenty years in the Iowa national guard after January 28, 1973, and who were discharged under honorable conditions. However, a member of the Iowa national guard who was activated for federal duty, other than training, for a minimum aggregate of ninety days, and was discharged under honorable conditions or was retired under Title X of the United States Code shall be included as a veteran.

(3) Former members of the active, oceangoing merchant marines who served during World War II at any time between December 7, 1941, and De-

ember 31, 1946, both dates inclusive, who were discharged under honorable conditions.

(4) Former members of the women's air force service pilots and other persons who have been conferred veterans status based on their civilian duties during World War II in accordance with federal Pub. L. No. 95-202, 38 U.S.C. § 106.

99 Acts, ch 180, §2
NEW section

35.7 Orphans educational fund. Repealed by 99 Acts, ch 180, § 21.

35.8 Money comprising fund.

A war orphans educational aid fund is created as a separate fund in the state treasury under the control of the commission of veterans affairs. Any money appropriated for the purpose of aiding in the education of orphaned children of veterans, as defined in section 35.1, shall be deposited in the war orphans educational aid fund.

99 Acts, ch 180, §3
Section amended

35.9 Expenditure by commission.

The commission of veterans affairs may expend not more than six hundred dollars per year for any one child who has lived in the state of Iowa for two years preceding application for aid, and who is the child of a person who died during active federal military service while serving in the armed forces or during active federal military service in the Iowa national guard or other military component of the United States, to defray the expenses of tuition, matriculation, laboratory and similar fees, books and supplies, board, lodging, and any other reasonably necessary expense for the child or children incident to attendance in this state at an educational or training institution of college grade, or in a business or vocational training school with standards approved by the commission of veterans affairs.

A child eligible to receive funds under this section shall not receive more than three thousand dollars under this section during the child's lifetime.

99 Acts, ch 180, §4
Unnumbered paragraph 1 amended

CHAPTER 35A

VETERANS AFFAIRS COMMISSION

35A.8 Executive director — term — duties.

1. The governor shall appoint an executive director, subject to confirmation by the senate, who shall serve at the pleasure of the governor. The executive director is responsible for administering the duties of the commission other than those related to the Iowa veterans home.

2. The executive director shall be a resident of the state of Iowa and an honorably discharged veteran who served in the armed forces of the United States during a conflict or war. As used in this section, the dates of service in a conflict or war shall coincide with the dates of service established by the Congress of the United States.

3. Except for the employment duties and responsibilities assigned to the commandant for the Iowa veterans home, the executive director shall employ such personnel as are necessary for the performance of the duties and responsibilities assigned to the commission. All employees shall be selected on a basis of fitness for the work to be performed with due regard to training and experience and shall be subject to the provisions of chapter 19A.

4. *a.* The executive director shall provide for the administration of the bonus authorized in this subsection. The commission shall adopt rules, pursuant to chapter 17A, as necessary to administer this subsection including, but not limited to, application procedures, investigation, approval or disapproval, and payment of claims.

b. (1) Each person who served on active duty in the active, oceangoing merchant marine service of the United States, at any time between December 7, 1941, and December 31, 1946, both dates inclusive, and who served for a period of not less than one hundred twenty days on or before December 31, 1946, and who at the time of entering into the merchant marine service was a legal resident of the state of Iowa, and who had maintained the person's residence in this state for a period of at least six months immediately before entering the merchant marine service, and was honorably discharged or separated from the merchant marine service, is entitled to receive from moneys appropriated for that purpose the sum of twelve dollars and fifty cents for each month that the person was on active duty in the merchant marine service, all before December 31, 1946, not to exceed a total sum of five hundred dollars. Compensation for a fraction of a month shall not be considered unless the fraction is sixteen days or more, in which case the fraction shall be computed as a full month.

(2) A person is not entitled to compensation pursuant to this subsection if the person received a bonus or compensation similar to that provided in this subsection from another state.

(3) A person is not entitled to compensation pursuant to this subsection if the person was on active duty in the merchant marine service after De-

ember 7, 1941, and the person refused on conscientious, political, religious, or other grounds, to be subject to military discipline.

(4) The surviving unremarried widow or widower, child or children, mother, father, or person standing in loco parentis, in the order named and none other, of any deceased person, shall be paid the compensation that the deceased person would be entitled to pursuant to this subsection, if living, but if any person has died or shall die, or is disabled, from service-connected causes incurred during the period and in the area from which the person is entitled to receive compensation pursuant to this subsection, the person or the first survivor as designated by this subsection, and in the order named, shall be paid five hundred dollars, regardless of the length of service.

c. A person who knowingly makes a false statement relating to a material fact in supporting an application under this subsection is guilty of a serious misdemeanor. A person convicted pursuant to this subsection shall forfeit all benefits to which the person may have been entitled under this subsection.

d. All payments and allowances made under this subsection shall be exempt from taxation and from levy and sale on execution.

e. The bonus compensation authorized under this subsection shall be paid from moneys appropriated for that purpose.

99 Acts, ch 180, §5
NEW subsection 4

35A.11 Veterans license fee fund.

A veterans license fee fund is created in the state treasury under the control of the commission. The fund shall include the fees credited by the treasurer of state from the sale of special veteran license plates pursuant to section 321.34, subsection 13, paragraph "d". Notwithstanding section 12C.7, interest or earnings on moneys in the veterans license fee fund shall be credited to the veterans license fee fund. Moneys in the fund are appropriated to the commission to be used to fulfill the responsibilities of the commission.

99 Acts, ch 201, §8
NEW section

CHAPTER 35B

COUNTY COMMISSIONS OF VETERAN AFFAIRS

35B.3 County commission of veteran affairs.

The county commission of veteran affairs shall consist of either three or five persons, as determined by the board of supervisors, all of whom shall be veterans as defined in section 35.1. If possible, each member of the commission shall be a veteran of a different military action. However, this qualification does not preclude membership to a

veteran who served in more than one of the military actions.

99 Acts, ch 180, §6
Section amended

35B.10 Disbursements — inspection of records.

All claims certified by the commission shall be reviewed by the board of supervisors and the

county auditor shall issue warrants in payment of the claims. All applications, investigation reports, and case records are privileged communications and shall be held confidential, subject to use and inspection only by persons authorized by law in connection with their official duties relating to financial audits and the administration of this chapter. However, the county commission of veteran affairs shall prepare and file in the office of the county auditor on or before the thirtieth day of each January, April, July, and October a report showing the case numbers of all recipients receiving assistance under this chapter, together with the amount paid to each during the preceding quarter. Each report so filed shall be securely fixed in a record book to be used only for such reports made under this chapter.

The record book shall be and the same is hereby declared to be a public record, open to public inspection at all times during the regular office hours of the county auditor. Each person who desires to examine said records, other than in pursuance of official duties as hereinbefore provided, shall sign a written request to examine the same, which shall contain an agreement on the part of the signer that the signer will not utilize any information gained therefrom for commercial or political purposes.

It shall be unlawful for any person, body, association, firm, corporation or any other agency to solicit, disclose, receive, make use of or to authorize, knowingly permit, participate in or acquiesce in the use of any lists, names or other information obtained from the reports above provided for, for commercial or political purposes, and a violation of this provision shall constitute a serious misdemeanor.

99 Acts, ch 180, §7
Unnumbered paragraph 1 amended

35B.13 Burial — expenses.

The commission is responsible for the interment in a suitable cemetery of the body of any veteran, as defined in section 35.1, or the spouse, surviving spouse, or child of the person, if the person has died without leaving sufficient means to defray the funeral expenses. The commission may pay the expenses in a sum not exceeding an amount established by the board of supervisors.

99 Acts, ch 180, §8
Section amended

35B.14 County appropriation.

The board of supervisors of each county may appropriate moneys for the food, clothing, shelter, utilities, medical benefits, and funeral expenses of indigent veterans, as defined in section 35.1, and their indigent spouses, surviving spouses, and minor children not over eighteen years of age, having a legal residence in the county.

The appropriation shall be expended by the joint action and control of the board of supervisors and the county commission of veteran affairs.

99 Acts, ch 180, §9
Unnumbered paragraph 1 amended

35B.16 Markers for graves.

The county commission of veteran affairs may furnish a suitable and appropriate metal marker for the grave of each veteran, as defined in section 35.1, who is buried within the limits of the county. The marker shall be placed at the individual's grave to permanently mark and designate the grave for memorial purposes. The expenses shall be paid from any funds raised as provided in this chapter.

99 Acts, ch 180, §10
Section amended

CHAPTER 35C

VETERANS PREFERENCE

35C.3 Duty to investigate and appoint.

When any preferred person applies for appointment or employment under this chapter, the officer, board, or person whose duty it is or may be to appoint or employ a person to fill the position or place shall, before appointing or employing a person to fill the position or place, make an investigation as to the qualifications of the applicant for the place or position, and if the applicant is of good moral character and can perform the duties of the position applied for, the officer, board, or person shall appoint the applicant to the position, place, or employment. The appointing officer, board, or person shall set forth in writing and file for public inspection the specific grounds upon which it appointed or refused to appoint the person. Within ten days after an appointment is refused, the appointing officer, board,

or person shall notify the unsuccessful applicant in writing of the specific grounds for refusal.

99 Acts, ch 180, §11
Section amended

35C.5A Arbitration.

In addition to the remedies provided in sections 35C.4 and 35C.5, a person belonging to a class of persons qualifying for a preference may submit any refusal to allow a preference, or any reduction of the person's salary as described in section 35C.4, to arbitration within sixty days after written notification of the refusal or reduction. Within ten days after any submission, an arbitrator shall be selected by a committee that includes one member chosen by the person refused preference, one member chosen by the appointing officer, board, or person, and

one member who shall be 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 other recognized arbitration organization or association.

The decision of the arbitrator shall be final and binding on the parties.

99 Acts, ch 180, §12
NEW section

CHAPTER 37

MEMORIAL HALLS AND MONUMENTS

37.9 Commissioners appointed — vacancies — request for appropriation.

When the proposition to erect any such building or monument has been carried by a majority vote, the board of supervisors or the city council, as the case may be, shall appoint a commission consisting of five or seven members, in the manner and with the qualifications provided in this chapter, which shall have charge and supervision of the erection of the building or monument, and when erected, the management and control of the building or monument.

In cities having a population of more than one hundred thousand, the city council may establish, by ordinance, the number of commission members at not less than five.

On or before January 15 of each year, a commission which manages and controls a county memorial hospital shall prepare and submit to the county auditor a request for an appropriation for the next fiscal year from the general fund for the operation and maintenance of the county memorial hospital. On or before January 20, the county auditor shall submit the request to the county board of supervisors. The board of supervisors may adjust the commission's request and may make an appropriation for the county memorial hospital as provided in section 331.427, subsection 2, paragraph "b". For the purposes of public notice, the commission is a certifying board and is subject to the requirements of sections 24.3 through 24.5, sections 24.9 through 24.12, and section 24.16.

The term of office of each member shall be three years, and any vacancies occurring in the membership shall be filled in the same manner as the original appointment.

Commencing with the commissioners appointed to take office after January 1, 1952, the terms of office of the commissioners shall be staggered so that all commissioners' terms will not end in the same year. Thereafter, the successors in each instance shall hold office for a term of three years or until a successor is appointed and qualified.

The commissioners having the management and control of a memorial hospital shall, within ten days after their appointment, qualify by taking the usual oath of office, but no bonds shall be required of them except as hereinafter provided. The commissioners shall organize by electing a chairperson, secretary, and treasurer. The secretary and treasurer shall each file with the chairperson of the commission a surety bond in such sum as the commission may require, with sureties approved by the commission, for the use and benefit of the memorial hospital. The reasonable costs of such bonds shall be paid from operating funds of the hospital. The secretary shall immediately report to the county auditor and county treasurer the names of the chairperson, secretary, and treasurer of the commission. The commission shall meet at least once each month. Three members of the commission shall constitute a quorum for the transaction of business. The secretary shall keep a complete record of its proceedings.

Memorial hospital funds shall be received, disbursed, and accounted for in the same manner and by the same procedure as provided by section 347.12.

99 Acts, ch 36, §1
Unnumbered paragraphs 1 and 5 amended

37.10 Qualification — appointment.

Each commissioner, except for a memorial hospital commissioner, shall be a veteran, as defined in section 35.1, and be a resident of the county in which the memorial hall or monument is located. Each commissioner for a memorial hospital shall be a resident of the county in which the memorial hospital is located.

Each commission member shall be appointed by the mayor with approval of the council or by the chairperson of the county board of supervisors in the case of a county or joint memorial building or monument.

99 Acts, ch 36, §2; 99 Acts, ch 180, §13; 99 Acts, ch 208, §47
See Code editor's note to §10A.202
Unnumbered paragraph 1 amended

CHAPTER 46

NOMINATION AND ELECTION OF JUDGES

46.16 Terms of judges.

1. Subject to sections 602.1610 and 602.1612 and to removal for cause:

a. The initial term of office of judges of the supreme court, court of appeals and district court shall be for one year after appointment and until January 1 following the next judicial election after expiration of such year; and

b. The regular term of office of judges of the supreme court retained at a judicial election shall be eight years, and of judges of the court of appeals and district court so retained shall be six years, from the expiration of their initial or previous regular term as the case may be.

For the purpose of initial appointments to the court of appeals, two of the judges appointed shall serve an irregular term ending December 31 of the fourth year after expiration of the initial term prescribed in subsection 1 and two of the judges appointed shall serve an irregular term ending December 31 of the fifth year after expiration of the initial term prescribed in subsection 1. Expiration of irregular terms shall be deemed expiration of regular terms for all purposes.

2. Subject to removal for cause, the initial term of office of a district associate judge shall be for one year after appointment and until January 1 following the next judicial election after expiration of such year, and the regular term of office of a district associate judge retained at a judicial election shall be four years from the expiration of the initial or previous regular term, as the case may be.

3. Subject to removal for cause, the initial term of office of a full-time associate juvenile judge or a full-time associate probate judge shall be for one year after appointment and until January 1 following the next judicial election after expiration of such year, and the regular term of office of a full-time associate juvenile judge or a full-time associate probate judge retained at a judicial election shall be four years from the expiration of the initial or previous regular term, as the case may be.

99 Acts, ch 93, §1, 15

Status and retention of associate juvenile judges and associate probate judges serving full-time as of July 1, 1999; 99 Acts, ch 93, §15
NEW subsection 3

46.20 Declaration of candidacy.

At least one hundred four days before the judicial election preceding expiration of the initial or regular term of office, a judge of the supreme court, court of appeals, or district court including district associate judges, full-time associate juvenile judges, or full-time associate probate judges, or a clerk of the district court who is required to stand

for retention under section 602.1216 may file a declaration of candidacy with the state commissioner of elections to stand for retention or rejection at that election. If a judge or clerk fails to file the declaration, the office shall be vacant at the end of the term. District associate judges, full-time associate juvenile judges, and full-time associate probate judges filing the declaration shall stand for retention in the judicial election district of their residence.

99 Acts, ch 93, §2
Section amended

46.21 Conduct of elections.

At least sixty-nine days before each judicial election, the state commissioner of elections shall certify to the county commissioner of elections of each county a list of the judges of the supreme court, court of appeals, and district court including district associate judges, full-time associate juvenile judges, and full-time associate probate judges, and clerks of the district court to be voted on in each county at that election. The county commissioner of elections shall place the names upon the ballot in the order in which they appear in the certificate, unless only one county is voting thereon. The state commissioner of elections shall rotate the names in the certificate by county, or the county commissioner of elections shall rotate them upon the ballot by precinct if only one county is voting thereon. The names of all judges and clerks to be voted on shall be placed upon one ballot, which shall be in substantially the following form:

STATE OF IOWA JUDICIAL BALLOT (Date)

VOTE ON ALL NAMES BY PLACING AN X IN THE APPROPRIATE BOX AFTER EACH NAME.

SUPREME COURT

Shall the following judges of the Supreme Court be retained in office?

CANDIDATE'S NAME YES NO
CANDIDATE'S NAME YES NO

COURT OF APPEALS

Shall the following judges of the Court of Appeals be retained in office?

CANDIDATE'S NAME YES NO
CANDIDATE'S NAME YES NO

DISTRICT COURT

Shall the following judge, associate judge, associate juvenile judge, or associate probate judge of the District Court be retained in office?

CANDIDATE'S NAME YES NO

Shall the following clerk of the District Court be retained in office?

CANDIDATE'S NAME YES NO

99 Acts, ch 93, §3
Section amended

46.24 Results of election.

A judge of the supreme court, court of appeals, or district court including a district associate judge, full-time associate juvenile judge, or full-time associate probate judge, or a clerk of the district court

must receive more affirmative than negative votes to be retained in office. When the poll is closed, the election judges shall publicly canvass the vote forthwith. The board of supervisors shall canvass the returns on the Monday or Tuesday after the election, and shall promptly certify the number of affirmative and negative votes on each judge or clerk to the state commissioner of elections.

The state board of canvassers shall, at the time of canvassing the vote cast at a general election, open and canvass all of the returns for the judicial election. Each judge of the supreme court, court of appeals or district court including a district associate judge, or a clerk of the district court who has received more affirmative than negative votes shall receive from the state board of canvassers an appropriate certificate so stating.

99 Acts, ch 93, §4
Unnumbered paragraph 1 amended

CHAPTER 47

ELECTION COMMISSIONERS

47.7 State registrar of voters.

1. The state commissioner of elections is designated the state registrar of voters, and shall regulate the preparation, preservation, and maintenance of voter registration records, the preparation of precinct election registers for all elections administered by the commissioner of any county, and the preparation of other data on voter registration and participation in elections which is requested and purchased at actual cost of preparation and production by a political party or any resident of this state. The registrar shall maintain a log, which is a public record, showing all lists and reports which have been requested or generated or which are capable of being generated by existing programs of the data processing services of the registrar. In the execution of the duties provided by this chapter, the state registrar of voters shall provide the maximum public access to the electoral process permitted by law.

2. The registrar shall offer to each county in the state the opportunity to arrange for performance of all functions referred to in subsection 1 by the data processing facilities of the registrar, commencing at the earliest practicable time, at a cost to the county determined in accordance with the stan-

dard charges for those services adopted annually by the registration commission. A county may accept this offer without taking bids under section 47.5.

3. Any county may use its own data processing facilities for voter registration record keeping and utilization functions, if the system design and the form in which the registration records are kept conform to specifications established by rules promulgated by the registration commission. Each county exercising the option to maintain its own voter registration records under this subsection shall provide the registrar, at the county's expense, original and updated voter registration lists in a form and at times prescribed by the registrar.

4. Not later than July 1, 1984, information listed in section 48A.11 contained in a county's manual records but not on the county's computer readable records shall be provided to the registrar in a form specified by the registrar. The registrar shall require that any information supplied under section 48A.11, except the signature and attestation of the registrant, be provided to the registrar in a form specified by the registrar.

Legislative intent that state data processing services to support voter registration file maintenance and storage be provided without charge; 99 Acts, ch 1217, §26; 99 Acts, ch 199, §27
Section not amended; footnote added

CHAPTER 48A

VOTER REGISTRATION

48A.11 Voter registration form.

1. Each voter registration form shall provide space for the registrant to provide the following information:

- a. The county where the registrant resides.
- b. The registrant's name.
- c. The address at which the registrant resides and claims as the registrant's residence for voting purposes.
- d. The registrant's mailing address if it is different from the residence address.
- e. Social security number of the registrant (optional to provide).
- f. Date of birth.
- g. Sex.
- h. Residential telephone number (optional to provide).
- i. Political party registration.
- j. The name and address appearing on the registrant's previous voter registration.
- k. A space for a rural resident to provide township and section number, and such additional information as may be necessary to describe the location of the rural resident's home.
- l. A space for a registrant who is homeless or who has no established residence to provide such information as may be necessary to describe a place to which the person often returns.
- m. A statement that lists each eligibility requirement, contains an attestation that the regis-

trant meets all of the requirements, and requires the signature of the registrant under penalty of perjury.

- n. A space for the registrant's signature and the date signed.
2. The voter registration form shall include, in print that is identical to the attestation portion of the form, the following:
- a. Each voter eligibility requirement.
 - b. The penalty provided by law for submission of a false voter registration form, which shall be the penalty for perjury as provided by section 902.9, subsection 5.
3. Voter registration forms used by voter registration agencies under section 48A.19 shall include the following statements:
- a. If a person declines to register to vote, the fact that the person has declined to register will remain confidential and will be used only for voter registration purposes.
 - b. If a person does register to vote, the office at which the registrant submits a voter registration form will remain confidential and the information will be used only for voter registration purposes.
4. Voter registration forms may be on paper or electronic media.
5. All forms for voter registration shall be prescribed by rule adopted by the state voter registration commission.

Section not amended; internal reference change applied

CHAPTER 49

METHOD OF CONDUCTING ELECTIONS

49.3 Election precincts.

Election precincts shall be drawn by the county board of supervisors or the temporary county redistricting commission in all unincorporated portions of each county, and by the city council of each city in which it is necessary or deemed advisable to establish more than one precinct. Precincts established as provided by this chapter shall be used for all elections, except where temporary merger of established precincts is specifically permitted by law for certain elections, and no political subdivision shall concurrently maintain different sets of precincts for use in different types of elections. Election precincts shall be drawn so that:

1. No precinct shall have a total population in excess of three thousand five hundred, as shown by the most recent federal decennial census.

2. Each precinct is contained wholly within an existing legislative district, except:

- a. When adherence to this requirement would force creation of a precinct which includes the places of residence of fewer than fifty registered voters.
- b. When the general assembly by resolution designates a period after the federal decennial census is taken and before the next succeeding reapportionment of legislative districts required by Article III, section 35, Constitution of the state of Iowa as amended in 1968, during which precincts may be drawn without regard to the boundaries of existing legislative districts.

3. Except as provided in section 49.4, subsection 3, precincts established after July 1, 1994, shall be composed of contiguous territory within a

single county. The boundaries of all precincts shall follow the boundaries of areas for which official population figures are available from the most recent federal decennial census.

4. All election districts, including city wards and county supervisor districts, shall be drawn according to the following standards:

a. All boundaries, except for supervisor districts for counties using supervisor representation plan “two” pursuant to section 331.209, shall follow precinct boundaries.

b. All districts shall be as nearly equal as practicable to the ideal population for the districts as determined by dividing the number of districts to be established into the population of the city or county.

c. All districts shall be composed of contiguous territory as compact as practicable.

d. Consideration shall not be given to the addresses of incumbent officeholders, political affiliations of registered voters, previous election results, or demographic information other than population head counts, except as required by the Constitution and the laws of the United States.

e. Cities shall not be divided into two or more county supervisor districts unless the population of the city is greater than the ideal size of a district. Cities shall be divided into the smallest number of county supervisor districts possible.

99 Acts, ch 17, §1
Subsection 3 amended

49.4 Precincts drawn by county board.

Where action by the board of supervisors is necessary or deemed advisable by the board of supervisors or the temporary county redistricting commission, the boundaries of precincts shall be definitely fixed by ordinance. A public hearing shall be held before final action is taken to adopt changes in the precinct boundaries. Notice of the date, time, and place of the hearing shall be given as provided in chapter 21. In the absence of contrary action by the board of supervisors or the temporary county redistricting commission, each civil township which does not include any part of a city of over two thousand population, and the portion of each civil township containing any such city which lies outside the corporate limits of that city or those cities, shall constitute an election precinct. If no action is necessary to change the county election precincts, the board of supervisors shall certify the retained boundaries to the state commissioner, as required by section 49.7.

1. Where a civil township, or the portion of a civil township outside the corporate limits of any city of over two thousand population contained therein, is divided into two or more election precincts, the precincts shall be so drawn that their total populations shall be reasonably equal on the basis of data available from the most recent federal decennial census.

2. Counties using alternative supervisor representation plans “two” or “three”, as described in section 331.206, shall be apportioned into single-member supervisor districts on the basis of population. In counties using representation plan “three”, the boundaries of supervisor districts shall follow the boundaries of election precincts.

3. Notwithstanding any other provision of this chapter, Indian settlement land held in trust by the secretary of the interior of the United States for the Sac and Fox tribe of the Mississippi in Iowa and its trust land contiguous to the Indian settlement lying in Tama, Toledo and Indian Village townships of Tama county shall be an election precinct. The polling place of that precinct shall be located on the Indian settlement in a structure designated by the election commissioner of Tama county.

The Indian settlement precinct shall be redrawn to include land contiguous to the Indian settlement when such land is purchased by the settlement and added to the Indian settlement land held in trust by the secretary of the interior of the United States. Upon recording of the deed transferring the land to the United States in trust, the county recorder shall notify the county commissioner of that fact. If the commissioner is notified more than seventy days before the next scheduled election, the commissioner shall redraw the precinct for that election. The commissioner shall notify the board of supervisors of the redrawn precinct boundaries and shall certify the redrawn boundaries to the state commissioner. Land completely surrounded by the boundaries of the Indian settlement precinct, but not included in the settlement precinct, shall be included in the precinct in which such land was located prior to redrawing of the Indian settlement precinct. The commissioner shall notify registered voters in each of the redrawn precincts of the change in the precincts and the proper polling place for those affected voters.

99 Acts, ch 17, §2
Subsection 3 amended

49.8 Changes in precincts.

After any required changes in precinct boundaries have been made following each federal decennial census, at the time established by or pursuant to section 49.7, the county board or city council shall make no further changes in precinct boundaries until after the next federal decennial census, except in the following circumstances:

1. When deemed necessary by the board of supervisors of any county because of a change in the location of the boundaries, dissolution or establishment of any civil township, the boundaries of precincts actually affected may be changed as necessary to conform to the new township boundaries.

2. When territory is annexed to a city the city council may attach all or any part of the annexed territory to any established precinct or precincts which are contiguous to the annexed territory,

however this subsection shall not prohibit establishment of one or more new precincts in the annexed territory.

3. A city may have one special federal census taken each decade and the population figures obtained may be used to revise precinct boundaries in accordance with the requirements of sections 49.3 and 49.5.

4. When the boundaries of a county supervisor, city council, or school director district, or any other district from which one or more members of any public representative body other than the general assembly are elected by the voters thereof, are changed by annexation or other means other than reprecincting, the change shall not result in the term of any officer elected from the former district being terminated before or extended beyond the expiration of the term to which the officer was last elected, except as provided under section 275.23A and section 331.209, subsection 1. If more than one incumbent officeholder resides in a district redrawn during reprecincting, their terms of office shall expire after the next election in the political subdivision.

When a vacancy occurs in the office of county supervisor, city council, or school director following the effective date of new district boundaries, the vacancy shall be filled using the new boundaries.

5. When a city is changing its form of government from one which has council members elected at large to one which has council members elected from wards, or is changing its number of council members elected from wards, the city council may redraw the precinct boundaries in accordance with sections 49.3 and 49.5 to coincide with the new ward boundaries.

6. Precinct boundaries established by or pursuant to section 49.4, and not changed under subsection 1 since the most recent federal decennial census, may be changed once during the period beginning January 1 of the second year following a year in which a federal decennial census is taken and ending June 30 of the year immediately following the year in which the next succeeding federal decennial census is taken, if the commissioner recommends and the board of supervisors finds that the change will effect a substantial savings in election costs. Changes made under this subsection shall be made not later than ninety-nine days before a primary election, unless the changes will not take effect until January 1 of the next even-numbered year.

7. When territory contiguous to the Indian settlement is added to the Indian settlement land held in trust by the secretary of the interior of the United States.

99 Acts, ch 17, §3
NEW subsection 7

CHAPTER 56

CAMPAIGN FINANCE

Campaign finance commission; hearings; report to general assembly
by December 15, 1999; 99 Acts, ch 136, §13–17

56.2 Definitions.

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

1. “*Ballot issue*” means a question, other than the nomination or election of a candidate to a public office, which has been approved by a political subdivision or the general assembly or is required by law to be placed before the voters of the political subdivision by a commissioner of elections, or to be placed before the voters by the state commissioner of elections.

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

3. “*Campaign function*” means any meeting related to a candidate’s campaign for election.

4. “*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.

5. “*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, ex-

pend 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. “*Clearly identified*” means that a communication contains an unambiguous reference to a particular candidate or ballot issue, including but not limited to one or more of the following:

a. Use of the name of the candidate or ballot issue.

b. Use of a photograph or drawing of the candidate, or the use of a particular symbol associated with a specific ballot issue.

c. Use of a candidate’s initials, nickname, office, or status as a candidate, or use of acronym, popular name, or characterization of a ballot issue.

7. “*Commissioner*” means the county auditor of each county, who is designated as the county commissioner of elections pursuant to section 47.2.

8. “*Committee*” includes a political committee and a candidate’s committee.

9. “*Consultant*” means a person who provides or procures services for or on behalf of a candidate including but not limited to consulting, public rela-

tions, advertising, fundraising, polling, managing or organizing services.

10. “*Contribution*” means:

a. A gift, loan, advance, deposit, rebate, refund, or transfer of money or a gift in kind.

b. The payment, by any person other than a candidate or political committee, of compensation for the personal services of another person which are rendered to a candidate or political committee for any such purpose.

“*Contribution*” shall not include services provided without compensation by individuals volunteering their time on behalf of a candidate’s committee or political committee or a state or county statutory political committee except when organized or provided on a collective basis by a business, trade association, labor union, or any other organized group or association. “*Contribution*” shall not include refreshments served at a campaign function so long as such refreshments do not exceed fifty dollars in value or transportation provided to a candidate so long as its value computed at a rate of twenty cents per mile does not exceed one hundred dollars in value in any one reporting period. “*Contribution*” shall not include something provided to a candidate for the candidate’s personal consumption or use and not intended for or on behalf of the candidate’s committee.

11. “*County office*” includes the office of drainage district trustee.

12. “*County statutory political committee*” means a committee as defined in section 43.100.

13. “*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.

14. “*Express advocacy*” or to “*expressly advocate*” means communication that can be characterized according to at least one of the following descriptions:

a. The communication is political speech made in the form of a contribution.

b. In advocating the election or defeat of one or more clearly identified candidates or the passage or defeat of one or more clearly identified ballot issues, the communication includes explicit words that unambiguously indicate that the communication is recommending or supporting a particular outcome in the election with regard to any clearly identified candidate or ballot issue.

c. When taken as a whole and with limited reference to external events such as the proximity to the election, the communication could only be interpreted by a reasonable person as supporting or recommending the election, passage, or defeat of one or more clearly identified candidates or ballot issues because both of the following conditions are met:

(1) The communication, as it relates to the election or defeat of the candidate or ballot issue, is unmistakable, unambiguous, and suggestive of only one meaning.

(2) Reasonable minds could not differ as to whether the communication encourages action to nominate, elect, approve, or defeat one or more clearly identified candidates or a ballot issue or whether the communication encourages some other kind of action.

15. “*Fundraising event*” means any campaign function to which admission is charged or at which goods or services are sold.

16. “*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.

17. “*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.

18. “*Political committee*” means either of the following:

a. A committee, but not a candidate’s committee, that accepts 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 five hundred dollars in the aggregate in any one calendar year to expressly advocate the nomination, election, or defeat of a candidate for public office, or to expressly advocate the passage or defeat of a ballot issue.

b. An association, lodge, society, cooperative, union, fraternity, sorority, educational institution, civic organization, labor organization, religious organization, or professional organization that accepts 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 five hundred dollars in the aggregate in any one calendar year to expressly advocate the nomination, election, or defeat of a candidate for public office, or to expressly advocate the passage or defeat of a ballot issue.

19. “*Political purpose*” or “*political purposes*” means the express advocacy of a candidate or ballot issue.

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

21. “*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.

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

99 Acts, ch 136, §1, 2, 17
NEW subsection 6 and former subsections 6–12 renumbered as 7–13
NEW subsection 14 and former subsections 13–20 renumbered as 15–22
Subsections 18 and 19 amended

56.4 Reports filed with board or commissioner.

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. The board shall retain statements and reports filed with the board for at least five years from the date of the election in which the committee is involved, or at least five years from the certified date of dissolution of the committee, whichever date is later. The commissioner shall retain statements and reports filed with the commissioner for at least three years from the date of the election in which the committee is involved, or at least three years from the certified date of dissolution of the committee, whichever date is later.

Political committees expressly advocating the nomination, election, or defeat of 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 board. However, a political committee which is registered and filing full disclosure reports of all financial activities with the federal election commission may file verified statements as provided in section 56.5.

Political committees expressly advocating the nomination, election, or defeat of candidates or the passage or defeat of 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.

99 Acts, ch 136, §3, 17
Unnumbered paragraphs 2 and 3 amended

56.5 Organization statement.

1. Every committee, as defined in this chapter, shall file a statement of organization within ten days from the date of its organization. Unless formal organization has previously occurred, a com-

mittee is deemed to have organized as of the date that committee transactions exceed the financial activity threshold established in section 56.2, subsection 5 or 18.

2. The statement of organization shall include:

a. The name, purpose, mailing address, and telephone number of the committee. The committee name shall not duplicate the name of another committee organized under this section. For candidate’s committees filing initial statements of organization on or after July 1, 1995, the candidate’s name shall be contained within the committee name.

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, 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 to expressly advocate the nomination, election, or defeat of any candidate for public office. In the case of political committees, statements shall be made by the treasurer of the committee and the chairperson.

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 organized as a committee under this section which makes a contribution to a candidate's committee or political committee organized in Iowa shall disclose each contribution to the board. A committee or organization not organized as a committee under this section 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, and shall either appoint an eligible Iowa elector as committee or organization treasurer, or shall maintain all committee funds in 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 committees organized only in Iowa, 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 and shall attest that the committee is filing reports with the federal election commission or in a jurisdiction with reporting requirements which are substantially similar to those of this chapter, and that the contribution is made from an account which does not accept contributions which would be in violation of section 56.15. 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.

99 Acts, ch 136, §4, 17
Subsection 2, paragraph f amended

56.5A Candidate's committee.

1. Each candidate for 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 five hundred dollars in the aggregate in a calendar year.

2. A political committee shall not be established to expressly advocate the nomination, election, or defeat of only one candidate for office, except that a political committee may be established

to expressly advocate the passage or defeat of approval of a single judge standing for retention.

99 Acts, ch 136, §5, 17
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 nineteenth 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, county, or city 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 at the respective state, county, or city level. 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 expressly advocate 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 expressly advocating the nomination, election, or defeat of a candidate for a municipal or school elective office or the passage or defeat of a local ballot issue shall also file disclosure reports on the nineteenth day of January and October of each year in which the candidate or ballot issue does not appear on the ballot and on the nineteenth 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 on or before 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 fund-raising event. Contributions and sales at fund-raising events which involve the sale of a product acquired at less than market value and sold for an amount of money in excess of the amount specified in paragraph "b" of this subsection shall be 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 the report is the first report filed by the committee, the report shall include all information required under subsection 3 covering the period from the beginning of the committee’s financial activity, even if from a different calendar year, through the end of the current reporting period. 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. If, upon review of a committee’s statement of dissolution and final report, the board determines that the requirements for dissolution have been satisfied, the dissolution shall be certified and the committee relieved of further filing requirements.

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 com-

mittee 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.

99 Acts, ch 136, §6, 17
Subsection 1, paragraph d amended

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 expressly advocating the passage or defeat of 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.

99 Acts, ch 136, §7, 17
Unnumbered paragraph 1 amended

56.13 Independent expenditures.

1. 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, to expressly advocate the nomination, election, or defeat of a candidate for public office shall notify the appropriate committee and provide necessary information for disclosure reports.

2. If a person, other than a political committee, makes one or more expenditures in excess of five hundred dollars in the aggregate, or incurs indebtedness in excess of five hundred dollars in the aggregate, in any one calendar year to expressly advocate the passage or defeat of a ballot issue, the person shall file a statement of activity within ten days of taking the action exceeding the threshold. The statement shall contain information identifying the person filing the statement, identifying the ballot issue, and indicating the position urged by the person with regard to the ballot issue. The person shall file reports indicating the dates on which the expenditures or incurrence of indebtedness took place; a description of the nature of the action taken which resulted in the expenditures or debt; and the cost of the promotion at fair market value. For a local ballot issue, the reports shall be filed five days prior to any election in which the ballot issue appears and on the first day of the month following the election, as well as on the nineteenth day of January, May, and July of each year in which the ballot issue appears on the ballot and on the nineteenth day of January and October of each year in which the ballot issue does not appear on the ballot. For a statewide ballot issue, reports shall be filed on the nineteenth day of January, May, and July of each year. The 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 on or before the due date. Filing obligations shall cease when the person files a statement of discontinuation indicating that the person's financial activity to expressly advocate the passage or defeat of the ballot issue has ceased. Statements and reports shall be filed with the commissioner responsible under section 47.2 for conducting the election at which the issue is voted upon, except that reports on a statewide ballot issue shall be filed with the board.

3. A person taking action involving the making of an expenditure or incurrence of indebtedness to expressly advocate the passage or defeat of a ballot issue independently of a political committee shall, within seventy-two hours of taking the action,

notify in writing any political committee which advocates the same position with regard to the ballot issue as the person taking the action. The notification shall provide the political committee with the cost of the promotion at fair market value. A copy of the notification shall be sent to the board. It shall be presumed that a benefited committee approves the action if the committee fails to file a statement of disavowal with the commissioner or board and takes corrective action within ten days of the action. Action approved by a committee shall be reported as a contribution by the committee.

4. This section shall not be construed to require duplicate reporting of anything reported under this chapter by a political committee except that actions which constitute contributions in kind shall be reported by the benefited committee. This section shall not be construed to require reporting of action by any person which does not constitute a contribution.

99 Acts, ch 136, §8, 17
Subsections 1-3 amended

56.14 Political material — yard signs.

1. *a.* A person who causes the publication or distribution of published material designed to expressly advocate the nomination, election, or defeat of a candidate for public office or the passage or defeat of a constitutional amendment or public measure shall include conspicuously on the published material the identity and address of the person responsible for the material. If the person responsible is an organization, the name of one officer of the organization shall appear on the material. However, if the organization is a committee which has filed a statement of organization under this chapter, only the name of the committee is required to be included on the published material. Published material designed to expressly advocate the nomination, election, or defeat of a candidate for public office or the passage or defeat of a constitutional amendment or public measure which contains language or depictions which a reasonable person would understand as asserting that an entity which is incorporated or is a registered committee had authored the material shall, if the entity is not incorporated or a registered committee, include conspicuously on the published material a statement that the apparent organization or committee is not incorporated or a registered committee in addition to the attribution statement required by this section. For purposes of this section, "*registered committee*" means a committee which has an active statement of organization filed under section 56.5.

b. This subsection does not apply to the editorials or news articles of a newspaper or magazine which are not political advertisements. For the purpose of this subsection, "*published material*" means any newspaper, magazine, shopper, outdoor advertising facility, poster, direct mailing, brochure, or any other form of printed general public

political advertising; however, the identification need not be conspicuous on posters. This subsection does not apply to yard signs, bumper stickers, pins, buttons, pens, matchbooks, and similar small items upon which the inclusion of the attribution statement would be impracticable or to published material which is subject to federal regulations regarding an attribution requirement.

c. This subsection shall not be construed to require the inclusion on published material of information which discloses the identity or address of any individual who is acting independently and using the individual's own modest resources to publish or distribute the material.

2. a. Yard signs shall not be placed on any property which adjoins a city, county, or state roadway sooner than forty-five days preceding a primary or general election and shall be removed within seven days after the primary or general election in which the name of the particular candidate or ballot issue described on the yard sign appears on the ballot. Yard signs are subject to removal by highway authorities as provided in section 319.13, or by county or city law enforcement authorities in a manner consistent with section 319.13. The placement or erection of yard signs shall be exempt from the requirements of chapter 480. Notice may be provided to the chairperson of the appropriate county central committee if the highway authorities are unable to provide notice to the candidate, candidate's committee, or political committee regarding the yard sign.

b. This subsection does not prohibit the placement of yard signs on agricultural land owned by individuals or by a family farm operation as defined in section 9H.1, subsections 8, 8A, 9, and 10; does not prohibit the placement of yard signs on property owned by private individuals who have rented or leased the property to a corporation, if the prior written permission of the property owner is obtained; and does not prohibit the placement of yard signs on residential property owned by a corporation but rented or leased to a private individual if the prior permission of the renter or lessee is obtained. For the purposes of this chapter, "*agricultural land*" means agricultural land as defined in section 9H.1.

99 Acts, ch 136, §9, 17
Subsection 1, paragraph a amended

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, the United States, 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 indi-

rectly, to a committee, or to expressly advocate that the vote of an elector be used to nominate, elect, or defeat a candidate for public office, 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, the United States, 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 to expressly advocate that the vote of an elector be used to nominate, elect, or defeat a candidate for public office. 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, the United States, 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 organization 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 expressly advocate the nomination, elec-

tion, or defeat of any candidate for public office. A nonprofit corporation or organization may use contributions solicited or received to expressly advocate the passage or defeat of 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.

This section does not prohibit a family farm corporation, as defined in section 9H.1, from placing a yard sign on agricultural land, and does not prohibit the placement of yard signs, with the prior written permission of the individual property owner, on property rented or leased by a corporation from private individuals, subject to the requirements of section 56.14. This section also does not prohibit the placement of a yard sign on residential property that is owned by a corporation, but rented or leased to a private individual, if the prior permission of the renter or lessee is obtained.

5. For purposes of this section, "committee" shall include statutory political committees organized under chapter 43, and nonparty political organizations organized under chapter 44.

6. Any person convicted of a violation of any of

the provisions of this section shall be guilty of a serious misdemeanor.

99 Acts, ch 136, §10, 11, 17
Subsections 1, 2, and 4 amended
NEW subsection 5 and former subsection 5 renumbered as 6

56.22 Distribution of campaign fund — restrictions on use.

1. The money accumulated in the Iowa election campaign fund to the account of each political party in the state shall be remitted to the party on the first business day of each month by warrant of the director of revenue and finance drawn upon the fund in favor of the state chairperson of that party. The money received by each political party under this section shall be used as directed by the party's state statutory political committee.

2. Funds distributed to statutory political committees pursuant to this chapter shall not be used to expressly advocate the nomination, election, or defeat of any candidate. Nothing in this subsection shall be construed to prohibit a statutory political committee from using such funds to pay expenses incurred in arranging and holding a nominating convention.

99 Acts, ch 136, §12, 17
Subsection 2 amended

CHAPTER 68

IMPEACHMENT

68.10 Powers of court.

The court of impeachment shall sit in the senate chamber, and have power:

1. To compel the attendance of its members as the senate may do when engaged in the ordinary business of legislation.

2. To establish rules necessary for the trial of the accused.

3. To appoint from time to time such subordinate officers, clerks, and reporters as are necessary for the convenient transaction of its business, and at any time to remove any of them.

4. To issue subpoenas, process, and orders,

which shall run into any part of the state, and may be served by any adult person authorized so to do by the president of the senate, or by the sheriff of any county, or the sheriff's deputy, in the name of the state, and with the same force and effect as in an ordinary criminal prosecution, and to compel obedience thereto.

5. To exercise the powers and privileges conferred upon the senate for punishment as for contempts in chapter 2.

6. To adjourn from time to time, and to dissolve when its work is completed.

99 Acts, ch 96, §6
Subsection 5 amended

CHAPTER 80

DEPARTMENT OF PUBLIC SAFETY

80.9 Duties of department.

It shall be the duty of the department of public safety to prevent crime, to detect and apprehend criminals and to enforce such other laws as are hereinafter specified. The members of the department of public safety, except clerical workers therein, when authorized by the commissioner of public

safety shall have and exercise all the powers of any peace officer of the state.

1. They shall not exercise their general powers within the limits of any city, except:

a. When so ordered by the direction of the governor;

b. When request is made by the mayor of any city, with the approval of the commissioner of public safety;

c. When request is made by the sheriff or county attorney of any county with the approval of the commissioner;

d. While in the pursuit of law violators or in investigating law violations;

e. While making any inspection provided by this chapter, or any additional inspection ordered by the commissioner;

f. When engaged in the investigating and enforcing of fire and arson laws;

g. When engaged in the investigation and enforcement of laws relating to narcotic, counterfeit, stimulant, and depressant drugs.

When any member of the department shall be acting in cooperation with any other local peace officer, or county attorney in general criminal investigation work, or when acting on a special assignment by the commissioner, the member's jurisdiction shall be statewide.

However, the above limitations shall in no way be construed as a limitation as to their power as officers when a public offense is being committed in their presence.

2. In more particular, their duties shall be as follows:

a. To enforce all state laws.

b. To enforce all laws relating to traffic on the public highways of the state, including those relating to the safe and legal operation of passenger cars, motorcycles, motor trucks and buses; to see that proper safety rules are observed and to give first aid to the injured.

c. To investigate all fires; to apprehend persons suspected of arson; to enforce all safety measures in connection with the prevention of fires; and to disseminate fire-prevention education.

d. To collect and classify, and keep at all times available, complete information useful for the detection of crime, and the identification and apprehension of criminals. Such information shall be available for all peace officers within the state, under such regulations as the commissioner may prescribe. The provisions of chapter 141A do not apply to the entry of human immunodeficiency virus-related information by criminal or juvenile justice agencies, as defined in section 692.1, into the Iowa criminal justice information system or the national crime information center system. The provisions of chapter 141A also do not apply to the transmission of the same information from either or both information systems to criminal or juvenile justice agencies. The provisions of chapter 141A also do not apply to the transmission of the same information from either or both information systems to employees of state correctional institutions subject to the jurisdiction of the department of corrections, employees of secure facilities for juveniles subject to the jurisdiction of the department of human ser-

vices, and employees of city and county jails, if those employees have direct physical supervision over inmates of those facilities or institutions. Human immunodeficiency virus-related information shall not be transmitted over the police radio broadcasting system under chapter 693 or any other radio-based communications system. An employee of an agency receiving human immunodeficiency virus-related information under this section who communicates the information to another employee who does not have direct physical supervision over inmates, other than to a supervisor of an employee who has direct physical supervision over inmates for the purpose of conveying the information to such an employee, or who communicates the information to any person not employed by the agency or uses the information outside the agency is guilty of a class "D" felony. The commissioner shall adopt rules regarding the transmission of human immunodeficiency virus-related information including provisions for maintaining confidentiality of the information. The rules shall include a requirement that persons receiving information from the Iowa criminal justice information system or the national crime information center system receive training regarding confidentiality standards applicable to the information received from the system. The commissioner shall develop and establish, in cooperation with the department of corrections and the Iowa department of public health, training programs and program criteria for persons receiving human immunodeficiency virus-related information through the Iowa criminal justice information system or the national crime information center system.

e. To operate such radio broadcasting stations as may be necessary in order to disseminate information which will make possible the speedy apprehension of lawbreakers, as well as such other information as may be necessary in connection with the duties of this office.

f. Provide protection and security for persons and property on the grounds of the state capitol complex.

g. To assist persons who are responsible for the care of private and public land in identifying growing marijuana plants when the plants are reported to the department. The department shall also provide education to the persons regarding methods of eradicating the plants. The department shall adopt rules necessary to carry out this paragraph.

h. To maintain a vehicle theft unit in the Iowa state patrol to investigate and assist in the examination and identification of stolen, altered, or forfeited vehicles.

3. They may administer oaths, acknowledge signatures, and take voluntary testimony pursuant to their duties as provided by law.

4. It is the intent of the general assembly that the commissioner of public safety shall reassign the arson investigators from the division of criminal in-

investigation and bureau of identification of the department of public safety to the state fire marshal's office effective July 1, 1978, and the arson investigators shall be under the direct supervision of the state fire marshal.

99 Acts, ch 181, §1
Subsection 2, paragraph d amended

80.41 Highway safety patrol fund — future repeal. Repealed by 99 Acts, ch 202, § 27.

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. Within the existing curriculum, expanded training regarding racial and cultural awareness and dealing with gang-affected youth.

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

6. 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.

7. Grounds for revocation or suspension of a law enforcement officer's certification.

8. 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.

9. Minimum qualifications for instructors in telecommunicator training schools.

10. Minimum qualifications for instructors in law enforcement and jailer training schools.

11. Certification through examination for individuals who have successfully completed the federal bureau of investigation national academy, have

corrected Snellen vision in both eyes of 20/20 or better, and were employed on or before January 1, 1996, as chief of police of a city in this state with a population of twenty thousand or more.

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.

99 Acts, ch 70, §1
Subsection 7 amended

80B.13 Authority of council.

The council may:

1. Designate members to visit and inspect any law enforcement or jailer training schools, or examine the curriculum or training procedures, for which application for approval has been made.
2. Issue certificates to law enforcement training schools qualifying under the regulations of the council.
3. Issue certificates to law enforcement officers and jailers who have met the requirements of this chapter and rules adopted under chapter 17A relative to hiring and training standards.
4. Make recommendations to the governor, the attorney general, the commissioner of public safety and the legislature on matters pertaining to qualification and training of law enforcement officers and jailers and other matters considered necessary to improve law enforcement services and jailer training.
5. Cooperate with federal, state, and local enforcement agencies in establishing and conducting local or area schools, or regional training centers for instruction and training of law enforcement officers and jailers.
6. Direct research in the field of law enforcement and jailer training and accept grants for such purposes.
7. Accept applications for attendance of the academy from persons other than those required to attend.
8. Revoke a law enforcement officer's certification for the conviction of a felony or revoke or sus-

pend a law enforcement officer's certification for a violation of rules adopted pursuant to section 80B.11, subsection 7. In addition the council may consider revocation or suspension proceedings when an employing agency recommends to the council that revocation or suspension would be appropriate with regard to a current or former employee. If a law enforcement officer resigns, the employing agency shall notify the council that an officer has resigned and state the reason for the resignation if a substantial likelihood exists that the reason would result in the revocation or suspension of an officer's certification for a violation of the rules.

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

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

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

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

99 Acts, ch 70, §2-4
Subsection 8, unnumbered paragraphs 1 and 3 amended
Subsection 9 amended

CHAPTER 84A

DEPARTMENT OF WORKFORCE DEVELOPMENT

84A.1B Duties of the workforce development board.

The workforce development board shall do all of the following:

1. Develop and coordinate the implementation of a twenty-year comprehensive workforce development plan of specific goals, objectives, and policies for the state. This plan shall be updated annually and revised as necessary. All other state

agencies involved in workforce development activities and the regional advisory boards for workforce development shall annually submit to the board for its review and potential inclusion in the plan their goals, objectives, and policies.

2. Prepare a five-year strategic plan for state workforce development to implement the specific comprehensive goals, objectives, and policies of the state. All other state agencies involved in work-

force development activities and the regional advisory boards for workforce development shall annually submit to the board for its review and potential inclusion in the strategic plan their specific strategic plans and programs. The five-year strategic plan for state workforce development shall be updated annually.

3. Develop a method of evaluation of the attainment of goals and objectives from pursuing the policies of the five-year and twenty-year plans.

4. Implement the requirements of chapter 73.

5. Approve the budget of the department related to workforce development as prepared by the director.

6. Establish guidelines, procedures, and policies for the awarding of grants for workforce development services by the department.

7. Review grants or contracts awarded by the department, with respect to the department's adherence to the guidelines and procedures and the impact on the five-year strategic plan for workforce development.

8. Make recommendations concerning the use of federal funds received by the department with respect to the five-year and twenty-year workforce development plans.

9. Adopt all necessary rules related to workforce development recommended by the director prior to their adoption pursuant to chapter 17A.

Transfer of functions previously conducted by state labor management cooperation council; 98 Acts, ch 1225, §9; 99 Acts, ch 197, §9
Section not amended; footnote revised

84A.1C Workforce development corporation.

1. *Nonprofit corporation for receiving and disbursing funds.* The Iowa workforce development board may organize a corporation under the provisions of chapter 504A for the purpose of receiving and disbursing funds from public or private sources to be used to further workforce development in this state and to accomplish the mission of the board.

2. *Incorporators.* The incorporators of the corporation organized pursuant to this section shall be the chairperson of the Iowa workforce development board, the director of the department of workforce development, and a member of the Iowa workforce development board selected by the chairperson.

3. *Board of directors.* The board of directors of the corporation organized pursuant to this section shall be the members of the Iowa workforce development board or their successors in office.

4. *Accepting grants in aid.* The corporation organized pursuant to this section may accept grants of money or property from the federal government or any other source and may upon its own order use its money, property, or other resources for any of the purposes identified in section 84A.1B.

99 Acts, ch 21, §1
NEW section

84A.4 Regional advisory boards.

1. A regional advisory board shall be established in each service delivery area as defined in section 84B.2. The members of the board shall be appointed by the governor, consistent with the requirements of federal law and in consultation with chief elected officials within the region. Chief elected officials responsible for recommendations for board membership shall include, but are not limited to, county elected officials, municipal elected officials, and community college directors. The membership of each board shall provide for equal representation of business and labor and shall include a county elected official, a city official, a representative of a school district, and a representative of a community college.

2. Each regional advisory board shall identify workforce development needs in its region, assist the workforce development board and the department in the awarding of grants or contracts administered by the department in that region and in monitoring the performance of the grants and contracts awarded, make annual reports as required by section 84A.1B, and make recommendations to the workforce development board and department concerning workforce development.

3. Section 84A.1A, subsections 2, 3, and 5, apply to the members of a regional advisory board except that the board shall meet if a majority of the members of the board, and not five, file a written request with the chairperson for a meeting. Members of a regional advisory board shall be allowed their actual and necessary expenses incurred in the performance of their duties. All expenses shall be paid from appropriations for those purposes and the department is subject to the budget requirements of chapter 8.

99 Acts, ch 21, §2
Subsection 3 amended

84A.5 Department's primary responsibilities.

The department of workforce development, in consultation with the workforce development board and the regional advisory boards, has the primary responsibilities set out in this section.

1. The department shall develop and implement a workforce development system which increases the skills of the Iowa workforce, fosters economic growth and the creation of new high skill and high wage jobs through job placement and training services, increases the competitiveness of Iowa businesses by promoting high performance workplaces, and encourages investment in workers.

The workforce development system shall strive to provide high quality services to its customers including workers, families, and businesses. The department shall maintain a common intake, assessment, and customer tracking system and to the

extent practical provide one-stop services to customers at workforce development centers and other service access points.

The system shall include an accountability system to measure program performance, identify accomplishments, and evaluate programs to ensure goals and standards are met. The accountability system shall use information obtained from the customer tracking system, the department of economic development, the department of education, and training providers to evaluate the effectiveness of programs. The department of economic development, the department of education, and training providers shall report information concerning the use of any state or federal training or retraining funds to the department of workforce development in a form as required by the department. The accountability system shall evaluate all of the following:

- a. The impact of services on wages earned by individuals.
- b. The effectiveness of training services providers in raising the skills of the Iowa workforce.
- c. The impact of placement and training services on Iowa's families, communities, and economy.

The department shall make information from the customer tracking and accountability system available to the department of economic development, the department of education, and other appropriate public agencies for the purpose of assisting with the evaluation of programs administered by those departments and agencies and for planning and researching public policies relating to education and economic development.

2. The department is responsible for administration of unemployment compensation benefits and collection of employer contributions under chapter 96, providing for the delivery of free public employment services established pursuant to chapter 96, other job placement and training programs established pursuant to section 84A.6, and the delivery of services located throughout the state.

3. The division of labor services is responsible for the administration of the laws of this state under chapters 88, 88A, 88B, 89, 89A, 89B, 90A, 91, 91A, 91C, 91D, 91E, 92, and 94A, and sections 30.7 and 85.68. The executive head of the division is the labor commissioner, appointed pursuant to section 91.2.

4. The division of workers' compensation 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 workers' compensation commissioner, appointed pursuant to section 86.1.

5. The director shall form a coordinating committee composed of the director, the labor commissioner, the workers' compensation commissioner, and other administrators. The committee shall

monitor federal compliance issues relating to coordination of functions among the divisions.

6. The department shall administer the following programs:

- a. The Iowa conservation corps established under section 84A.7.
- b. The workforce investment program established under section 84A.8.
- c. The statewide mentoring program established under section 84A.9.
- d. The workforce development centers established under chapter 84B.
- e. Job training partnership programs under chapter 7B.

7. The department shall work with the department of economic development to incorporate workforce development as a component of community-based economic development.

8. The department, in consultation with the applicable regional advisory board, shall select service providers, subject to approval by the workforce development board for each service delivery area. A service provider in each service delivery area shall be identified to coordinate the services throughout the service delivery area. The department shall select service providers that, to the extent possible, meet or have the ability to meet the following criteria:

- a. The capacity to deliver services uniformly throughout the service delivery area.
- b. The experience to provide workforce development services.
- c. The capacity to cooperate with other public and private agencies and entities in the delivery of education, workforce training, retraining, and workforce development services throughout the service delivery area.
- d. The demonstrated capacity to understand and comply with all applicable state and federal laws, rules, ordinances, regulations, and orders, including fiscal requirements.

9. The department shall provide access to information and documents necessary for employers and payors of income, as defined in sections 252D.16 and 252G.1, to comply with child support reporting and payment requirements. Access to the information and documents shall be provided at the central location of the department of workforce development and at each workforce development center.

10. The director of the department may adopt rules pursuant to chapter 17A to charge and collect fees for enhanced or value-added services provided by the department which are not required by law to be provided by the department and are not generally available from the department. Fees shall not be charged to provide a free public labor exchange. Fees established by the director shall be based upon the costs of administering the service, with due regard to the anticipated time spent, and travel costs incurred, by personnel performing the ser-

vice. The collection of fees authorized by this subsection shall be treated as repayment receipts as defined in section 8.2.

99 Acts, ch 21, §3; 99 Acts, ch 68, §1; 99 Acts, ch 130, §7
See Code editor's note to §10A.202
Subsection 3 amended
NEW subsection 10

84A.7 Iowa conservation corps.

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

a. *"Account"* means the Iowa conservation corps account.

b. *"Corps"* means the Iowa conservation corps.

2. *Iowa conservation corps established.* The Iowa conservation corps is established in this state to provide meaningful and productive public service jobs for youth, unemployed persons, persons with disabilities, disadvantaged persons, and elderly persons, and to provide participants with an opportunity to explore careers, gain work experience, and contribute to the general welfare of their communities and the state. The corps shall provide opportunities in the areas of natural resource and wildlife conservation, park maintenance and restoration, land management, energy savings, community improvement projects, tourism, economic development, and work benefiting human services programs. The department of workforce development shall administer the corps and shall adopt rules governing its operation, eligibility for participation, cash contributions, and implementation of an incentive program.

3. *Funding.* Corps projects shall be funded

by appropriations to the Iowa conservation corps account and by cash, services, and material contributions made by other state agencies or local public and private agencies. Public and private entities who benefit from a corps project shall contribute at least thirty-five percent of the total project budget. The contributions may be in the form of cash, materials, or services. Materials and services shall be intended for the project and acceptable to the department. Minimum levels of contributions shall be prescribed in rules adopted by the department.

4. *Account created.* The Iowa conservation corps account is established within and administered by the department. The account shall include all appropriations made to programs administered by the corps, and may also include moneys contributed by a private individual or organization, or a public entity for the purpose of implementing corps programs and projects. The department may establish an escrow account within the department and obligate moneys within that escrow account for tuition payments to be made beyond the term of any fiscal year. Interest earned on moneys in the Iowa conservation corps account shall be credited to the account.

5. *Participant eligibility.* Notwithstanding any contrary provision of chapters 19A and 96, a person employed through an Iowa conservation corps program shall be exempt from merit system requirements and shall not be eligible to receive unemployment compensation benefits.

99 Acts, ch 21, §4
NEW subsection 5

CHAPTER 85B

OCCUPATIONAL HEARING LOSS

85B.11 Previous hearing loss excluded.

An employer is liable, as provided in this chapter and subject to the provisions of chapter 85, for an occupational hearing loss to which the employment has contributed, but if previous hearing loss, whether occupational or not, is established by an audiometric examination or other competent evidence, whether or not the employee was subjected to excessive noise exposure within six months preceding the test, the employer is not liable for the previous loss, nor is the employer liable for a loss for which compensation has previously been paid or awarded. The employer is liable only for the difference between the percent of occupational hearing loss determined as of the date of the audiometric examination used to determine occupational hearing loss and the percentage of loss established

by the pre-employment audiometric examination. An amount paid to an employee for occupational hearing loss by any other employer shall be credited against compensation payable by an employer for the hearing loss. An employee shall not receive in the aggregate greater compensation from all employers for occupational hearing loss than that provided in this section for total occupational hearing loss. A payment shall not be made to an employee unless the employee has worked in excessive noise exposure employment for a total period of at least ninety days for the employer from whom compensation is claimed.

99 Acts, ch 96, §7
Section amended

CHAPTER 86

DIVISION OF WORKERS' COMPENSATION

86.17 Hearings — presiding officer — venue.

1. Notwithstanding the provisions of section 17A.11, the industrial commissioner or a deputy industrial commissioner shall preside over any contested case proceeding brought under this chapter, chapter 85, 85A, or 85B in the manner provided by chapter 17A. The deputy commissioner or the commissioner may make such inquiries in contested case proceedings as shall be deemed necessary, so long as such inquiries do not violate any of the provisions of section 17A.17.

2. Hearings in contested case proceedings under chapters 85, 85A and this chapter shall be held

in the judicial district where the injury occurred. By written stipulation of the parties or by the order of a deputy workers' compensation commissioner or the commissioner, a hearing may be held elsewhere. If the injury occurred outside this state, or if the proceeding is not one for benefits resulting from an injury, hearings shall be held in Polk county or as otherwise stipulated by the parties or by order of a deputy workers' compensation commissioner or the workers' compensation commissioner.

98 Acts, ch 1202, §29, 46

1998 amendment to subsection 1 is effective July 1, 1999, and applies to agency proceedings commenced, or conducted on remand from a court or other agency, on or after that date; 98 Acts, ch 1202, §29, 46

Subsection 1 amended

CHAPTER 87

COMPENSATION LIABILITY INSURANCE

87.11 Relief from insurance — procedures upon employer's insolvency.

When an employer coming under this chapter furnishes satisfactory proofs to the insurance commissioner of such employer's solvency and financial ability to pay the compensation and benefits as by law provided and to make such payments to the parties when entitled thereto, or when such employer deposits with the insurance commissioner security satisfactory to the insurance commissioner and the workers' compensation commissioner as guaranty for the payment of such compensation, such employer shall be relieved of the provisions of this chapter requiring insurance; but such employer shall, from time to time, furnish such additional proof of solvency and financial ability to pay as may be required by such insurance commissioner or workers' compensation commissioner.

An employer seeking relief from the insurance requirements of this chapter shall pay to the insurance division of the department of commerce the following fees:

1. A fee of one hundred dollars, to be submitted annually along with an application for relief.

2. A fee of one hundred dollars for issuance of the certificate relieving the employer from the insurance requirements of this chapter.

3. A fee of fifty dollars, to be submitted with each filing required by the commissioner of insurance, including but not limited to the annual and quarterly financial statements, and material change statements.

If an employer becomes insolvent and a debtor under 11 U.S.C., on or after January 1, 1990, this paragraph applies. The commissioner of insurance

may request of the workers' compensation commissioner that all future payments of workers' compensation weekly benefits, medical expenses, or other payments pursuant to chapter 85, 85A, 85B, 86, or 87 be commuted to a present lump sum. The workers' compensation commissioner shall fix the lump sum of probable future medical expenses and weekly compensation benefits, or other benefits payable pursuant to chapter 85, 85A, 85B, 86, or 87, capitalized at their present value upon the basis of interest at the rate provided in section 535.3 for court judgments and decrees. The commissioner of insurance shall be discharged from all further liability for the commuted workers' compensation claim upon payment of the present lump sum to either the claimant, or a licensed insurer for purchase of an annuity or other periodic payment plan for the benefit of the claimant.

The commissioner of insurance shall not be required to pay more for all claims of an insolvent self-insured employer than is available for payment of such claims from the security given under this section.

Notwithstanding contrary provisions of section 85.45, any future payment of medical expenses, weekly compensation benefits, or other payments by the commissioner of insurance from the security given under this section, pursuant to chapter 85, 85A, 85B, 86, or 87, shall be deemed an undue expense, hardship, or inconvenience upon the employer for purposes of a full commutation pursuant to section 85.45, subsection 2.

Financial statements provided to the commissioner of insurance pursuant to this section may be held as confidential, proprietary trade secrets, pur-

suant to section 22.7, subsection 3, upon the request of the employer, subject to rules adopted by the commissioner of insurance, and are not subject

to disclosure or examination under chapter 22.

99 Acts, ch 114, §4
Unnumbered paragraph 6 amended

CHAPTER 88

OCCUPATIONAL SAFETY AND HEALTH

88.3 Definitions.

Wherever used in this chapter, unless the context clearly requires a different meaning:

1. *"Appeal board"* means the employment appeal board created under section 10A.601.

2. *"Commissioner"* means the labor commissioner appointed pursuant to section 91.2, or the commissioner's designee.

3. *"Emergency temporary standards"* means any occupational safety and health standard or modification thereof which has been adopted and promulgated by a nationally recognized standards-producing organization under procedures whereby it can be determined by the commissioner that persons interested and affected by the scope or provisions of the standard have reached substantial agreement on its adoption, and was formulated in a manner which afforded an opportunity for diverse views to be considered or is an emergency temporary standard provided by the secretary pursuant to and in conformance with the provisions of the federal law.

4. *"Employee"* means an employee of an employer who is employed in a business of the employer. *"Employee"* also means an inmate as defined in section 85.59, when the inmate works in connection with the maintenance of the institution, in an industry maintained in the institution, or while otherwise on detail to perform services for pay. *"Employee"* also means a volunteer involved in responses to hazardous waste incidences. The employer of a volunteer is that entity which provides or which is required to provide workers' compensation coverage for the volunteer.

5. *"Employer"* means a person engaged in a business who has one or more employees and also includes the state of Iowa, its various departments and agencies, and any political subdivision of the state.

6. *"Federal law"* means the Act of Congress approved December 29, 1970, 84 Stat. 1590, officially cited as the "Occupational Safety and Health Act of 1970 (29 U.S.C. 651-678)."

7. *"Imminent danger"* means a condition or practice in any place of employment which is such that a danger exists which will reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures of this chapter, exclusive of the procedures set forth in section 88.11.

8. *"Occupational safety and health standard"* means a standard which requires conditions or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safety or healthful employment and places of employment.

9. *"Person"* means one or more individuals, partnerships, associations, corporations, business trusts, legal representatives, or any organized group of persons.

10. *"Secretary"* means the secretary of labor of the United States.

99 Acts, ch 68, §2
Subsection 2 amended

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 the inspection or investigation, notify the employer by service in the same manner as an original notice or 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 the time specified, 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 service in the same manner as an original notice or 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.

99 Acts, ch 68, §3
Subsections 1 and 2 amended

CHAPTER 88A

SAFETY INSPECTION OF AMUSEMENT RIDES

88A.1 Definitions.

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

1. *"Amusement device"* means any equipment or piece of equipment, appliance or combination thereof designed or intended to entertain or amuse a person.

2. *"Amusement ride"* means any mechanized device or combination of devices which carries passengers along, around, or over a fixed or restricted course for the purpose of giving its passengers amusement, pleasure, thrills, or excitement. *"Amusement ride"* does not include a device or structure that is devoted principally to exhibitions related to agriculture, the arts, education, industry, religion, or science.

3. *"Carnival"* means an enterprise offering amusement or entertainment to the public in, upon, or by means of amusement devices or rides or concession booths.

4. *"Commissioner"* means the labor commissioner or the labor commissioner's designee.

5. *"Concession booth"* means a structure, or enclosure, used at more than one fair or carnival, or at one fair or carnival for more than seven consecutive days, from which amusements are offered to the public.

6. *"Division"* means the division of labor services of the department of workforce development created under section 84A.1.

7. *"Fair"* means an enterprise principally devoted to the exhibition of products of agriculture or industry in connection with the operation of amusement rides or devices or concession booths.

8. *"Operator"* means a person, or the agent of a person, who owns or controls or has the duty to control the operation of an amusement device or ride, a concession booth, or related electrical equipment at a carnival or fair. *"Operator"* includes an agency of the state or any of its political subdivisions.

9. *"Parent or guardian"* means a parent, custodian, or guardian or person responsible for the control, safety, training, or education of a rider who is a minor or person with a disability.

10. *"Related electrical equipment"* means any electrical apparatus or wiring used at a carnival or fair.

11. *"Rider"* means a person waiting in the immediate vicinity of an amusement ride to get on the amusement ride, getting on an amusement ride, using an amusement ride, getting off an amusement ride, or leaving an amusement ride and still in the immediate vicinity of the amusement ride. *"Rider"* does not include an employee, agent, or ser-

vant of the amusement ride owner while engaged in the duties of their employment.

12. “*Sign*” means any symbol or language reasonably calculated to communicate information to a rider or the rider’s parent or guardian, including

placards, prerecorded messages, live public address, stickers, pictures, pictograms, video, verbal information, and visual signals.

99 Acts, ch 96, §8
Subsections 2 and 11 amended

CHAPTER 89A

ELEVATORS

89A.1 Definitions.

As used in this chapter, except as otherwise expressly provided:

1. “*Alteration*” means any change made to an existing facility, other than the repair or replacement of damaged, worn, or broken parts necessary for normal maintenance.

2. “*Appeal board*” means the employment appeal board created under section 10A.601.

3. “*Commissioner*” means the labor commissioner, appointed pursuant to section 91.2, or the labor commissioner’s designee.

4. “*Division*” means the division of labor services of the department of workforce development created under section 84A.1.

5. “*Dormant facility*” means a facility whose power feed lines have been disconnected from the mainline disconnect switch and is one of the following:

a. An electric elevator, material lift, or dumbwaiter whose suspension ropes have been removed, whose car and counterweight rest at the bottom of the hoistway, and whose hoistway doors have been permanently barricaded or sealed in the closed position on the hoistway side.

b. A hydraulic elevator, material lift, or dumbwaiter whose car rests at the bottom of the hoistway, whose pressure piping has been disassembled and a section removed from the premises; whose hoistway doors have been permanently barricaded or sealed in the closed position on the hoistway side; and, if provided, whose suspension ropes have been removed and the counterweights landed at the bottom of the hoistway.

c. An escalator or moving walk whose entrances have been permanently barricaded.

d. A rack and pinion or screw column facility, whose motor has been removed, platform lowered to the bottom, and entrances barricaded.

6. “*Dumbwaiter*” means a hoisting and lowering mechanism equipped with a car which moves in guides in a substantially vertical direction, when the floor area does not exceed nine square feet, the total compartment height does not exceed four feet, the capacity does not exceed five hundred pounds, and which is used exclusively for carrying materials.

7. “*Elevator*” means a hoisting and lowering mechanism equipped with a car or platform which

moves in guides in a substantially vertical direction, and which serves two or more floors of a building or structure. The term elevator does not include a dumbwaiter, endless belt, conveyor, chain or bucket hoist, construction hoist, or other device used for the primary purpose of elevating or lowering building or other materials and not used as a means of conveyance for individuals, nor shall it include tiering, piling, feeding, or other machines or devices giving service within only one story.

8. “*Escalator*” means a power-driven, inclined, continuous stairway used for raising or lowering passengers.

9. “*Facility*” means an elevator, dumbwaiter, escalator, moving walk, lift, or inclined or vertical wheelchair lift subject to regulation under this chapter, and includes hoistways, rails, guides, and all other related mechanical and electrical equipment.

10. “*Freight elevator*” means an elevator used for carrying freight and on which only the operator and persons necessary for unloading and loading the freight are permitted to ride.

11. “*Inclined or vertical wheelchair lift*” means a lift used as part of an accessible route in or at a public building as specified in the American society of mechanical engineers safety codes for elevators and escalators, A17.1.

12. “*Inspector*” means an inspector employed by the division for the purpose of administering this chapter.

13. “*Lift*” means a device consisting of a power-driven endless belt, provided with steps or platforms and handholds attached to it for the transportation of persons from floor to floor.

14. “*Material lift elevator*” means an elevator existing at the location prior to January 1, 1975, which is limited to the movement of materials.

15. “*Moving walk*” means a type of passenger-carrying device on which passengers stand or walk, and in which the passenger carrying surface remains parallel to its direction in motion and is uninterrupted.

16. “*New installation*” means a facility the construction or relocation of which is begun, or for which an application for a new installation permit is filed, on or after the effective date of rules relating to those permits adopted by the commissioner

under authority of this chapter. All other installations are existing installations.

17. "Passenger elevator" means an elevator that is used to carry persons other than the operator and person necessary for loading and unloading.

18. "Provisions of this chapter" includes rules adopted by the labor commissioner pursuant to this chapter.

19. "Special inspector" means an inspector licensed by the labor commissioner, and not employed by the division.

99 Acts, ch 68, §4
Subsections 5 and 11 amended

89A.3 Rules.

1. The commissioner may adopt rules governing maintenance, construction, alteration, and installation of facilities, and the inspection and testing of new and existing installations as necessary to provide for the public safety, and to protect the public welfare.

The commissioner shall adopt, amend, or repeal rules pursuant to chapter 17A as the commissioner deems necessary for the execution of the commissioner's duties under this chapter, which shall include, but not be limited to, rules providing for:

- a. Classifications of types of facilities.
- b. Maintenance, inspection, testing, and operation of the various classes of facilities.
- c. Construction of new facilities.
- d. Alteration of existing facilities.
- e. Minimum safety requirements for all existing facilities.
- f. Control or prevention of access to facilities or dormant facilities.
- g. The reporting of accidents and injuries arising from the use of facilities.
- h. The specification of hearing and appeal procedures used by the commissioner.
- i. Qualifications for obtaining an inspector's license.
- j. The adoption of procedures for the issuance of variances.
- k. The amount of fees charged and collected for inspection, permits, and licenses. Fees shall be set at an amount sufficient to cover costs as determined from consideration of the reasonable time required to conduct an inspection, reasonable hourly wages paid to inspectors, and reasonable transportation and similar expenses.

2. The commissioner shall adopt rules for facilities according to the applicable provisions of the American society of mechanical engineers safety codes for elevators and escalators, A17.1 and A17.3, as the commissioner deems necessary. In adopting rules the commissioner may adopt the American society of mechanical engineers safety codes, or any part of the codes, by reference.

The commissioner may adopt rules permitting existing passenger and freight elevators to be modified into material lift elevators.

3. A rule adopted pursuant to this section which adopts standards by reference to another publication shall be exempt from the requirements of section 17A.6, subsection 4, if the following conditions exist:

a. The cost of the publication is an unreasonable expense when compared to the anticipated usage of the publication.

b. A copy of the publication is available from an entity located within the state capitol complex.

c. The rule identifies the location where the publication is available.

d. The administrative rules coordinator approves the exemption.

4. The commissioner shall furnish copies of the rules adopted by the commissioner to any person who requests them, without charge, or upon payment of a charge not to exceed the actual cost of printing of the rules.

5. The commissioner may adopt rules permitting inclined or vertical wheelchair lifts in churches and houses of worship to service more than one floor.

99 Acts, ch 68, §5, 6
Subsection 2 amended
Subsection 3 stricken and rewritten

89A.5 Registration of facilities.

The owner of every existing facility, whether or not dormant, shall register the facility with the commissioner, giving type, contract load and speed, name of manufacturer, its location and the purpose for which it is used, and other information the commissioner may require. Registration shall be made in a format required by the division.

99 Acts, ch 68, §7
Section amended

89A.6 Inspections — reports — nonliability.

All new and existing facilities, except dormant facilities, shall be tested and inspected in accordance with the following schedule:

1. Every new or altered facility shall be inspected and tested before the operating permit is issued.

2. Every existing facility registered with the commissioner shall be inspected within one year after the effective date of the registration, except that the commissioner may, at the commissioner's discretion, extend by rule the time specified for making inspections.

3. Every facility shall be inspected not less frequently than annually, except that the commissioner may adopt rules providing for inspections of facilities at intervals other than annually.

4. The inspections required by subsections 1 to 3 shall be made only by inspectors or special inspectors. An inspection by a special inspector may be accepted by the commissioner in lieu of a required inspection by an inspector.

5. A report of every inspection shall be filed with the commissioner by the inspector or special

inspector, in a format required by the commissioner, after the inspection has been completed and within the time provided by rule, but not to exceed thirty days. The report shall include all information required by the commissioner to determine whether the facility is in compliance with applicable rules. For the inspection required by subsection 1, the report shall indicate whether the facility has been installed in accordance with the detailed plans and specifications approved by the commissioner, and meets the requirements of the applicable rules. The failure of a special inspector to inform the commissioner of violations shall not subject the commissioner to liability for any damages incurred.

6. In addition to the inspections required by subsections 1 to 3, the commissioner may provide by rule for additional inspections as the commissioner deems necessary to enforce the provisions of this chapter.

99 Acts, ch 68, §8
Subsection 5 amended

89A.7 Alteration permits.

The owner shall submit to the commissioner detailed plans, specifications, and other information the commissioner may require for each facility to be altered, together with an application for an alteration permit, in a format required by the commissioner. Repairs or replacements necessary for normal maintenance are not alterations, and may be made on existing installations with parts equivalent in material, strength and design to those replaced and no plans or specifications or application need be filed for the repairs or replacements. However, this section does not authorize the use of any facility contrary to an order issued pursuant to section 89A.10, subsections 2 and 3.

99 Acts, ch 68, §9
Section amended

89A.8 New installation permits.

A permit shall be issued by the commissioner before construction on a new installation is begun. The division shall issue a permit for relocation or installation, as applicable, if the plans and specifications indicate compliance with applicable rules.

If such plans and specifications indicate a failure of compliance with applicable rules, the division shall give notice of necessary changes to the person filing the application. After such changes have been made and approved, the division shall issue a permit.

The owner shall submit plans in triplicate, together with an application for the permit, in a format required by the commissioner. The plans shall include:

1. Sectional plan of car and hoistway.
2. Sectional plan of machine room.
3. Sectional elevation of hoistway and machine room, including the pit, bottom and top clearance of car, and counterweight.

4. Size and weight of guide rails, and guide rail bracket spacing.

5. Other information which the division may require.

99 Acts, ch 68, §10
Unnumbered paragraph 3 amended

89A.10 Enforcement orders by commissioner — injunction.

1. If an inspection report indicates a failure to comply with applicable rules, or with the detailed plans and specifications approved by the commissioner, the commissioner may, upon giving notice, order the owner thereof to make the changes necessary for compliance.

2. If the owner does not make the changes necessary for compliance as required in subsection 1 within the period specified by the commissioner, the commissioner, upon notice, may suspend or revoke the operating permit, or may refuse to issue the operating permit for the facility. The commissioner shall notify the owner of any action to suspend, revoke, or refuse to issue an operating permit and the reason for the action by service in the same manner as an original notice or by certified mail. An owner may appeal the commissioner's initial decision. The appeal shall be heard by an administrative law judge of the department of inspections and appeals. An owner who, after a hearing before an administrative law judge, is aggrieved by a suspension, revocation, or refusal to issue an operating permit may appeal to the employment appeal board created under section 10A.601. Notice of appeal shall be filed with the appeal board within thirty calendar days from receipt of the notice of the commissioner's action.

A party adversely affected or aggrieved by an order of the appeal board issued under this subsection may obtain a review of the order in the district court of the county in which the facility is located by filing in the court within sixty days following the issuance of the order a written petition that the order be modified or set aside. A copy of the petition shall be forthwith transmitted by the clerk of the district court to the appeal board and to all other parties, and the appeal board shall promptly file in the court the transcript of record in the proceedings. Upon filing of the petition, the court has jurisdiction of the proceedings and of the questions to be determined, and may grant temporary relief or a restraining order, and may make and enter upon the pleadings, testimony, and proceedings set forth in the record a decree affirming, modifying, or setting aside in whole or in part, the order of the appeal board and enforcing the order to the extent that the order is affirmed, modified, or denied.

No proceedings before the commissioner or the commissioner's agents, an administrative law judge, the appeal board, or any district court of this state shall be deemed to deny an owner an operating permit until there is a final adjudication of the matter. An objection which has not been urged be-

fore the appeal board shall not be considered by the court, unless the failure or neglect to urge the objection is excused because of extraordinary circumstances. The findings of the appeal board with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, are conclusive. 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. Upon the filing of the record with it, the jurisdiction of the court is exclusive and its judgment and decree is final, except that it is subject to review by the Iowa supreme court.

3. If the commissioner has reason to believe that the continued operation of a facility constitutes an imminent danger which could reasonably be expected to seriously injure or cause death to members of the public, the commissioner may ap-

ply to the district court in the county in which such imminently dangerous condition exists for a temporary order for the purpose of enjoining such imminently dangerous facility. Upon hearing, if deemed appropriate by the court, a permanent injunction may be issued to insure that such imminently dangerous facility be prevented or controlled. Upon the elimination or rectification of such imminently dangerous condition the temporary or permanent injunction shall be vacated.

99 Acts, ch 68, §11
Subsection 2, unnumbered paragraph 1 amended

89A.12 Access to facilities.

Every owner of a facility subject to regulation by this chapter shall grant access to that facility to the commissioner and personnel of the division. Inspections shall be permitted at reasonable times, with or without prior notice.

99 Acts, ch 68, §12
Section amended

CHAPTER 90A

BOXING AND WRESTLING

90A.1 Definitions.

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

1. "*Boxer registry*" means an entity certified by the association of boxing commissions for the purpose of maintaining records and identification of boxers.

2. "*Commissioner*" means the state commissioner of athletics, who is also the labor commissioner appointed pursuant to section 91.2, or the labor commissioner's designee.

3. "*Official*" means a person who is employed as a referee, judge, timekeeper, or match physician for a boxing or wrestling match event.

4. "*Participant*" means a person involved in the boxing or wrestling match event and includes con-

testants, seconds, managers, and similar event personnel.

5. "*Professional boxing or wrestling match*" means a boxing or wrestling contest or exhibition open to the public in this state for which the contestants are paid or awarded a prize for their participation.

6. "*Promoter*" means a person or business that does at least one of the following:

a. Organizes, holds, advertises, or otherwise conducts a professional boxing or wrestling match.

b. Charges admission for the viewing of a professional boxing or wrestling match received through a closed-circuit, pay-per-view, or similarly distributed signal.

99 Acts, ch 68, §13
Subsection 2 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 programs of the division of labor services.

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 cooperate with other interested persons and organizations in conducting edu-

cational programs and projects on employment safety.

5. The director of the department of workforce development, 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, and 94A, and sections 30.7 and 85.68, and the recommendations, if any, shall be transmitted by the governor to the first general assembly in session after the report is filed.

6. The commissioner, with the assistance of the office of the attorney general if requested by the commissioner, may commence a civil action in any court of competent jurisdiction to enforce the statutes under the commissioner's jurisdiction.

7. The division of labor services may sell documents printed by the division at cost according to rules established by the labor commissioner pursuant to chapter 17A. Receipts from the sale shall be deposited to the credit of the division and may be used by the division for administrative expenses.

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.

99 Acts, ch 68, §14, 15; 99 Acts, ch 130, §8
See Code editor's note to §10A.202
Subsections 2 and 5 amended

91.10 Power to secure evidence.

The labor commissioner, or the commissioner's designee, may issue subpoenas, administer oaths, and take testimony in all matters relating to the duties required of them. Witnesses subpoenaed and testifying before the commissioner or the commissioner's designee shall be paid the same fees as witnesses under section 622.69, payment to be made out of the funds appropriated to the division of labor services.

99 Acts, ch 68, §16
Section amended

91.11 Prosecutions for violations.

If the commissioner learns of any violation of any law administered by the division, the commissioner may give the county attorney of the county in which the violation occurred written notice of the facts, whereupon that officer shall institute the proper proceedings against the person charged with the offense.

If the commissioner is of the opinion that the violation is not willful, or is an oversight or of a trivial nature, the commissioner may at the commissioner's discretion fix a time within which the violation shall be corrected and notify the owner, operator, superintendent, or person in charge, and if corrected within the time fixed, then the commissioner shall not cause prosecution to be begun.

99 Acts, ch 68, §17
Section amended

CHAPTER 91A

WAGE PAYMENT COLLECTION

91A.3 Mode of payment — bond of farm labor contractor.

1. An employer shall pay all wages due its employees, less any lawful deductions specified in section 91A.5, at least in monthly, semimonthly, or bi-weekly installments on regular paydays which are at consistent intervals from each other and which are designated in advance by the employer. However, if any of these wages due its employees are determined on a commission basis, the employer may, upon agreement with the employee, pay only a credit against such wages. If such credit is paid, the employer shall, at regular intervals, pay any difference between a credit paid against wages deter-

mined on a commission basis and such wages actually earned on a commission basis. These regular intervals shall not be separated by more than twelve months. A regular payday shall not be more than twelve days, excluding Sundays and legal holidays, after the end of the period in which the wages were earned. An employer and employee may, upon written agreement which shall be maintained as a record, vary the provisions of this subsection.

2. The wages paid under subsection 1 shall be paid in United States currency or by written instrument issued by the employer and negotiable on demand at full face value for such currency, unless

the employee has agreed in writing to receive a part of or all wages in kind or in other form.

3. The wages paid under subsection 1 shall be sent to the employee by mail or be paid at the employee's normal place of employment during normal employment hours or at a place and hour mutually agreed upon by the employer and employee.

4. The wages paid under subsection 1 may be delivered to a designee of the employee who is so designated in writing or may be sent to the employee by any reasonable means requested by the employee in writing. A designee under this subsection shall not also be an assignee or buyer of wages under section 539.4 nor a garnisher of the employee under chapter 642, unless the designee complies with the provisions of section 539.4 and chapter 642.

5. If an employee is absent from the normal place of employment on the regular payday, the employer shall, upon demand of the employee made within the first seven days following the regular payday, pay the wages, less any lawful deductions specified in section 91A.5, which were due on that regular payday. However, if demand is not made

within this seven-day period, the employer shall, upon demand of the employee, pay the wages which were due on a regular payday within the first seven days following the day on which demand is made.

6. Expenses by the employee which are authorized by the employer and incurred by the employee shall either be reimbursed in advance of expenditure or be reimbursed not later than thirty days after the employee's submission of an expense claim. If the employer refuses to pay all or part of each claim, the employer shall submit to the employee a written justification of such refusal within the same time period in which expense claims are paid under this subsection.

7. If a farm labor contractor contracts with a person engaged in the production of seed or feed grains to remove unwanted or genetically deviant plants or corn tassels or to hand pollinate plants, and fails to pay all wages due the employees of the farm labor contractor, the person engaged in the production of seed or feed grains shall also be liable to the employees for wages not paid by the farm labor contractor.

99 Acts, ch 68, §18
Subsection 7 amended

CHAPTER 91C

CONSTRUCTION CONTRACTORS

91C.8 Investigations — enforcement — administrative penalties.

1. The labor commissioner and inspectors of the division of labor services of the department of workforce development have jurisdiction for investigation and enforcement in cases where contractors may be in violation of the requirements of this chapter or rules adopted pursuant to this chapter.

2. If, upon investigation, the labor commissioner or the commissioner's authorized representative believes that a contractor has violated any of the following, the commissioner shall with reasonable promptness issue a citation to the contractor:

a. The requirement that a contractor be registered.

b. The requirement that the contractor's registration information be substantially complete and accurate.

c. The requirement that an out-of-state contractor file a bond with the division of labor services.

3. Each citation shall be in writing and shall describe with particularity the nature of the violation, including a reference to the provision of the statute alleged to have been violated.

4. If a citation is issued, the commissioner shall, within seven days, notify the contractor by service in the same manner as an original notice or by certified mail of the administrative penalty, if

any, proposed to be assessed and that the contractor has fifteen working days within which to notify the commissioner that the employer wishes to contest the citation or proposed assessment of penalty.

5. The administrative penalties which may be imposed under this section shall be not more than five hundred dollars in the case of a first violation and not more than five thousand dollars for each violation in the case of a second or subsequent violation. All administrative penalties collected pursuant to this chapter shall be deposited in the general fund of the state.

6. If, within fifteen working days from the receipt of the notice, the contractor fails to notify the commissioner that the contractor intends to contest the citation or proposed assessment of penalty, the citation and the assessment, as proposed, shall be deemed a final order of the employment appeal board and not subject to review by any court or agency.

7. If the contractor notifies the commissioner that the contractor intends to contest the citation or proposed assessment of penalty, the commissioner shall immediately advise the employment appeal board established by section 10A.601. The employment appeal board shall review the action of the commissioner and 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 the order shall become final sixty days after its issuance.

8. The labor commissioner shall notify the department of revenue and finance upon final agency action regarding the citation and assessment of penalty against a registered contractor.

9. Judicial review of any order of the employment appeal board issued pursuant to this section may be sought in accordance with the terms of chapter 17A. If no petition for judicial review is filed within sixty days after service of the order of

the employment appeal board, 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 the sixty-day period. In any such case, the clerk of court, unless otherwise ordered by the court, shall forthwith enter a decree enforcing the order and shall transmit a copy of the decree to the employment appeal board and the contractor named in the petition.

99 Acts, ch 68, §19
Subsection 4 amended

CHAPTER 94

STATE FREE EMPLOYMENT SERVICE — EMPLOYMENT AGENCIES

Repealed by 99 Acts, ch 130, §9; see chapter 94A

CHAPTER 94A

EMPLOYMENT AGENCIES

94A.1 Definitions.

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

1. *"Applicant"* means a person applying for a private employment agency license.

2. *"Commissioner"* means the labor commissioner, appointed pursuant to section 91.2, or the labor commissioner's designee.

3. *"Employee"* means a person who seeks employment or who obtains employment through an employment agency.

4. *"Employer"* means a person who seeks one or more employees or who obtains one or more employees.

5. *"Employment agency"* means a person who brings together those desiring to employ and those desiring employment and who receives a fee, privilege, or other consideration directly or indirectly from an employee for the service. *"Employment agency"* does not include furnishing or procuring theatrical, stage, or platform attractions or amusement enterprises.

99 Acts, ch 130, §1
NEW section

94A.2 Licensing.

1. An employment agency shall obtain a license from the commissioner prior to transacting any business. Licenses expire on June 30 of each year.

2. A license application shall be in the form prescribed by the commissioner and shall be accompanied by all of the following:

a. A surety company bond in the sum of thirty thousand dollars, to be approved by the commissioner and conditioned to pay any damages that

may accrue to any person due to a wrongful act or violation of law on the part of the applicant in the conduct of business.

b. The schedule of fees to be charged by the employment agency.

c. All contract forms to be signed by an employee.

d. An application fee of seventy-five dollars.

3. The commissioner shall grant or deny a license within thirty days from the filing date of a completed application.

4. The commissioner may revoke, suspend, or annul a license in accordance with chapter 17A upon good cause.

99 Acts, ch 130, §2
NEW section

94A.3 General requirements.

Each employment agency shall do all of the following:

1. Keep an employee record, which shall include the name of each employee signing a contract or agreement, the name and address of the employer, if employment is found, and the fee charged, paid, or refunded. Each record shall be maintained for at least two years.

2. Prior to referral to an employer, provide an employee with a copy of the contract or agreement, which specifies the fee or consideration to be paid by the employee.

99 Acts, ch 130, §3
NEW section

94A.4 Prohibitions.

1. A person shall not require an employee to pay a fee as a condition of application with an employer or an employment agency.
2. An employee shall not be required to pay a fee to an employer as a condition of hire.
3. An employer shall not require an employee to reimburse the employer for a fee the employer paid to an employment agency or other person or entity when the employee was hired.
4. An employment agency shall not do any of the following:
 - a. Send an employee or an application of an employee to an employer who has not applied to the employment agency for help or labor.
 - b. Through false notice, advertisement, or other means, fraudulently promise or deceive a person seeking help or employment with regard to the service to be rendered by the employment agency.
 - c. Divide a fee received from an employee with an employer or any member of an employer's staff. The division of fees between one or more employment agencies that provided services is not prohibited.
 - d. Charge an employee any fee greater than the fee schedule on file with the commissioner without prior consent of the commissioner.
 - e. Charge a fee greater than fifteen percent of the employee's annual gross earnings.
 - f. Require an employee to pay a fee in advance of earnings. If an employee wishes to pay a fee in advance of earnings, the contract between the em-

ployee and employment agency shall state that any advance payment by the employee is voluntary. If an employee works less than one year at the referred employment, the employment agency shall refund any amount in excess of fifteen percent of the employee's gross earnings from the referred employment.

99 Acts, ch 130, §4
NEW section

94A.5 Powers and duties of the commissioner.

1. At any time, the commissioner may examine the records, books, and any papers relating to the conduct and operation of an employment agency.
2. The commissioner shall adopt rules pursuant to chapter 17A to administer this chapter.

99 Acts, ch 130, §5
NEW section

94A.6 Violations.

1. A person who violates a provision of this chapter or who refuses the commissioner access to records, books, and papers pursuant to an examination under section 94A.5 shall be guilty of a simple misdemeanor.
2. If a person violates a provision of this chapter or refuses the commissioner access to records, books, and papers pursuant to an examination under section 94A.5, the commissioner shall assess a civil penalty against the person in an amount not greater than two thousand dollars.

99 Acts, ch 130, §6
NEW section

CHAPTER 95

LICENSES FOR EMPLOYMENT AGENCIES

Repealed by 99 Acts, ch 130, §9; see chapter 94A

CHAPTER 96

EMPLOYMENT SECURITY — UNEMPLOYMENT COMPENSATION

96.7 Employer contributions and reimbursements.

1. *Payment.* Contributions accrue and are payable, in accordance with rules adopted by the department, on all taxable wages paid by an employer for insured work.
2. *Contribution rates based on benefit experience.*
 - a. (1) The department 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, or to an individual who failed without good cause, either to apply for available, suitable work or to accept suitable work with that employer, but shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

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 department 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 department shall notify each employer of the amount of benefits charged to the employer's account during that quarter. The notification shall show the name of each individual to whom benefits were paid, the individual's social security number, and the amount of benefits paid to the individual. An employer which has not been no-

tified 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 department 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 department within ninety days from the date of the partial transfer, and the succession is approved by the predecessor employer or employers and the department.

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 department shall include notice of the requirement of disclosure in the department'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 predeces-

sor employer with respect to the period immediately preceding the date of the succession, provided the successor employer was not, prior to the succession, a subject employer, and only one predecessor employer, or only predecessor employers with identical rates, are involved. If the predecessor employers' rates are not identical and the successor employer is not a subject employer prior to the succession, the department 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 department 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 department 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 department, 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 department, for less than five periods of four consecutive calendar quarters immediately preceding the computation date.

d. The department 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 department 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 Pay- roll 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 department shall fix the contribution rate for each employer and notify the employer of the rate by regular mail to the last known address of the employer. An employer may appeal to the department 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 department may affirm, set aside, or modify its former determination and may grant the employer a new contribution rate. The department shall notify the employer of its decision by regular mail. Judicial review of action of the department 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 contributions become due at a disputed contribution rate prior to the employer receiving a decision reversing benefits, the employer shall pay the contributions at the disputed rate but shall be eligible for a refund pursuant to section 96.14, subsection 5. 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 6, for a calendar quar-

ter which precedes the computation date and upon which the employer's rate of contribution is computed, the employer's average annual taxable payroll shall be computed by considering the delinquent quarterly reports as containing zero taxable wages.

If a delinquent quarterly report is received by September 30 following the computation date the contribution rate shall be recomputed by using the taxable wages in all the appropriate quarterly reports on file to determine the average annual taxable payroll.

If a delinquent quarterly report is received after September 30 following the computation date the contribution rate shall not be recomputed, unless the rate is appealed in writing to the department under paragraph "e" and the delinquent quarterly report is also submitted not later than thirty days after the department 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 6, the department shall examine the reports and determine the correct amount of contributions due, and the amount so determined by the department shall be the contributions payable. If the contributions found due are greater than the amount paid, the department 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 as-

assessment is not paid or appealed within thirty days of the date of the notice of assessment.

b. If the department discovers from the examination of the reports required pursuant to section 96.11, subsection 6, 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 department 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 department 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 department 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 department 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 department, of each affected employing unit or employer.

The affected employing unit or employer may appeal in writing to the department from the initial determination. An appeal shall not be entertained for any reason by the department unless the appeal is filed with the department 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 department. 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 department, of each affected employing unit or employer.

The department'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 nonresi-

dent 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 department'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 department believes that the collection of contributions payable or benefits reimbursable will be jeopardized by delay, the department 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 department may immediately file a lien against the employer which may be followed by the issuance of a distress warrant.

The department 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 department.

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 department 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 department 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 percent-

age 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 department 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 department 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 the entire enterprise or business of a reimbursable governmental entity is sold or otherwise transferred to a subsequent employing unit and the acquiring employing unit continues to operate the enterprise or business, the acquiring employing unit shall assume the position of the reimbursable governmental entity with respect to the reimbursable governmental entity's liability to pay the department for reimbursable benefits based on the governmental entity's payroll to the same extent as if no change in the ownership or control of the enterprise or business had occurred, whether or not the acquiring employing unit elected or elects, or was or is eligible to elect, to become a reimbursable employer with respect to the acquiring employing unit's own payroll prior to or after the acquisition of the governmental entity's 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 department 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 department 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 department 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 department 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 department, in accordance with rules, shall notify each nonprofit organization of any determination made by the department 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 department 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 department 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 department setting forth the grounds for the application. The department 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 the entire enterprise or business of a reimbursable nonprofit organization is sold or other-

wise transferred to a subsequent employing unit and the acquiring employing unit continues to operate the enterprise or business, the acquiring employing unit shall assume the position of the reimbursable nonprofit organization with respect to the nonprofit organization's liability to pay the department for reimbursable benefits based on the nonprofit organization's payroll to the same extent as if no change in the ownership or control of the enterprise or business had occurred, whether or not the acquiring employing unit elected or elects, or was or is eligible to elect, to become a reimbursable employer with respect to the acquiring employing unit's own payroll prior to or after the acquisition of the nonprofit organization's 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 department 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 department shall establish a group account for the employers effective as of the beginning of the calendar quarter in which the department 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 department 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 department 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 department 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 in-

terest for that calendar quarter, the department 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 department 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 department 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 department 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 department 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 department 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 department shall adopt rules prescribing the manner in which the surcharge will be collected. Interest shall accrue on all unpaid sur-

charges 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 department only upon appropriation by the general assembly and only for personnel and nonpersonnel costs of rural and satellite departmental offices in population centers of less than twenty thousand or for the department-approved training fund funded in section 8, subsection 2, of 1988 Iowa Acts, chapter 1274.

d. This subsection is repealed July 1, 2001, and the repeal is applicable to contribution rates for calendar year 2002 and subsequent calendar years.

99 Acts, ch 5, §1
Subsection 2, paragraph b, unnumbered paragraph 1 amended

96.9 Unemployment compensation fund.

1. *Establishment and control.* There is hereby established as a special fund, separate and apart from all public moneys or funds of this state, an unemployment compensation fund, which shall be administered by the department exclusively for the purposes of this chapter. This fund shall consist of:

a. All contributions collected under this chapter,

b. Interest earned upon any moneys in the fund,

c. Any property or securities acquired through the use of moneys belonging to the fund,

d. All earnings of such property or securities, and

e. All money credited to this state's account in the unemployment trust fund pursuant to section 903 of the Social Security Act [42 USC § 501 to 503, 1103 to 1105, 1321 to 1324]. All moneys in the unemployment compensation fund shall be mingled and undivided.

2. *Accounts and deposits.* The state treasurer shall be ex officio treasurer and custodian of the fund and shall administer such fund in accordance with the directions of the department. The director of revenue and finance shall issue warrants upon the fund pursuant to the order of the department and such warrants shall be paid from the fund by the treasurer. The treasurer shall maintain within the fund three separate accounts:

a. A clearing account.

b. An unemployment trust fund account.

c. A benefit account.

All moneys payable to the unemployment compensation fund and all interest and penalties on delinquent contributions and reports shall, upon receipt thereof by the department, be forwarded to

the treasurer who shall immediately deposit them in the clearing account, but the interest and penalties on delinquent contributions and reports shall not be deemed to be a part of the fund. Refunds of contributions payable pursuant to section 96.14 shall be paid by the treasurer from the clearing account upon warrants issued by the director of revenue and finance under the direction of the department. After clearance thereof, all other moneys in the clearing account, except interest and penalties on delinquent contributions and reports, shall be immediately deposited with the secretary of the treasury of the United States to the credit of the account of this state in the unemployment trust fund, established and maintained pursuant to section 904 of the Social Security Act as amended, any provisions of law in this state relating to the deposit, administration, release or disbursement of moneys in the possession or custody of this state to the contrary notwithstanding. Interest and penalties on delinquent contributions and reports collected from employers shall be transferred from the clearing account to the special employment security contingency fund. The benefit account shall consist of all moneys requisitioned from this state's account in the unemployment trust fund for the payment of benefits. Except as herein otherwise provided, moneys in the clearing and benefit account may be deposited by the treasurer, under the direction of the department, in any bank or public depository in which general funds of the state may be deposited, but no public deposit insurance charge or premium shall be paid out of the fund. The treasurer shall give a separate bond conditioned upon the faithful performance of the treasurer's duties as custodian of the fund in an amount fixed by the governor and in form and manner prescribed by law. Premiums for said bond shall be paid from the administration fund.

Interest paid upon the moneys deposited with the secretary of the treasury of the United States shall be credited to the unemployment compensation fund.

3. *Withdrawals.* Moneys shall be requisitioned from this state's account in the unemployment trust fund solely for the payment of benefits and in accordance with regulations prescribed by the department, except that money credited to this state's account pursuant to section 903 of the Social Security Act may, subject to the conditions prescribed in subsection 4 of this section, be used for the payment of expenses incurred for the administration of this chapter. The department shall from time to time requisition from the unemployment trust fund such amounts, not exceeding the amounts standing to the account of this state therein, as the department deems necessary for the payment of benefits for a reasonable future period. Upon receipt thereof the treasurer shall deposit such moneys in the benefit account, and shall disburse such moneys upon warrants drawn by the di-

rector of revenue and finance pursuant to the order of the department for the payment of benefits solely from such benefit account. Expenditures of such moneys from the benefit account and refunds from the clearing account shall not be subject to any provisions of law requiring specific appropriations or other formal release by state officers of money in their custody. All warrants issued by the director of revenue and finance for the payment of benefits and refunds shall bear the signature of the director of revenue and finance. Any balance of moneys requisitioned from the unemployment trust fund which remains unclaimed or unpaid in the benefit account after the expiration of the period for which such sums were requisitioned shall either be deducted from estimates for, and may be utilized for the payment of, benefits during succeeding periods, or, in the discretion of the department, shall be re-deposited with the secretary of the treasury of the United States, to the credit of this state's account in the unemployment trust fund, as provided in subsection 2 of this section.

4. *Money credited under section 903 of the Social Security Act.*

a. Money credited to the account of this state in the unemployment trust fund by the secretary of the treasury of the United States pursuant to section 903 of the Social Security Act may not be requisitioned from this state's account or used except for the payment of benefits and for the payment of expenses incurred for the administration of this chapter. Such money may be requisitioned pursuant to subsection 3 of this section for the payment of benefits. Such money may also be requisitioned and used for the payment of expenses incurred for the administration of this chapter but only pursuant to a specific appropriation by the legislature and only if the expenses are incurred and the money is requisitioned after the enactment of an appropriation law which (1) specifies the purposes for which such money is appropriated and the amounts appropriated therefor, (2) limits the period within which such money may be obligated to a period ending not more than two years after the date of the enactment of the appropriation law, and (3) limits the amount which may be obligated during a twelve-month period beginning on July 1 and ending on the next June 30 to an amount which does not exceed the amount by which the aggregate of the amounts transferred to the account of this state pursuant to section 903 of the Social Security Act exceeds the aggregate of the amounts used by this state pursuant to this chapter and charged against the amounts transferred to the account of this state during the same twelve-month period. For purposes of this subsection, amounts used by this state for administration shall be chargeable against transferred amounts at the exact time the obligation is entered into. The use of money appropriated under this subsection shall be accounted for in ac-

cordance with standards established by the United States secretary of labor.

b. Money requisitioned as provided herein for the payment of expenses of administration shall be deposited in the employment security administration fund, but, until expended, shall remain a part of the unemployment compensation fund. The treasurer of state shall maintain a separate record of the deposit, obligation, expenditure, and return of funds so deposited. Any money so deposited which either will not be obligated within the period specified by the appropriation law or remains unobligated at the end of the period, and any money which has been obligated within the period but will not be expended, shall be returned promptly to the account of this state in the unemployment trust fund.

5. *Administration expenses excluded.* Any amount credited to this state's account in the unemployment trust fund under section 903 of the Social Security Act which has been appropriated for expenses of administration pursuant to subsection 4 of this section, whether or not withdrawn from such account, shall not be deemed assets of the unemployment compensation fund for the purpose of computing contribution rates under section 96.7, subsection 3, of this chapter.

6. *Management of funds in the event of discontinuance of unemployment trust fund.* The provisions of subsections 1, 2, and 3 to the extent that they relate to the unemployment trust fund shall be operative only so long as such unemployment trust fund continues to exist and so long as the secretary of the treasury of the United States continues to maintain for this state a separate book account of all funds deposited therein by this state for benefit purposes, together with this state's proportionate share of the earnings of such unemployment trust fund, from which no other state is permitted to make withdrawals. If and when such unemployment trust fund ceases to exist, or such separate book account is no longer maintained, all moneys, properties, or securities therein, belonging to the unemployment compensation fund of this state shall be transferred to the treasurer of the unemployment compensation fund, who shall hold, invest, transfer, sell, deposit, and release such moneys, properties, or securities in a manner approved by the director, treasurer of state, and governor, in accordance with the provisions of this chapter: Provided, that such moneys shall be invested in the following readily marketable classes of securities; such securities as are authorized by the laws of the state of Iowa for the investment of trust funds. The treasurer shall dispose of securities and other properties belonging to the unemployment compensation fund only under the direction of the director, treasurer of state, and governor.

7. *Cancellation of warrants.* The director of revenue and finance, as of January 1, April 1, July

1, and October 1 of each year, shall stop payment on all warrants for the payment of benefits which have been outstanding and unredeemed by the state treasurer for six months or longer. Should the original warrants subsequently be presented for payment, warrants in lieu thereof shall be issued by the director of revenue and finance at the discre-

tion of and certification by the department.

For federal fiscal years beginning October 1, 1999, October 1, 2000, and October 1, 2001, federal Social Security Act fund credits shall be used solely for the administration of the unemployment program; expenditure shall not require a specific appropriation; 99 Acts, ch 5, §2

Appropriation of moneys credited under section 903 of the Social Security Act to department of workforce development for administration of unemployment compensation program until December 31, 2002; 99 Acts, ch 197, §17

Section not amended; footnotes added

CHAPTER 97B

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM (IPERS)

97B.53 Termination of employment — refund options.

Membership in the retirement system, and all rights to the benefits under the system, will cease upon a member's termination of employment with the employer prior to the member's retirement, other than by death, and upon receipt by the member of the member's accumulated contributions.

1. Upon the termination of employment with the employer prior to retirement other than by death of a member, the accumulated contributions by the member and, for a vested member, the accumulated employer contributions for the vested member at the date of the termination may be paid to the member upon application, except as provided in subsections 2, 5, and 6. For the purpose of this subsection, the "*accumulated employer contributions*" is an amount equal to the total obtained as of any date, by accumulating each individual contribution by the employer for the member with interest plus interest dividends as provided in section 97B.70, 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, compounded as provided in section 97B.70 multiplied by a fraction of years of service for that member as defined in section 97B.49A, 97B.49B, or 97B.49C.

2. If a vested member's employment is terminated prior to the member's retirement, other than by death, the member may receive a monthly retirement allowance commencing on the first day of the month in which the member attains the age of sixty-five years, if the member is then alive, or, if the member so elects in accordance with section 97B.47, commencing on the first day of the month in which the member attains the age of fifty-five or any month thereafter prior to the date the member attains the age of sixty-five years, and continuing on the first day of each month thereafter during the member's lifetime, provided the member does not receive prior to the date the member's retirement allowance is to commence a refund of accumulated contributions under any of the provisions of this chapter. The amount of each such monthly retirement allowance shall be determined as provided in

either sections 97B.49A through 97B.49G, or in section 97B.50, whichever is applicable.

3. The accumulated contributions account of a terminated, vested member shall be credited with interest, including interest dividends, in the manner provided in section 97B.70.

4. A terminated, vested member has the right, prior to the commencement of the member's retirement allowance, to receive a refund of the member's accumulated contributions, and in the event of the death of the member prior to the commencement of the member's retirement allowance and prior to the receipt of any such refund the benefits of subsection 1 of section 97B.52 shall be paid.

5. A member has not terminated employment if the member accepts other covered employment within thirty days.

5A. Within sixty days after a member has been issued payment for a refund of the member's accumulated contributions, the member may repay the accumulated contributions plus interest that would have accrued, as determined by the department, and receive credit for membership service for the period covered by the refund payment.

5B. A member who does not withdraw the member's accumulated contributions upon termination of employment may at any time request the return of the member's accumulated contributions, but if the member receives a return of contributions the member has waived all claims for any other benefits and membership rights from the fund.

6. The system is under no obligation to maintain the accumulated contribution account of a member who terminates covered employment prior to December 31, 1998, if the member was not vested at the time of termination. A person who made contributions to the abolished system, who is entitled to a refund in accordance with the provisions of this chapter, and who has not claimed and received such a refund prior to January 1, 1964, shall, if the person makes a claim for refund after January 1, 1964, be required to submit proof satisfactory to the department of the person's entitlement to the refund. The department is under no ob-

ligation to maintain the contribution accounts of such persons after January 1, 1964.

7. Any member whose employment is terminated may elect to leave the member's accumulated contributions in the retirement fund.

8. If an employee hired to fill a permanent position terminates the employee's employment within six months from the date of employment, the employer may file a claim with the department for a refund of the funds contributed to the department by the employer for the employee.

98 Acts, ch 1183, §57, 78

1998 amendment to subsection 1 effective July 1, 1999; 98 Acts, ch 1183, §78

Subsection 1 amended

97B.73A Part-time county attorneys.

1. A part-time county attorney may elect in writing to the department to make 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 applicable period of service as a part-time county attorney for which contributions are made. A member making contributions pursuant to this section may make the contributions either for the entire applicable period of service, or for portions of the period of service, and if contributions are made for portions of the period of service, the contributions shall be in increments of one or more calendar quarters.

2. The contributions required to be made for purposes of this section shall be determined as follows:

a. For a member making contributions for a purchase of additional service prior to July 1, 1999, the contributions paid by the member shall be equal to the accumulated contributions, as defined in section 97B.1A, subsection 2, for the applicable period of membership service. A member who elects to make contributions pursuant to this paragraph shall notify the applicable 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 the applicable period of service.

b. For a member making contributions for a purchase of additional service on or after July 1, 1999, the member shall make contributions in an amount equal to forty percent of the actuarial cost of the service purchase. Upon notification of the applicable county board of supervisors of the member's election, the county board of supervisors shall pay to the department an amount sufficient to pay sixty percent of the actuarial cost of the service purchase by a member pursuant to this paragraph. For purposes of this paragraph, the actuarial cost of the service purchase is an amount determined by the department in accordance with actuarial tables, as reported to the department by the system's actuary, which reflects the actuarial cost necessary to fund an increased retirement allowance resulting from the purchase of additional service.

3. 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.

4. 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.

99 Acts, ch 96, §9

Subsection 1 amended

CHAPTER 99E

IOWA LOTTERY

99E.9 Duties of the board and commissioner — contracts — rules.

1. The board and the commissioner shall supervise the lottery in order to produce the maximum amount of net revenues for the state in a manner which maintains the dignity of the state and the general welfare of the people.

2. Subject to the approval of the board, the commissioner may enter into contracts for the operation and marketing of the lottery, except that the board may by rule designate classes of contracts other than major procurements which do not require prior approval by the board. A major procurement shall be as the result of competitive bid-

ding with the contract being awarded to the responsible vendor submitting the lowest and best proposal. However, before a contract for a major procurement is awarded, the division of criminal investigation of the department of public safety shall conduct a thorough background investigation of the vendor, any parent or subsidiary corporation of the vendor, all shareholders of five percent or more interest of the vendor or parent or subsidiary corporation of the vendor, and all officers and directors of the vendor or parent or subsidiary corporation of the vendor to whom the contract is to be awarded. The vendor shall submit to the division of criminal investigation appropriate investigation

authorizations to facilitate this investigation. A contract for a major procurement awarded or entered into by the commissioner with an individual or business organization shall require that individual or business organization to establish a permanent office in this state. As used in this subsection, "major procurement" means consulting agreements and the major procurement contract with a business organization for the printing of tickets, or for purchase or lease of equipment or services essential to the operation of a lottery game.

3. Except as provided in paragraph "b", the board shall make rules in accordance with chapter 17A for implementing and enforcing this chapter. The rules shall include but are not limited to the following subject matters:

a. The fees charged for a license to sell lottery tickets or shares. Revenue received by the lottery from license fees shall be transferred to the lottery fund immediately after the cost of processing license applications is deducted.

b. The types of lottery games to be conducted. Rules governing the operation of a class of games are subject to chapter 17A. However, rules governing the particular features of specific games within a class of games are not subject to chapter 17A. Such rules may include, but are not limited to, setting the name and prize structure of the game and shall be made available to the public prior to the time the games go on sale and shall be kept on file at the office of the commissioner. The board shall authorize instant lottery and on-line lotto games and may authorize the use of any type of lottery game that on May 3, 1985, has been conducted by a state lottery of another state in the United States, or any game that the board determines will achieve the revenue objectives of the lottery and is consistent with subsection 1. However, the board shall not authorize a game using an electronic computer terminal or other device if, upon winning a game, the terminal or device immediately dispenses coins or currency or a ticket, credit or token which is redeemable for cash or a prize. In a game utilizing instant tickets other than pull-tab tickets, each ticket in the game shall bear a unique consecutive serial number distinguishing it from every other ticket in the game, and each lottery number or symbol shall be accompanied by a confirming caption consisting of a repetition of a symbol or a description of the symbol in words. In the game other than an instant game which uses tangible evidence of participation, each ticket shall bear a unique serial number distinguishing it from every other ticket in the game.

c. The price of tickets or shares in the lottery, including but not limited to authorization of sales of tickets or shares at a discount for marketing purposes.

d. The number and size of the prizes on the winning tickets or shares, including but not limited to prizes of free tickets or shares in lottery games

conducted by the lottery and merchandise prizes. The lottery division shall maintain and make available for public inspection at its offices during regular business hours a detailed listing of the estimated number of prizes of each particular denomination that are expected to be awarded in any game that is on sale or the estimated odds of winning the prizes and, after the end of the claim period, shall maintain and make available a listing of the total number of tickets or shares sold in a game and the number of prizes of each denomination which were awarded.

e. The method of selecting the winning tickets or shares and the manner of payment of prizes to the holders of winning tickets or shares. The rules may provide for payment by the purchase of annuities in the case of prizes payable in installments. Lottery employees shall examine claims and shall not pay any prize for altered, stolen, or counterfeit tickets or shares nor tickets or shares which fail to meet validation rules established for a lottery game. A prize shall not be paid more than once. If the commissioner determines that more than one person is entitled to a prize, the sole remedy of the claimants is to receive an equal share in the single prize. The rules may provide for payment of prizes directly by the licensee.

f. The methods of validation of the authenticity of winning tickets or shares.

g. The frequency of selection of winning tickets or shares. Drawings shall be held in public. Drawings shall be witnessed by an independent certified public accountant. Equipment used to select winning tickets or shares or participants for prizes shall be examined by an independent certified public accountant prior to and after each public drawing.

h. Requirements for eligibility for participation in runoff drawings, including but not limited to requirements for submission of evidence of eligibility.

i. The locations at which tickets or shares may be sold. The board may authorize the sale of tickets or shares on the premises of establishments which sell or serve alcoholic beverages, wine, or beer as defined in section 123.3.

j. The method to be used in printing and selling tickets or shares. An elected official's name shall not be printed on the tickets. The overall estimated odds of winning a prize in a given game shall be printed on each ticket if the games have either pre-printed winners or fixed odds. Estimated odds of winning a prize are not required to be printed on tickets in lottery games of a pari-mutuel nature. As used in this paragraph, "games of a pari-mutuel nature" means a game in which the amount of the winnings and the odds of winning are determined by the number of participants in the game.

k. The issuing of licenses to sell tickets or shares. In addition to any other rules made regarding the qualifications of an applicant for a license, a

person shall not be issued a license unless the person meets the criteria established in section 99E.16, subsection 7.

l. The compensation to be paid licensees including but not limited to provision for variable compensation based on sales volume or incentive considerations.

m. The form and type of marketing, informational, and educational material to be permitted. Marketing material and campaigns shall include the concept of investing in Iowa's economic development and show the economic development initiatives funded from lottery revenue.

n. Subject to section 99E.10, the apportionment of the annual revenues accruing from the sale of lottery tickets or shares and from other sources for the payment of prizes to the holders of winning tickets or shares and for the following:

(1) The payment of costs incurred in the operation and administration of the lottery and the lottery division, including the expenses of the lottery and the cost resulting from contracts entered into for consulting or operational services, or for marketing.

(2) Actual and necessary expenses of all audits performed pursuant to section 99E.20, subsection 3.

(3) Incentive programs for lottery licensees and lottery employees.

(4) Payment of compensation to licensees necessary to provide for the adequate availability of tickets, shares, or services to prospective buyers and for the convenience of the public.

(5) The purchase or lease of lottery equipment, tickets, and materials.

o. Requirement that a licensee either print or stamp the licensee's name and address on the back of each instant ticket, except pull-tab tickets.

4. The board and the commissioner may enter into written agreements or compacts with another state or states or one or more political subdivisions of another state or states for the operation, marketing, and promotion of a joint lottery or joint lottery games.

5. The board may authorize the commissioner to enter into written agreements with business entities for special lottery promotions in which, incident to the special lottery games, additional prizes, including annuities, may be purchased by the business entity and transferred to the lottery division for payment to qualifying holders of lottery tickets or shares.

6. If reasonably practical when the lottery division awards a contract under subsection 2, for the lease or purchase of a machine to be used in the conducting of a lottery game including, but not limited to, a machine used in lotto, the lottery division shall give preference to awarding the contract to a responsible vendor who manufactures the machines in the state, provided the costs and benefits

to the lottery division are equal to those available from competing vendors.

If reasonably practical when the lottery division awards a contract under subsection 2, for the servicing of a machine to be used in the conducting of a lottery game including, but not limited to, a machine used in lotto, the lottery division shall give preference to a responsible vendor whose principal place of business is in Iowa, provided the costs and benefits to the lottery division are equal to those available from competing vendors.

7. In making decisions relating to the marketing or advertising of the Iowa lottery and the various games offered, the board shall give consideration to marketing or advertising through Iowa-based advertising agencies and media outlets.

8. The Iowa lottery board shall cooperate with the gambling treatment program administered by the Iowa department of public health to incorporate information regarding the gambling treatment program and its toll-free telephone number in printed materials distributed by the board.

For legislative intent regarding establishment of a licensee compliance program; see 99 Acts, ch 199, §25
Section not amended; footnote added

99E.10 Allocation and appropriation of funds generated.

1. Upon receipt of any revenue, the commissioner shall deposit the moneys in the lottery fund created pursuant to section 99E.20. As nearly as is practicable, at least fifty percent of the projected annual revenue, after deduction of the amount of the sales tax, accruing from the sale of tickets or shares is appropriated for payment of prizes to the holders of winning tickets. After the payment of prizes, all of the following shall be deducted from lottery revenue prior to disbursement:

a. An amount equal to three-tenths of one percent of the gross lottery revenue shall be deposited in a gambling treatment fund in the office of the treasurer of 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 responsibility

ties 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.

Lottery revenue remaining after expenses are determined shall be transferred to the general fund of the state on a monthly basis. 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 general fund of the state, 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 general fund of the state in the same manner as other lottery revenue.

2. The director of management shall not include lottery revenues in the director's fiscal year revenue estimates.

99 Acts, ch 201, §9; 99 Acts, ch 208, §2, 3
Subsection 1, paragraph a amended
Subsection 1, unnumbered paragraph 3 amended
Subsection 2 amended

99E.20 Deposit of receipts — lottery fund — audits.

1. The board shall adopt rules for the deposit as soon as possible in the lottery fund of money received by licensees from the sale of tickets or shares less the amount of compensation, if any, authorized under section 99E.16, subsection 6. Subject to approval of the board, the commissioner may require licensees to file with the commissioner reports of receipts and transactions in the sale of tickets or shares. The reports shall be in the form and contain the information the commissioner requires.

2. A lottery fund is created in the office of the treasurer of state. The fund consists of all revenues received from the sale of lottery tickets or shares and all other moneys lawfully credited or transferred to the fund. The commissioner shall certify monthly that portion of the fund that is transferred to the general fund of the state under section 99E.10 and shall cause that portion to be transferred to the general fund of the state. The commissioner shall certify before the twentieth of each month that portion of the lottery fund resulting from the previous month's sales to be transferred to the general fund of the state.

3. The auditor of state or a certified public accounting firm appointed by the auditor shall conduct quarterly and annual audits of all accounts and transactions of the lottery and other special audits as the auditor of state, the general assembly, or the governor deems necessary. The auditor or a designee conducting an audit under this chapter shall have access and authority to examine any and all records of licensees necessary to determine compliance with this chapter and the rules adopted pursuant to this chapter.

99 Acts, ch 208, §4
Subsection 2 amended

99E.34 Appropriations — ten fiscal years. Repealed by 99 Acts, ch 208, § 5.

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 and shall only apply to those buildings, structures, and facilities subject to chapter 104A.

- 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.

99 Acts, ch 49, §1, 3
Subsection 5 amended

CHAPTER 104A

ACCESSIBILITY FOR PERSONS WITH DISABILITIES

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. However, this chapter shall not apply to a building, or to structures or facilities within the building, if the primary use of the building is to serve as a place of worship.

99 Acts, ch 49, §2, 3
Section amended

CHAPTER 123

ALCOHOLIC BEVERAGE CONTROL

123.47 Persons under legal age — penalty.

1. A person shall not sell, give, or otherwise supply alcoholic liquor, wine, or beer to any person knowing or having reasonable cause to believe that person to be under legal age.

2. A person or persons under legal age shall not purchase or attempt to purchase, or individually or jointly have alcoholic liquor, wine, or beer in their possession or control; except in the case of liquor, wine, or beer given or dispensed to a person under legal age within a private home and with the knowledge, presence, and consent of the parent or guardian, for beverage or medicinal purposes or as administered to the person by either a physician or dentist for medicinal purposes and except to the extent that a person under legal age may handle alcoholic beverages, wine, and beer during the regular course of the person's employment by a liquor control licensee, or wine or beer permittee under this chapter.

3. A person who is under legal age, other than a licensee or permittee, who violates this section regarding the purchase of or attempt to purchase alcoholic liquor, wine, or beer, or possessing or having control of alcoholic liquor, wine, or beer, commits a simple misdemeanor punishable by a fine of one

hundred dollars for the first offense. A second or subsequent offense shall be a simple misdemeanor punishable by a fine of two hundred dollars and the suspension of the person's motor vehicle operating privileges for a period not to exceed one year. The court may, in its discretion, order the person who is under legal age to perform community service work under section 909.3A, of an equivalent value to the fine imposed under this section. However, if the person who commits the violation of this section is under the age of eighteen, the matter shall be disposed of in the manner provided in chapter 232.

4. Except as otherwise provided in subsections 5 and 6, a person who is of legal age, other than a licensee or permittee, who sells, gives, or otherwise supplies alcoholic liquor, wine, or beer to a person who is under legal age in violation of this section commits a serious misdemeanor punishable by a minimum fine of five hundred dollars.

5. A person who is of legal age, other than a licensee or permittee, who sells, gives, or otherwise supplies alcoholic liquor, wine, or beer to a person who is under legal age in violation of this section which results in serious injury to any person commits an aggravated misdemeanor.

6. A person who is of legal age, other than a licensee or permittee, who sells, gives, or otherwise supplies alcoholic liquor, wine, or beer to a person who is under legal age in violation of this section which results in the death of any person commits a class “D” felony.

99 Acts, ch 153, §1
Subsection 3 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. Civil penalties imposed and collected by the division shall be credited to the general fund of the state. The moneys from the civil penalties shall be used by the division, subject to appropriation by the general assembly, 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.

99 Acts, ch 199, §32
Subsection 5 amended

CHAPTER 124

CONTROLLED SUBSTANCES

124.101 Definitions.

As used in this chapter:

1. “Administer” means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:

a. A practitioner, or in the practitioner’s presence, by the practitioner’s authorized agent; or

b. The patient or research subject at the direction and in the presence of the practitioner.

Nothing contained in this chapter shall be construed to prevent a physician, dentist, podiatric physician, or veterinarian from delegating the administration of controlled substances under this chapter to a nurse, intern, or other qualified individual or, as to veterinarians, to an orderly or assistant, under the veterinarian’s direction and supervision; all pursuant to rules adopted by the board.

2. “Agent” means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. It does not include a common or contract carrier, public warehouse, or employee of the carrier or warehouse.

3. “Board” means the state board of pharmacy examiners.

4. “Bureau” means the bureau of narcotics and dangerous drugs, United States department of justice, or its successor agency.

5. “Controlled substance” means a drug, substance, or immediate precursor in schedules I through V of division II of this chapter.

6. “Counterfeit substance” means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other

than the person who in fact manufactured, distributed, or dispensed the substance.

7. “*Deliver*” or “*delivery*” means the actual, constructive, or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship.

8. “*Department*” means the department of public safety of the state of Iowa.

9. “*Dispense*” means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery.

10. “*Dispenser*” means a practitioner who dispenses.

11. “*Distribute*” means to deliver other than by administering or dispensing a controlled substance.

12. “*Distributor*” means a person who distributes.

13. “*Drug*” means:

a. Substances recognized as drugs in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them;

b. Substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or animals;

c. Substances, other than food, intended to affect the structure or any function of the human body or animals; and

d. Substances intended for use as a component of any article specified in paragraph “a”, “b”, or “c” of this subsection. It does not include devices or their components, parts, or accessories.

14. “*Immediate precursor*” means a substance which the board has found to be and by rule designates as being the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit manufacture.

15. “*Isomer*” means the optical isomer, except as used in section 124.204, subsection 4, section 124.204, subsection 9, paragraph “b”, and section 124.206, subsection 2, paragraph “d”. As used in section 124.204, subsection 4, and section 124.204, subsection 9, paragraph “b”, “*isomer*” means the optical, positional, or geometric isomer. As used in section 124.206, subsection 2, paragraph “d”, “*isomer*” means the optical or geometric isomer.

16. “*Manufacture*” means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly or by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or re-

packaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation, compounding, packaging, or labeling of a controlled substance:

a. By a practitioner as an incident to administering or dispensing of a controlled substance in the course of the practitioner’s professional practice, or

b. By a practitioner, or by an authorized agent under the practitioner’s supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale.

17. “*Marijuana*” means all parts of the plants of the genus *cannabis*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin, including tetrahydrocannabinols. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil or cake or the sterilized seed of the plant which is incapable of germination.

18. “*Narcotic drug*” means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

a. Opium, opiates, derivatives of opium and opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation. Such term does not include the isoquinoline alkaloids of opium.

b. Poppy straw and concentrate of poppy straw.

c. Opium poppy.

d. Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in paragraphs “a” through “c”.

19. “*Opiate*” means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under section 124.201, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms.

20. “*Opium poppy*” means the plant of the species *Papaver somniferum* L., except its seeds.

21. “*Person*” means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

22. “*Poppy straw*” means all parts, except the seeds, of the opium poppy, after mowing.

23. “*Practitioner*” means either:

a. A physician, dentist, podiatric physician, veterinarian, scientific investigator or other person licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research in this state.

b. A pharmacy, hospital or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research in this state.

24. "Production" includes the manufacture, planting, cultivation, growing, or harvesting of a controlled substance.

25. "Simulated controlled substance" means a substance which is not a controlled substance but which is expressly represented to be a controlled substance, or a substance which is not a controlled substance but which is impliedly represented to be a controlled substance and which because of its nature, packaging, or appearance would lead a reasonable person to believe it to be a controlled substance.

26. "State," when applied to a part of the United States, includes any state, district, commonwealth, territory, insular possession, and any area subject to the legal authority of the United States of America.

27. "Ultimate user" means a person who lawfully possesses a controlled substance for the person's own use or for the use of a member of the person's household or for administering to an animal owned by the person or by a member of the person's household.

99 Acts, ch 89, §1, 2
Subsection 16, unnumbered paragraph 1 amended

124.401 Prohibited acts — manufacturers — possessors — counterfeit substances — simulated controlled substances — penalties.

1. Except as authorized by this chapter, it is unlawful for any person to manufacture, deliver, or possess with the intent to manufacture or deliver, a controlled substance, a counterfeit substance, or a simulated controlled substance, or to act with, enter into a common scheme or design with, or conspire with one or more other persons to manufacture, deliver, or possess with the intent to manufacture or deliver a controlled substance, a counterfeit substance, or a simulated controlled substance.

a. Violation of this subsection, with respect to the following controlled substances, counterfeit substances, or simulated controlled substances is a class "B" felony, and notwithstanding section 902.9, subsection 2, shall be punished by confinement for no more than fifty years and a fine of not more than one million dollars:

(1) More than one kilogram of a mixture or substance containing a detectable amount of heroin.

(2) More than five kilograms of a mixture or substance containing a detectable amount of any of the following:

(a) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed.

(b) Cocaine, its salts, optical and geometric isomers, and salts of isomers.

(c) Ecgonine, its derivatives, their salts, isomers, and salts of isomers.

(d) Methamphetamine, its salts, isomers, or salts of isomers.

(e) Amphetamine, its salts, isomers, and salts of isomers.

(f) Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subparagraph subdivisions (a) through (e).

(3) More than fifty grams of a mixture or substance described in subparagraph (2) which contains cocaine base.

(4) More than one hundred grams of phencyclidine (PCP) or one kilogram or more of a mixture or substance containing a detectable amount of phencyclidine (PCP).

(5) More than ten grams of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD).

(6) More than one thousand kilograms of a mixture or substance containing a detectable amount of marijuana.

b. Violation of this subsection with respect to the following controlled substances, counterfeit substances, or simulated controlled substances is a class "B" felony, and in addition to the provisions of section 902.9, subsection 2, shall be punished by a fine of not less than five thousand dollars nor more than one hundred thousand dollars:

(1) More than one hundred grams but not more than one kilogram of a mixture or substance containing a detectable amount of heroin.

(2) More than five hundred grams but not more than five kilograms of any of the following:

(a) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed.

(b) Cocaine, its salts, optical and geometric isomers, and salts of isomers.

(c) Ecgonine, its derivatives, their salts, isomers, and salts of isomers.

(d) Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subparagraph subdivisions (a) through (c).

(3) More than five grams but not more than fifty grams of a mixture or substance described in subparagraph (2) which contains cocaine base.

(4) More than ten grams but not more than one hundred grams of phencyclidine (PCP) or more than one hundred grams but not more than one kilogram of a mixture or substance containing a detectable amount of phencyclidine (PCP).

(5) Not more than ten grams of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD).

(6) More than one hundred kilograms but not more than one thousand kilograms of marijuana.

(7) More than five grams but not more than five kilograms of methamphetamine, its salts, isomers, or salts of isomers, or analogs of methamphetamine, or any compound, mixture, or preparation which contains any quantity or detectable amount of methamphetamine, its salts, isomers, or salts of isomers, or analogs of methamphetamine.

(8) More than five grams but not more than five kilograms of amphetamine, its salts, isomers, or salts of isomers, or any compound, mixture, or preparation which contains any quantity of detectable amount of amphetamine, its salts, isomers, and salts of isomers.

c. Violation of this subsection with respect to the following controlled substances, counterfeit substances, or simulated controlled substances is a class "C" felony, and in addition to the provisions of section 902.9, subsection 4, shall be punished by a fine of not less than one thousand dollars nor more than fifty thousand dollars:

(1) One hundred grams or less of a mixture or substance containing a detectable amount of heroin.

(2) Five hundred grams or less of any of the following:

(a) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed.

(b) Cocaine, its salts, optical and geometric isomers, and salts of isomers.

(c) Ecgonine, its derivatives, their salts, isomers, and salts of isomers.

(d) Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subparagraph subdivisions (a) through (c).

(3) Five grams or less of a mixture or substance described in subparagraph (2) which contains cocaine base.

(4) Ten grams or less of phencyclidine (PCP) or one hundred grams or less of a mixture or substance containing a detectable amount of phencyclidine (PCP).

(5) More than fifty kilograms but not more than one hundred kilograms of marijuana.

(6) Five grams or less of methamphetamine, its salts, isomers, or salts of isomers, or analogs of

methamphetamine, or any compound, mixture, or preparation which contains any quantity or detectable amount of methamphetamine, its salts, isomers, or salts of isomers, or analogs of methamphetamine.

(7) Five grams or less of amphetamine, its salts, isomers, or salts of isomers, or any compound, mixture, or preparation which contains any quantity or detectable amount of amphetamine, its salts, isomers, and salts of isomers.

(8) Any other controlled substance, counterfeit substance, or simulated controlled substance classified in schedule I, II, or III.

d. Violation of this subsection, with respect to any other controlled substances, counterfeit substances, or simulated controlled substances classified in schedule IV or V is an aggravated misdemeanor. However, violation of this subsection involving fifty kilograms or less of marijuana is a class "D" felony.

e. A person in the immediate possession or control of a firearm while participating in a violation of this subsection shall be sentenced to two times the term otherwise imposed by law, and no such judgment, sentence, or part thereof shall be deferred or suspended.

f. A person in the immediate possession or control of an offensive weapon, as defined in section 724.1, while participating in a violation of this subsection, shall be sentenced to three times the term otherwise imposed by law, and no such judgment, sentence, or part thereof shall be deferred or suspended.

2. If the same person commits two or more acts which are in violation of subsection 1 and the acts occur in approximately the same location or time period so that the acts can be attributed to a single scheme, plan, or conspiracy, the acts may be considered a single violation and the weight of the controlled substances, counterfeit substances, or simulated controlled substances involved may be combined for purposes of charging the offender.

3. It is unlawful for any person to sell, distribute, or make available any product containing ephedrine, its salts, optical isomers, salts of optical isomers, or analogs of ephedrine, or pseudoephedrine, its salts, optical isomers, salts of optical isomers, or analogs of pseudoephedrine, if the person knows, or should know, that the product may be used as a precursor to any illegal substance or an intermediary to any controlled substance. A person who violates this subsection commits a serious misdemeanor.

4. A person who possesses any product containing any of the following commits a class "D" felony, if the person possesses with the intent to use the product to manufacture any controlled substance:

a. Ephedrine, its salts, optical isomers, salts of optical isomers, or analogs of ephedrine.

b. Pseudoephedrine, its salts, optical isomers, salts of optical isomers, or analogs of pseudoephedrine.

c. Ethyl ether.

d. Anhydrous ammonia.

e. Red phosphorous.

f. Lithium.

g. Iodine.

h. Thionyl chloride.

i. Chloroform.

j. Palladium.

k. Perchloric acid.

l. Tetrahydrofuran.

m. Ammonium chloride.

n. Magnesium sulfate.

5. It is unlawful for any person knowingly or intentionally to possess a controlled substance unless such substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of the practitioner's professional practice, or except as otherwise authorized by this chapter. Any person who violates this subsection is guilty of a serious misdemeanor for a first offense. A person who commits a violation of this subsection and who has previously been convicted of violating this subsection is guilty of an aggravated misdemeanor. A person who commits a violation of this subsection and has previously been convicted two or more times of violating this subsection is guilty of a class "D" felony.

If the controlled substance is marijuana, the punishment shall be by imprisonment in the county jail for not more than six months or by a fine of not more than one thousand dollars, or by both such fine and imprisonment for a first offense. If the controlled substance is marijuana and the person has been previously convicted of a violation of this subsection in which the controlled substance was marijuana, the punishment shall be as provided in section 903.1, subsection 1, paragraph "b". If the controlled substance is marijuana and the person has been previously convicted two or more times of a violation of this subsection in which the controlled substance was marijuana, the person is guilty of an aggravated misdemeanor.

All or any part of a sentence imposed pursuant to this subsection may be suspended and the person placed upon probation upon such terms and conditions as the court may impose including the active participation by such person in a drug treatment, rehabilitation or education program approved by the court.

If a person commits a violation of this subsection, the court shall order the person to serve a term of imprisonment of not less than forty-eight hours. Any sentence imposed may be suspended, and the court shall place the person on probation upon such terms and conditions as the court may impose. If the person is not sentenced to confinement under the custody of the director of the department of corrections, the terms and conditions of probation

shall require submission to random drug testing. If the person fails a drug test, the court may transfer the person's placement to any appropriate placement permissible under the court order.

If the controlled substance is methamphetamine, its salts, isomers, or salts of its isomers, the court shall order the person to serve a term of imprisonment of not less than forty-eight hours. Any sentence imposed may be suspended, and the court shall place the person on probation upon such terms and conditions as the court may impose. The court may place the person on intensive probation. However, the terms and conditions of probation shall require submission to random drug testing. If the person fails a drug test, the court may transfer the person's placement to any appropriate placement permissible under the court order.

99 Acts, ch 12, §2, 3; 99 Acts, ch 65, §1

See §124B.9

Subsection 1, paragraph d amended

Subsection 4 amended

Subsection 5, NEW unnumbered paragraphs 4 and 5

124.401D Conspiracy to manufacture for delivery or delivery or intent or conspiracy to deliver methamphetamine to a minor.

1. It is unlawful for a person eighteen years of age or older to act with, or enter into a common scheme or design with, or conspire with one or more persons to manufacture for delivery to a person under eighteen years of age a material, compound, mixture, preparation, or substance that contains any detectable amount of methamphetamine, its salts, isomers, or salts of its isomers.

A violation of this subsection is a felony punishable under section 902.9, subsection 1. A second or subsequent violation of this subsection is a class "A" felony.

2. It is unlawful for a person eighteen years of age or older to deliver, or possess with the intent to deliver to a person under eighteen years of age, a material, compound, mixture, preparation, or substance that contains any detectable amount of methamphetamine, its salts, isomers, or salts of its isomers, or to act with, or enter into a common scheme or design with, or conspire with one or more persons to deliver or possess with the intent to deliver to a person under eighteen years of age a material, compound, mixture, preparation, or substance that contains any detectable amount of methamphetamine, its salts, isomers, or salts of its isomers.

A violation of this subsection is a felony punishable under section 902.9, subsection 1. A second or subsequent violation of this subsection is a class "A" felony.

99 Acts, ch 12, §4

NEW section

124.401E Certain penalties for manufacturing or delivery of methamphetamine.

1. If a court sentences a person for the person's first conviction for delivery or possession with in-

tent to deliver a controlled substance under section 124.401, subsection 1, paragraph “c”, and if the controlled substance is methamphetamine, its salts, isomers, or salts of its isomers, the court may suspend the sentence, and the court may order the person to complete a drug court program if a drug court has been established in the county in which the person is sentenced or order the person to be assigned to a community-based correctional facility for a period of one year or until maximum benefits are achieved, whichever is earlier.

2. If a court sentences a person for a conviction of manufacturing of a controlled substance under section 124.401, subsection 1, paragraph “c”, and if the controlled substance is methamphetamine, its salts, isomers, or salts of its isomers, the court may suspend the sentence, and the court may order the person to complete a drug court program if a drug court has been established in the county in which the person is sentenced, or order the person to be assigned to a community-based correctional facility for a period of one year or until maximum benefits are achieved, whichever is earlier.

3. If a court sentences a person for the person’s second or subsequent conviction for delivery or possession with intent to deliver a controlled substance under section 124.401, subsection 1, and the controlled substance is methamphetamine, its salts, isomers, or salts of its isomers, the court, in addition to any other authorized penalties, shall sentence the person to imprisonment in accordance with section 124.401, subsection 1, and the person shall serve the minimum period of confinement as required by section 124.413.

99 Acts, ch 12, §5

Establishment of drug court pilot programs; 99 Acts, ch 195, §3
NEW section

124.401F Prohibitions on tampering with, possessing, or transporting anhydrous ammonia or anhydrous ammonia equipment.

1. A person shall not intentionally tamper with anhydrous ammonia equipment. Tampering occurs when a person who is not authorized by the owner of anhydrous ammonia equipment uses the equipment in violation of a provision of this section. A person shall not in any manner or for any purpose sell, fill, refill, deliver, permit to be delivered, or use an anhydrous ammonia container or receptacle, including for the storage of any gas or compound, unless the person owns the container or receptacle or is authorized to do so by the owner. A person shall not possess or transport anhydrous ammonia in a container or receptacle which is not authorized by the secretary of agriculture to hold anhydrous ammonia.

2. A person violating this section commits a serious misdemeanor. In addition to the imposition of the serious misdemeanor penalty, a person shall be subject to a civil penalty of not more than one thou-

sand five hundred dollars, if the person does any of the following:

a. Intentionally tampers with anhydrous ammonia equipment.

b. Possesses or transports anhydrous ammonia in a container or receptacle which is not authorized to hold anhydrous ammonia according to rules adopted by the secretary.

3. A person tampering with anhydrous ammonia equipment in violation of this section shall not have a cause of action against the owner of the equipment, any person responsible for the installation and maintenance of the equipment, or the person lawfully selling the anhydrous ammonia for damages arising out of the tampering.

99 Acts, ch 12, §6; 99 Acts, ch 208, §48
NEW section

124.407 Gatherings where controlled substances unlawfully used — penalties.

It is unlawful for any person to sponsor, promote, or aid, or assist in the sponsoring or promoting of a meeting, gathering, or assemblage with the knowledge or intent that a controlled substance be there distributed, used or possessed, in violation of this chapter.

Any person who violates this section and where the controlled substance is any one other than marijuana is guilty of a class “D” felony.

Any person who violates this section, and where the controlled substance is marijuana only, is guilty of a serious misdemeanor.

The district court shall grant an injunction barring a meeting, gathering, or assemblage if upon hearing the court finds that the sponsors or promoters of the meeting, gathering, or assemblage have not taken reasonable means to prevent the unlawful distribution, use or possession of a controlled substance. Further injunctive relief may be granted against all persons furnishing goods or services to such meeting, gathering, or assemblage.

The district court may, upon application and a showing of one or more of the grounds provided in section 639.3, grant to the state or governmental subdivision thereof a writ of attachment, ex parte, without bond, in an amount necessary to secure the payment of any fine that may be imposed and the payment of costs. The reasonable expense to the state and governmental subdivisions thereof to provide the necessary law enforcement resulting from a meeting, gathering or assemblage held in violation of this section may be taxed as costs in the criminal action.

99 Acts, ch 135, §13

Unnumbered paragraphs 2 and 7 stricken

124.410 Accommodation offense.

In a prosecution for unlawful delivery or possession with intent to deliver marijuana, if the prosecution proves that the defendant violated the provisions of section 124.401, subsection 1, by proving that the defendant delivered or possessed with

intent to deliver one-half ounce or less of marijuana which was not offered for sale, the defendant is guilty of an accommodation offense and rather than being sentenced as if convicted for a violation of section 124.401, subsection 1, paragraph “d”, shall be sentenced as if convicted of a violation of section 124.401, subsection 5. An accommodation offense may be proved as an included offense under a charge of delivering or possessing with the intent to deliver marijuana in violation of section 124.401, subsection 1. This section does not apply to hashish, hashish oil, or other derivatives of marijuana as defined in section 124.101, subsection 17.

99 Acts, ch 67, §1
Section amended

124.502 Administrative inspections and warrants.

1. Issuance and execution of administrative inspection warrants shall be as follows:

a. A district judge or district associate judge, within the court’s jurisdiction, and upon proper oath or affirmation showing probable cause, may issue warrants for the purpose of conducting administrative inspections under this chapter or a related rule or under chapter 124A. The warrant may also permit seizures of property appropriate to the inspections. For purposes of the issuance of administrative inspection warrants, probable cause exists upon showing a valid public interest in the effective enforcement of the statute or related rules, sufficient to justify administrative inspection of the area, premises, building or conveyance in the circumstances specified in the application for the warrant.

b. A warrant shall issue only upon sworn testimony of an officer or employee of the board duly designated and having knowledge of the facts alleged, before the judicial officer, establishing the grounds for issuing the warrant. If the judicial officer is satisfied that grounds for the application exist or that there is probable cause to believe they exist, the officer shall issue a warrant identifying the area, premises, building, or conveyance to be inspected, the purpose of the inspection, and, if appropriate, the type of property to be inspected, if any.

The warrant shall:

(1) State the grounds for its issuance and the name of each person whose testimony has been taken in support thereof.

(2) Be directed to a person authorized by section 124.501 to execute it.

(3) Command the person to whom it is directed to inspect the area, premises, building, or conveyance identified for the purpose specified and, if appropriate, direct the seizure of the property specified.

(4) Identify the item or types of property to be seized, if any.

(5) Direct that it be served during normal business hours, if appropriate, and designate the judge to whom it shall be returned.

c. A warrant issued pursuant to this section must be executed and returned within ten days after its date unless, upon a showing of a need for additional time, the court so instructs otherwise in the warrant. If property is seized pursuant to a warrant, the person executing the warrant shall give to the person from whom the property is seized, or the person in charge of the premises from which the property is seized, a copy of the warrant and a receipt for the property seized or shall leave the copy and receipt at the place from which the property is seized. The return of the warrant shall be made promptly and shall be accompanied by a written inventory of any property seized. The inventory shall be made in the presence of the person executing the warrant and of the person from whose possession or premises the property was seized, if they are present, or in the presence of at least one credible person other than the person executing the warrant. A copy of the inventory shall be delivered to the person from whom or from whose premises the property was seized and to the applicant for the warrant.

d. The judicial officer who has issued a warrant under this section shall require that there be attached to the warrant a copy of the return, and of all papers filed in connection with the return, and shall file them with the clerk of the district court for the county in which the inspection was made.

2. The department may make administrative inspections of controlled premises in accordance with the following provisions:

a. For purposes of this section only, “controlled premises” means:

(1) Places where persons registered or exempted from registration requirements under this chapter are required to keep records; and

(2) Places including factories, warehouse establishments, and conveyances where persons registered or exempted from registration requirements under this chapter are permitted to hold, manufacture, compound, process, sell, deliver, or otherwise dispose of any controlled substance.

b. Whenever authorized by an administrative inspection warrant issued pursuant to subsection 1 of this section an officer or employee of the board, upon presenting the warrant and appropriate credentials to the owner, operator, or agent in charge, has the right to enter controlled premises for the purpose of conducting an administrative inspection.

c. Whenever authorized by an administrative inspection warrant, an officer or employee of the board has the right:

(1) To inspect and copy records required by this chapter to be kept;

(2) To inspect, within reasonable limits and in a reasonable manner, controlled premises and all pertinent equipment, finished and unfinished material, containers and labeling found therein, and, except as provided in paragraph “e” of this subsection, all other things therein, including records, files, papers, processes, controls, and facilities bearing on violation of this chapter; and

(3) To inventory any stock of any controlled substance therein and obtain samples of any such substance.

d. This section shall not be construed to prevent the inspection without a warrant of books and records pursuant to a subpoena issued in accordance with section 622.65, nor shall this section be construed to prevent entries and administrative inspections, including seizures of property, without a warrant:

(1) With the consent of the owner, operator, or

agent in charge of the controlled premises;

(2) In situations presenting imminent danger to health or safety;

(3) In situations involving inspection of conveyances where there is reasonable cause to believe that the mobility of the conveyance makes it impracticable to obtain a warrant;

(4) In any other exceptional or emergency circumstance where time or opportunity to apply for a warrant is lacking; and

(5) In all other situations where a warrant is not constitutionally required.

e. Except when the owner, operator, or agent in charge of the controlled premises so consents in writing, no inspection authorized by this section shall extend to financial data; sales data, other than shipment data; or pricing data.

99 Acts, ch 96, §10
Subsection 1, paragraph c amended

CHAPTER 125

CHEMICAL SUBSTANCE ABUSE

125.39 Eligible entities.

A local governmental unit which is providing funds to a facility for treatment of substance abuse may request from the facility a treatment program plan prior to authorizing payment of any claims filed by the facility. The governing body of the local governmental unit may review the plan, but shall not impose on the facility any requirement conflicting with the comprehensive treatment program of the facility.

99 Acts, ch 141, §1
Subsection 1 stricken and former subsection 2 redesignated as unnumbered paragraph 1

125.78 Procedure after application.

As soon as practical after the filing of an application for involuntary commitment or treatment, the court shall:

1. Determine whether the respondent has an attorney who is able and willing to represent the respondent in the commitment proceeding, and if not, whether the respondent is financially able to employ an attorney and capable of meaningfully assisting in selecting an attorney. In accordance with those determinations, the court shall allow the respondent to select an attorney or shall assign an attorney to the respondent. If the respondent is financially unable to pay an attorney, the county shall compensate the attorney at an hourly rate to be established by the county board of supervisors in substantially the same manner as provided in section 815.7.

2. If the application includes a request for a court-appointed attorney for the applicant and the court is satisfied that a court-appointed attorney is necessary to assist the applicant in a meaningful

presentation of the evidence, and that the applicant is financially unable to employ an attorney, the court shall appoint an attorney to represent the applicant and the county shall compensate the attorney at an hourly rate to be established by the county board of supervisors in substantially the same manner as provided in section 815.7.

3. Issue a written order:

a. Scheduling a tentative time and place for a hearing, subject to the findings of the report required under section 125.80, subsections 3 and 4, but not less than forty-eight hours after notice to the respondent, unless the respondent waives the forty-eight-hour notice requirement.

b. Requiring an examination of the respondent, prior to the hearing, by one or more licensed physicians who shall submit a written report of the examination to the court as required by section 125.80.

99 Acts, ch 135, §14
Subsections 1 and 2 amended

125.85 Custody, discharge, and termination of proceeding.

1. A respondent committed under section 125.84, subsection 2, shall remain in the custody of a facility for treatment for a period of thirty days, unless sooner discharged. The department is not required to pay the cost of any medication or procedure provided to the respondent during that period which is not necessary or appropriate to the specific objectives of detoxification and treatment of substance abuse. At the end of the thirty-day period, the respondent shall be discharged automatically unless the administrator of the facility, before expi-

ration of the period, obtains a court order for the respondent's recommitment pursuant to an application under section 125.75, for a further period not to exceed ninety days.

2. A respondent recommitted under subsection 1 who has not been discharged by the facility before the end of the ninety-day period shall be discharged at the expiration of that period unless the administrator of the facility, before expiration of the period, obtains a court order for the respondent's recommitment pursuant to an application under section 125.75, for a further period not to exceed ninety days.

3. Upon the filing of an application for recommitment under subsection 1 or 2, the court shall schedule a recommitment hearing for no later than ten days after the date the application is filed. A copy of the application, the notice of hearing, and any reports shall be served or provided in the manner and to the persons as required by sections 125.77 to 125.80, 125.83 and 125.84.

4. Following a respondent's discharge from a

facility or from treatment, the administrator of the facility shall immediately report that fact to the court which ordered the respondent's commitment or treatment. The court shall issue an order confirming the respondent's discharge from the facility or from treatment, as the case may be, and shall terminate the proceedings pursuant to which the order was issued. Copies of the order shall be sent by regular mail to the facility and the respondent.

5. A person who is placed for evaluation at a facility under section 125.83 or who is committed to a facility under section 125.84, subsection 2, shall remain at that facility unless discharged or otherwise permitted to leave by the court or administrator of the facility. If a person placed at a facility or committed to a facility leaves the facility without permission or without having been discharged, the administrator may notify the sheriff of the person's absence and the sheriff shall take the person into custody and return the person promptly to the facility.

99 Acts, ch 144, §1
Subsection 4 amended

CHAPTER 135

DEPARTMENT OF PUBLIC HEALTH

Professional licensure; pilot project utilizing scope of practice review committees; duration; review of request for establishment of licensure requirements for certified professional midwives; see 97 Acts, ch 203, §6; 99 Acts, ch 81, §1

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. However, the department may approve a request for an exception to the application of specific embalming and disposition rules adopted pursuant to this subsection if such rules would otherwise conflict with tenets and practices of a recognized religious denomination to which the deceased individual adhered or of which denomination the deceased individual was a member. The department shall inform the board of mortuary science examiners of any such approved exception which may affect services provided by a funeral director licensed pursuant to chapter 156.

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 chapter 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 and 155, 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 for, 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, homemaker-home health aide, and senior health 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. Program direction, evaluation requirements, and formula allocation procedures for each of the programs shall be established by the department by rule, consistent with 1997 Iowa Acts, chapter 203, section 5.

16. Administer chapters 125, 136A, 136C, 139, 140, 142, 144, and 147A.

17. Issue an annual report to the governor as provided in section 7E.3, subsection 4.

18. Consult with the office of statewide clinical education programs at the university of Iowa college of medicine and annually submit a report to the general assembly by January 15 verifying the number of physicians in active practice in Iowa by county who are engaged in providing obstetrical care. To the extent data are readily available, the report shall include information concerning the number of deliveries per year by specialty and county, the age of physicians performing deliveries, and the number of current year graduates of the

university of Iowa college of medicine and the university of osteopathic medicine and health sciences entering into residency programs in obstetrics, gynecology, and family practice. The report may include additional data relating to access to obstetrical services that may be available.

19. Administer the statewide maternal and child health program and the program for children with disabilities 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 conditions which may cause disabilities and children with 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 or alleged offender for the human immunodeficiency virus pursuant to sections 915.40 through 915.43. The rules shall provide for the provision of counseling, health care, and support services to the victim.

25. Establish ad hoc and advisory committees to the director in areas where technical expertise is not otherwise readily available. Members may be compensated for their actual and necessary expenses incurred in the performance of their duties. Expense moneys paid to the members shall be paid from funds appropriated to the department. A majority of the members of such a committee constitutes a quorum.

99 Acts, ch 141, §2

Duties relating to compilation and dissemination of health data; designation of state poison center; development and maintenance of statewide perinatal program; compliance report; 98 Acts, ch 1221, §5; 99 Acts, ch 201, §5
Subsection 9 amended

135.16 Special women, infants, and children supplemental food program — methamphetamine education.

As a component of the federal funding received by the department as the administering agency for the special women, infants, and children supplemental food program, from the United States department of agriculture, food and consumer service, the department shall incorporate a methamphetamine education program into its nutrition and health-related education services. The department shall be responsible for the development of the education program to be delivered, and for the selection of qualified contract agencies to deliver the instruction under the program.

99 Acts, ch 195, §8
NEW section

135.17 Repealed by 78 Acts, ch 1104, § 3.

135.22 Central registry for brain or spinal cord injuries.

1. As used in this section:

a. “*Brain injury*” means the occurrence of injury to the head not primarily related to a degenerative disease or aging process that is documented in a medical record with one or more of the following conditions attributed to the head injury:

(1) An observed or self-reported decreased level of consciousness.

(2) Amnesia.

(3) A skull fracture.

(4) An objective neurological or neuropsychological abnormality.

(5) A diagnosed intracranial lesion.

b. “*Spinal cord injury*” means the occurrence of an acute traumatic lesion of neural elements in the spinal cord including the spinal cord and cauda equina, resulting in temporary or permanent sen-

sory deficit, motor deficit, or bladder or bowel dysfunction.

2. The director shall establish and maintain a central registry of persons with brain or spinal cord injuries in order to facilitate prevention strategies and the provision of appropriate rehabilitative services to the persons by the department and other state agencies. Hospitals shall report patients who are admitted with a brain or spinal cord injury and their diagnoses to the director no later than forty-five days after the close of a quarter in which the patient was discharged. The report shall contain the name, age, and residence of the person, the date, type, and cause of the brain or spinal cord injury, and additional information as the director requires, except that where available, hospitals shall report the Glasgow coma scale. The director shall consult with health care providers concerning the availability of additional relevant information. The department shall maintain the confidentiality of all information which would identify any person named in a report. However, the identifying information may be released for bona fide research purposes if the confidentiality of the identifying information is maintained by the researchers, or the identifying information may be released by the person with the brain or spinal cord injury or by the person’s guardian or, if the person is a minor, by the person’s parent or guardian.

99 Acts, ch 141, §3
Section amended

135.22A Advisory council on brain injuries.

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

a. “*Brain injury*” means an injury to the brain* as defined in section 135.22.

b. “*Council*” means the advisory council on brain injuries.

2. The advisory council on brain injuries is established. The following persons or their designees shall serve as ex officio, nonvoting members of the council:

a. The director of public health.

b. The director of human services and any division administrators of the department of human services so assigned by the director.

c. The director of the department of education.

d. The chief of the special education bureau of the department of education.

e. The administrator of the division of vocational rehabilitation services of the department of education.

f. The director of the department for the blind.

g. The commissioner of insurance.

3. The council shall be composed of a minimum of nine members appointed by the governor in addition to the ex officio members, and the governor may appoint additional members. Insofar as practicable, the council shall include persons with brain injuries, family members of persons with brain in-

juries, representatives of industry, labor, business, and agriculture, representatives of federal, state, and local government, and representatives of religious, charitable, fraternal, civic, educational, medical, legal, veteran, welfare, and other professional groups and organizations. Members shall be appointed representing every geographic and employment area of the state and shall include members of both sexes.

4. Members of the council appointed by the governor shall be appointed for terms of two years. Vacancies on the council shall be filled for the remainder of the term of the original appointment. Members whose terms expire may be reappointed.

5. The voting members of the council shall appoint a chairperson and a vice chairperson and other officers as the council deems necessary. The officers shall serve until their successors are appointed and qualified. Members of the council shall receive actual expenses for their services. Members may also be eligible to receive compensation as provided in section 7E.6. The council shall adopt rules pursuant to chapter 17A.

6. The council shall do all of the following:

a. Promote meetings and programs for the discussion of methods to reduce the debilitating effects of brain injuries, and disseminate information in cooperation with any other department, agency, or entity on the prevention, evaluation, care, treatment, and rehabilitation of persons affected by brain injuries.

b. Study and review current prevention, evaluation, care, treatment, and rehabilitation technologies and recommend appropriate preparation, training, retraining, and distribution of personnel and resources in the provision of services to persons with brain injuries through private and public residential facilities, day programs, and other specialized services.

c. Participate in developing and disseminating criteria and standards which may be required for future funding or licensing of facilities, day programs, and other specialized services for persons with brain injuries in this state.

d. Make recommendations to the governor for developing and administering a state plan to provide services for persons with brain injuries.

e. Meet at least quarterly.

7. The council is assigned to the department for administrative purposes. The director shall be responsible for budgeting, program coordination, and related management functions.

8. The council may receive gifts, grants, or donations made for any of the purposes of its programs and disburse and administer them in accordance with their terms and under the direction of the director.

99 Acts, ch 141, §4

For definition of "brain injury" for purposes of recognition as a disability, see also §225C.23

*Defined term in §135.22 is "brain injury"; corrective legislation is pending

Section amended

135.101 Childhood lead poisoning prevention program.

There is established a childhood lead poisoning prevention program within the Iowa department of public health. The department shall implement and review programs necessary to eliminate potentially dangerous toxic lead levels in children in Iowa in a year for which funds are appropriated to the department for this purpose.

99 Acts, ch 141, §5
Section amended

135.102 Rules.

The department shall adopt rules, pursuant to chapter 17A, regarding the:

1. Implementation of the grant program pursuant to section 135.103.

2. Maintenance of laboratory facilities for the childhood lead poisoning prevention program.

3. Maximum blood lead levels in children living in targeted rental dwelling units.

4. Standards and program requirements of the grant program pursuant to section 135.103.

5. Prioritization of proposed childhood lead poisoning prevention programs, based on the geographic areas known with children identified with elevated blood lead level resulting from surveys completed by the department.

99 Acts, ch 141, §6
Subsections 2 and 5 amended

135.103 Grant program.

The department shall implement a childhood lead poisoning prevention grant program which provides matching funds to local boards of health or cities for the program after standards and requirements for the local program are developed. The state shall provide funds to approved programs on the basis of three dollars for each one dollar designated by the local board of health or city for the program for the first two years of a program, and funds on the basis of one dollar for each one dollar designated by the local board of health or city for the program for the third and subsequent years of the program if such funding is determined necessary by the department for such subsequent years.

99 Acts, ch 141, §7
Section amended

135.104 Requirements.

The program by a local board of health or city receiving matching funding for an approved childhood lead poisoning prevention grant program shall include:

1. A public education program about lead poisoning and dangers of lead poisoning to children.

2. An effective outreach effort to ensure availability of services in the predicted geographic area.

3. A screening program for children, with emphasis on children less than five years of age.

4. Access to laboratory services for lead analysis.

- 5. A program of referral of identified children for assessment and treatment.
- 6. An environmental assessment of suspect dwelling units.
- 7. Surveillance to ensure correction of the identified hazardous settings.
- 8. A plan of intent to continue the program on a maintenance basis after the grant is discontinued.

99 Acts, ch 141, §8, 9
 Unnumbered paragraph 1 and subsection 7 amended

135.105 Department duties.

The department shall:

- 1. Coordinate the childhood lead poisoning prevention program with the department of natural resources, the University of Iowa poison control program, the mobile and regional child health speciality clinics, and any agency or program known for a direct interest in lead levels in the environment.
- 2. Survey geographic areas not included in the grant program pursuant to section 135.103 periodically to determine prioritization of such areas for future grant programs.

99 Acts, ch 141, §10
 Subsection 1 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, podiatric physicians, osteopaths, osteopathic surgeons, dentists, certified health service providers in psychology, physician assistants, or advanced registered nurse practitioners licensed under chapter 148, 148C, 149, 150, 150A, 152, 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 postsecondary 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. The rules shall not prohibit a hospital from limiting, restricting, or revoking clinical privileges of a practitioner for violation of hospital rules, regulations, or procedures established under this para-

graph, when applied in good faith and in a nondiscriminatory manner. This paragraph shall not 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. This section shall not 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; and 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 responding to the needs of patients who are victims of domestic abuse, as defined in section 236.2.

99 Acts, ch 42, §1
 Unnumbered paragraph 2 amended

CHAPTER 135C

HEALTH CARE FACILITIES

135C.2 Purpose — rules — special classifications — protection and advocacy agency.

1. The purpose of this chapter is to promote and encourage adequate and safe care and housing for individuals who are aged or who, regardless of age, are infirm, convalescent, or mentally or physically dependent, by both public and private agencies by providing for the adoption and enforcement of rules and standards:

a. For the housing, care, and treatment of individuals in health care facilities, and

b. For the location, construction, maintenance, renovation, and sanitary operation of such health care facilities which will promote safe and adequate care of individuals in such homes so as to further the health, welfare, and safety of such individuals.

2. Rules and standards prescribed, promulgated, and enforced under this chapter shall not be arbitrary, unreasonable, or confiscatory and the department or agency prescribing, promulgating, or enforcing such rules or standards shall have the burden of proof to establish that such rules or standards meet such requirements and are consistent with the economic problems and conditions involved in the care and housing of persons in health care facilities.

3. *a.* The department shall establish by administrative rule the following special classifications:

(1) Within the residential care facility category, a special license classification for residential facilities intended to serve persons with mental illness.

(2) Within the nursing facility category, a special license classification for nursing facilities which designate and dedicate the facility or a special unit within the facility to provide care for persons who suffer from chronic confusion or a dementing illness. A nursing facility which designates and dedicates the facility or a special unit within the facility for the care of persons who suffer from chronic confusion or a dementing illness shall be specially licensed. For the purposes of this subsection, “*designate*” means to identify by a distinctive title or label and “*dedicate*” means to set apart for a definite use or purpose and to promote that purpose.

b. The department may also establish by administrative rule special classifications within the residential care facility, intermediate care facility for persons with mental illness, intermediate care facility for persons with mental retardation, or nursing facility categories, for facilities intended to serve individuals who have special health care problems or conditions in common. Rules establishing a special classification shall define the

problem or condition to which the special classification is relevant and establish requirements for an approved program of care commensurate with the problem or condition. The rules may grant special variances or considerations to facilities licensed within the special classification.

c. The rules adopted for intermediate care facilities for persons with mental retardation shall be consistent with, but no more restrictive than, the federal standards for intermediate care facilities for persons with mental retardation established pursuant to the federal Social Security Act, § 1905(c)(d), as codified in 42 U.S.C. § 1396d, in effect on January 1, 1989. However, in order to be licensed the state fire marshal must certify to the department an intermediate care facility for persons with mental retardation as meeting the applicable provisions of either the health care occupancies chapter or the residential board and care chapter of the life safety code of the national fire protection association, 1985 edition. The department shall adopt additional rules for intermediate care facilities for persons with mental retardation pursuant to section 135C.14, subsection 8.

d. Notwithstanding the limitations set out in this subsection regarding rules for intermediate care facilities for persons with mental retardation, the department shall consider the federal interpretive guidelines issued by the federal health care financing administration when interpreting the department’s rules for intermediate care facilities for persons with mental retardation. This use of the guidelines is not subject to the rulemaking provisions of sections 17A.4 and 17A.5, but the guidelines shall be published in the Iowa administrative bulletin and the Iowa administrative code.

4. The protection and advocacy agency designated in the state, under Pub. L. No. 98-527, the Developmental Disabilities Act of 1984, Pub. L. No. 99-319, the Protection and Advocacy for Mentally Ill Individuals Act of 1986, and Pub. L. No. 100-146, the federal Developmental Disabilities Assistance and Bill of Rights Act Amendments of 1987, is recognized as an agency legally authorized and constituted to ensure the implementation of the purposes of this chapter for populations under its authority and in the manner designated by Pub. L. No. 98-527, Pub. L. No. 99-319, and Pub. L. No. 100-146 and in the assurances of the governor of the state.

5. The department shall establish a special classification within the residential care facility category in order to foster the development of residential care facilities which serve persons with mental retardation, chronic mental illness, a developmental disability, or brain injury, as described under section 225C.26, and which contain five or

fewer residents. A facility within the special classification established pursuant to this subsection is exempt from the requirements of section 135.63. The department shall adopt rules which are consistent with rules previously developed for the waiver demonstration project pursuant to 1986 Iowa Acts, chapter 1246, section 206, and which include all of the following provisions:

a. A facility provider under the special classification must comply with rules adopted by the department for the special classification. However, a facility provider which has been accredited by the accreditation council for services to persons with mental retardation and other developmental disabilities shall be deemed to be in compliance with the rules adopted by the department.

b. A facility must be located in an area zoned for single or multiple-family housing or in an unincorporated area and must be constructed in compliance with applicable local requirements and the rules adopted for the special classification by the state fire marshal in accordance with the concept of the least restrictive environment for the facility residents. Local requirements shall not be more restrictive than the rules adopted for the special classification by the state fire marshal and the state building code requirements for single or multiple-family housing.

c. Facility provider plans for the facility's accessibility to residents must be in place.

d. A written plan must be in place which documents that a facility meets the needs of the facility's residents pursuant to individual program plans developed according to age appropriate and least restrictive program requirements.

e. A written plan must be in place which documents that a facility's residents have reasonable access to employment or employment-related training, education, generic community resources, and integrated opportunities to promote interaction with the community.

f. The facilities licensed under this subsection shall be eligible for funding utilized by other licensed residential care facilities for persons with mental retardation, or licensed residential care facilities for persons with mental illness, including but not limited to funding under or from the federal social services block grant, the state supplementary assistance program, state mental health and developmental disabilities services funds, and county funding provisions.

6. a. This chapter shall not apply to adult day care services provided in a health care facility. However, adult day care services shall not be provided by a health care facility to persons requiring a level of care which is higher than the level of care the facility is licensed to provide.

b. The level of care certification provisions pursuant to sections 135C.3 and 135C.4, the license application and fee provisions pursuant to section 135C.7, and the involuntary discharge provisions

pursuant to section 135C.14, subsection 8, shall not apply to respite care services provided in a health care facility. However, respite care services shall not be provided by a health care facility to persons requiring a level of care which is higher than the level of care the facility is licensed to provide.

c. The department shall adopt rules to implement this subsection.

7. The rules adopted by the department regarding nursing facilities shall provide that a nursing facility may choose to be inspected either by the department or by the joint commission on accreditation of health care organizations. The rules regarding acceptance of inspection by the joint commission on accreditation of health care organizations shall include recognition, in lieu of inspection by the department, of comparable inspections and inspection findings of the joint commission on accreditation of health care organizations, if the department is provided with copies of all requested materials relating to the inspection process.

99 Acts, ch 141, §11

Subsection 7 is effective contingent upon passage of federal legislation; see 96 Acts, ch 1053, §3

Subsection 5, paragraph b amended

135C.6 License required — exemptions.

1. A person or governmental unit acting severally or jointly with any other person or governmental unit shall not establish or operate a health care facility in this state without a license for the facility. A supported community living service, as defined in section 225C.21, is not required to be licensed under this chapter, but is subject to approval under section 225C.21 in order to receive public funding.

2. A health care facility suitable for separation and operation with distinct parts may, where otherwise qualified in all respects, be issued multiple licenses authorizing various parts of such facilities to be operated as health care facilities of different license categories.

3. No change in a health care facility, its operation, program, or services, of a degree or character affecting continuing licensability shall be made without prior approval thereof by the department. The department may by rule specify the types of changes which shall not be made without its prior approval.

4. No department, agency, or officer of this state or of any of its political subdivisions shall pay or approve for payment from public funds any amount or amounts to a health care facility under any program of state aid in connection with services provided or to be provided an actual or prospective resident in a health care facility, unless the facility has a current license issued by the department and meets such other requirements as may be in effect pursuant to law.

5. No health care facility established and operated in compliance with law prior to January 1,

1976, shall be required to change its corporate or business name by reason of the definitions prescribed in section 135C.1, provided that no health care facility shall at any time represent or hold out to the public or to any individual that it is licensed as, or provides the services of, a health care facility of a type offering a higher grade of care than such health care facility is licensed to provide. Any health care facility which, by virtue of this section, operates under a name not accurately descriptive of the type of license which it holds shall clearly indicate in any printed advertisement, letterhead, or similar material, the type of license or licenses which it has in fact been issued. No health care facility established or renamed after January 1, 1976, shall use any name indicating that it holds a different type of license than it has been issued.

6. A health care facility operated by and for the exclusive use of members of a religious order, which does not admit more than two individuals to the facility from the general public, may be operated without obtaining a license under this chapter and shall not be deemed to be licensed by the state.

7. A freestanding hospice facility which operates a hospice program in accordance with 42 C.F.R. § 418 may be operated without obtaining a license under this chapter and shall not be deemed to be licensed by the state.

8. The following residential programs to which the department of human services applies accreditation, certification, or standards of review shall not be required to be licensed as a health care facility under this chapter:

a. A residential program which provides care to not more than four individuals and receives moneys appropriated to the department of human services under provisions of a federally approved home and community-based services waiver for persons with mental retardation or other medical assistance program under chapter 249A. In approving a residential program under this paragraph, the department of human services shall consider the geographic location of the program so as to avoid an overconcentration of such programs in an area. In order to be approved under this paragraph, a residential program shall not be required to involve the conversion of a licensed residential care facility for persons with mental retardation.

b. A total of forty residential care facilities for persons with mental retardation which are licensed to serve no more than five individuals may be authorized by the department of human services to convert to operation as a residential program under the provisions of a medical assistance home and community-based services waiver for persons with mental retardation. A converted residential program is subject to the conditions stated in paragraph "a" except that the program shall not serve more than five individuals. The department of human services shall allocate conversion authoriza-

tions to provide for eight conversions in each of the department's five service regions.

9. Contingent upon the department of human services receiving federal approval, a residential program which serves not more than eight individuals and is licensed as an intermediate care facility for persons with mental retardation may surrender the facility license and continue to operate under a federally approved medical assistance home and community-based services waiver for persons with mental retardation, if the department of human services has approved a plan submitted by the residential program.

10. Notwithstanding section 135C.9, nursing facilities which are accredited by the joint commission on accreditation of health care organizations shall be licensed without inspection by the department, if the nursing facility has chosen to be inspected by the joint commission on accreditation of health care organizations in lieu of inspection by the department.

99 Acts, ch 160, §17

Subsection 10 is effective contingent upon passage of federal legislation; see 96 Acts, ch 1053, §3

Subsection 8, paragraphs a and b amended

135C.11 Notice — hearings.

1. The denial, suspension, or revocation of a license shall be effected by delivering to the applicant or licensee by certified mail or by personal service of a notice setting forth the particular reasons for such action. Such denial, suspension, or revocation shall become effective thirty days after the mailing or service of the notice, unless the applicant or licensee, within such thirty-day period, shall give written notice to the department requesting a hearing, in which case the notice shall be deemed to be suspended. If a hearing has been requested, the applicant or licensee shall be given an opportunity for a prompt and fair hearing before the department. At any time at or prior to the hearing the department may rescind the notice of the denial, suspension, or revocation upon being satisfied that the reasons for the denial, suspension, or revocation have been or will be removed. On the basis of any such hearing, or upon default of the applicant or licensee, the determination involved in the notice may be affirmed, modified, or set aside by the department. A copy of such decision shall be sent by certified mail, or served personally upon the applicant or licensee. The applicant or licensee may seek judicial review pursuant to section 135C.13.

2. The procedure governing hearings authorized by this section shall be in accordance with the rules promulgated by the department. A full and complete record shall be kept of all proceedings, and all testimony shall be reported but need not be transcribed unless judicial review is sought pursuant to section 135C.13. Copies of the transcript may be obtained by an interested party upon pay-

ment of the cost of preparing the copies. Witnesses may be subpoenaed by either party and shall be allowed fees at a rate prescribed by the department's rules. The director may, after advising the resident advocate committee established pursuant to section 135C.25, either proceed in accordance with section 135C.30, or remove all residents and suspend the license or licenses of any health care facility, prior to a hearing, when the director finds that the health or safety of residents of the health care facility requires such action on an emergency basis. The fact that no resident advocate committee has been appointed for a particular facility shall not bar the director from exercising the emergency powers granted by this subsection with respect to that facility.

99 Acts, ch 129, §1
Subsection 2 amended

135C.12 Conditional operation.

If the department has the authority under section 135C.10 to deny, suspend or revoke a license, the department or director may, as an alternative to those actions:

1. Apply to the district court of the county in which the licensee's health care facility is located for appointment by the court of a receiver for the facility pursuant to section 135C.30.

2. Conditionally issue or continue a license dependent upon the performance by the licensee of reasonable conditions within a reasonable period of time as set by the department so as to permit the licensee to commence or continue the operation of the health care facility pending full compliance with this chapter or the regulations or minimum standards promulgated under this chapter. If the licensee does not make diligent efforts to comply with the conditions prescribed, the department may, under the proceedings prescribed by this chapter, suspend or revoke the license. No health care facility shall be operated on a conditional license for more than one year.

3. The department, in evaluating corrections of deficiencies in a facility in receivership or operating on a conditional license, may determine what is satisfactory compliance, provided that in so doing it shall employ established criteria which shall be uniformly applied to all facilities of the same license category.

For legislative intent regarding imposition of a conditional license if failure of full compliance will result in single class I citation that is not an immediate jeopardy, see 99 Acts, ch 199, §10

Section not amended; footnote added

135C.13 Judicial review.

Judicial review of any action of the director may be sought in accordance with the terms of the Iowa administrative procedure Act. Notwithstanding the terms of said Act, petitions for judicial review may be filed in the district court of the county where the facility or proposed facility is located, and pending final disposition of the matter the status quo of the applicant or licensee shall be pre-

served except when the director, with the advice and consent of the resident advocate committee established pursuant to section 135C.25, determines that the health, safety or welfare of the residents of the facility is in immediate danger, in which case the director may order the immediate removal of such residents. The fact that no resident advocate committee has been appointed for a particular facility shall not bar the director from exercising the emergency powers granted by this subsection with respect to that facility.

99 Acts, ch 129, §2
See §17A.19
Section amended

135C.14 Rules.

The department shall, in accordance with chapter 17A, and with the approval of the state board of health adopt and enforce rules setting minimum standards for health care facilities. In so doing, the department, with the approval of the state board of health, may adopt by reference, with or without amendment, nationally recognized standards and rules, which shall be specified by title and edition, date of publication, or similar information. The rules and standards required by this section shall be formulated in consultation with the director of human services or the director's designee and with affected industry, professional, and consumer groups, and shall be designed to further the accomplishment of the purposes of this chapter and shall relate to:

1. Location and construction of the facility, including plumbing, heating, lighting, ventilation, and other housing conditions, which shall ensure the health, safety and comfort of residents and protection from fire hazards. The rules of the department relating to protection from fire hazards and fire safety shall be promulgated by the state fire marshal, and shall be in keeping with the latest generally recognized safety criteria for the facilities covered of which the applicable criteria recommended and published from time to time by the national fire protection association are prima facie evidence.

2. Number and qualifications of all personnel, including management and nursing personnel, having responsibility for any part of the care provided to residents.

3. All sanitary conditions within the facility and its surroundings including water supply, sewage disposal, food handling, and general hygiene, which shall ensure the health and comfort of residents.

4. Diet related to the needs of each resident and based on good nutritional practice and on recommendations which may be made by the physician attending the resident.

5. Equipment essential to the health and welfare of the resident.

6. Requirements that a minimum number of registered or licensed practical nurses and nurses'

aides, relative to the number of residents admitted, be employed by each licensed facility. Staff-to-resident ratios established under this subsection need not be the same for facilities holding different types of licenses, nor for facilities holding the same type of license if there are significant differences in the needs of residents which the respective facilities are serving or intend to serve.

7. Social services and rehabilitative services provided for the residents.

8. Facility policies and procedures regarding the treatment, care, and rights of residents. The rules shall apply the federal resident's rights contained in the federal Omnibus Budget Reconciliation Act of 1987, Pub. L. No. 100-203, and the regulations adopted pursuant to the Act and contained in 42 C.F.R. § 483.10, 483.12, 483.13, and 483.15, as amended to February 2, 1989, to all health care facilities as defined in this chapter and shall include procedures for implementing and enforcing the federal rules. The department shall also adopt rules relating to the following:

a. The transfer of residents to other rooms within a facility.

b. The involuntary discharge or transfer of residents from a facility including provisions for notice and agency hearings and for the development of a patient discharge or transfer plan and for providing counseling services to a patient being discharged or transferred.

c. The required holding of a bed for a resident under designated circumstances upon payment of a prescribed charge for the bed.

d. The notification of resident advocate committees by the department of all complaints relating to health care facilities and the involvement of the resident advocate committees in resolution of the complaints.

e. For the recoupment of funds or property to residents when the resident's personal funds or property have been used without the resident's written consent or the written consent of the resident's guardian.

99 Acts, ch 129, §3
Subsection 8, paragraph d amended

135C.20A Report cards — facility inspections — complaint procedures — availability to public — electronic access.

1. The department shall develop and utilize a report card system for the recording of the findings of any inspection of a health care facility. The report card shall include but is not limited to a summary of the findings of the inspection, any violation found, any enforcement action taken including any citations issued and penalties assessed, any actions taken to correct violations or deficiencies, and the nature and status of any action taken with respect to any uncorrected violation for which a citation was issued.

2. The report card form shall be developed by the department in cooperation with representa-

tives of the department of elder affairs, the state long-term care resident's advocate, representatives of resident advocate committees, representatives of protection and advocacy entities, consumers, and other interested persons.

3. The department shall make any completed report cards electronically accessible to the public, on a monthly basis, and shall compile the report cards on an annual basis and make the compilation electronically accessible to the public. The annual compilation shall also be available at the office of the department at the seat of government and shall be available to the public by mail, upon request and at the department's expense.

4. In addition to the monthly and annual compilations, the department shall provide compilations of the report cards on a cumulative basis. The cumulative compilation shall reflect the report cards of health care facilities during the four-year period prior to the production of the cumulative compilation. The cumulative compilation shall be applicable to a particular health care facility as a four-year report card history of that facility becomes available. The cumulative compilation shall be available to the public in the same manner as the annual compilation.

99 Acts, ch 129, §4
Subsection 2 amended

135C.20B Governor's award — quality care.

1. A governor's award for quality care is established, to be awarded annually by the governor to a health care facility in the state which demonstrates provision of the highest quality care to residents.

2. The department shall adopt rules establishing the criteria to determine quality care. In developing the criteria, the department shall consult with the members of Iowa partners for resident care and shall also consider all of the following:

a. The report cards completed pursuant to section 135C.20A.

b. Any unique services provided by a facility to its residents to improve the quality of care in the facility.

c. Any information submitted by care review committee members or residents with regard to the quality of care of the facility.

d. Whether the facility accepts residents for whom costs of care are paid under chapter 249A.

99 Acts, ch 132, §1
NEW section

135C.25 Resident advocate committee appointments — duties — disclosure — liability.

1. Each health care facility shall have a resident advocate committee whose members shall be appointed by the director of the department of elder affairs or the director's designee. A person shall not be appointed a member of a resident advocate committee for a health care facility unless the person is a resident of the service area where the facility is

located. The resident advocate committee for any facility caring primarily for persons with mental illness, mental retardation, or a developmental disability shall only be appointed after consultation with the administrator of the division of mental health and developmental disabilities of the department of human services on the proposed appointments. Recommendations to the director or the director's designee for membership on resident advocate committees are encouraged from any agency, organization, or individual. The administrator of the facility shall not be appointed to the resident advocate committee and shall not be present at committee meetings except upon request of the committee.

2. Each resident advocate committee shall periodically review the needs of each individual resident of the facility and shall perform the functions pursuant to sections 135C.38 and 231.44.

3. A health care facility shall disclose the names, addresses, and phone numbers of a resident's family members, if requested, to a resident advocate committee member, unless permission for this disclosure is refused in writing by the family member. The facility shall provide a form on which a family member may indicate a refusal to grant this permission.

4. Neither the state nor any resident advocate committee member is liable for an action by a resident advocate committee member in the performance of duty, if the action is undertaken and carried out in good faith.

99 Acts, ch 129, §5
Section amended

135C.33 Child or dependent adult abuse information and criminal records — evaluations — application to other providers.

1. Beginning July 1, 1997, prior to employment of a person in a facility, the facility shall request that the department of public safety perform criminal and dependent adult abuse record checks of the person in this state. In addition, the facility may request that the department of human services perform a child abuse record check in this state. Beginning July 1, 1997, a facility shall inform all persons prior to employment regarding the performance of the records checks and shall obtain, from the persons, a signed acknowledgment of the receipt of the information. Additionally, a facility shall include the following inquiry in an application for employment: "Do you have a record of founded child or dependent adult abuse or have you ever been convicted of a crime, in this state or any other state?" If the person has been convicted of a crime under a law of any state or has a record of founded child or dependent adult abuse, the department of human services shall perform an evaluation to determine whether the crime or founded child or dependent adult abuse warrants prohibition of employment in the facility. The evaluation shall be performed in accordance with procedures adopted for this pur-

pose by the department of human services. If a person owns or operates more than one facility, and an employee of one of such facilities is transferred to another such facility without a lapse in employment, the facility is not required to request additional criminal and dependent adult abuse record checks of that employee.

2. If the department of public safety determines that a person has committed a crime or has a record of founded dependent adult abuse and is to be employed in a facility licensed under this chapter, the department of public safety shall notify the licensee that an evaluation will be conducted by the department of human services to determine whether prohibition of the person's employment is warranted. If a department of human services child abuse record check determines the person has a record of founded child abuse, the department of human services shall inform the licensee that an evaluation will be conducted to determine whether prohibition of the person's employment is warranted.

3. In an evaluation, the department of human services shall consider the nature and seriousness of the crime or founded child or dependent adult abuse in relation to the position sought or held, the time elapsed since the commission of the crime or founded child or dependent adult abuse, the circumstances under which the crime or founded child or dependent adult abuse was committed, the degree of rehabilitation, the likelihood that the person will commit the crime or founded child or dependent adult abuse again, and the number of crimes or founded child or dependent adult abuses committed by the person involved. The department of human services has final authority in determining whether prohibition of the person's employment is warranted.

4. If the department of human services determines that the person has committed a crime or has a record of founded child or dependent adult abuse which warrants prohibition of employment, the person shall not be employed in a facility licensed under this chapter.

5. Beginning July 1, 1998, this section shall apply to prospective employees of all of the following, if the provider is regulated by the state or receives any state or federal funding:

a. An employee of a homemaker, home-health aide, home-care aide, adult day care, or other provider of in-home services if the employee provides direct services to consumers.

b. An employee of a hospice, if the employee provides direct services to consumers.

c. An employee who provides direct services to consumers under a federal home and community-based services waiver.

d. An employee of an elder group home certified under chapter 231B, if the employee provides direct services to consumers.

e. An employee of an assisted living facility certified or voluntarily accredited under chapter 231C, if the employee provides direct services to consumers.

In substantial conformance with the provisions of this section, prior to the employment of such an employee, the provider shall request the performance of the criminal and dependent adult abuse record checks and may request the performance of the child abuse record checks. The provider shall inform the prospective employee and obtain the prospective employee's signed acknowledgment. The department of human services shall perform the evaluation of any criminal record or founded child or dependent adult abuse record and shall make the determination of whether a prospective employee of a provider shall not be employed by the provider.

6. The department of inspections and appeals, in conjunction with other departments and agencies of state government involved with criminal history and abuse registry information, shall establish a single contact repository for facilities and other providers to have electronic access to data to perform background checks for purposes of employment, as required of the facilities and other providers under this section.

99 Acts, ch 96, §11; 99 Acts, ch 114, §5
 Subsection 2 amended
 Subsection 5, unnumbered paragraph 2 amended

135C.37 Complaints alleging violations — confidentiality.

A person may request an inspection of a health care facility by filing with the department, resident advocate committee of the facility, or the long-term care resident's advocate as defined in section 231.4, subsection 16, a complaint of an alleged violation of applicable requirements of this chapter or the rules adopted pursuant to this chapter. A person alleging abuse or neglect of a resident with a developmental disability or with mental illness may also file a complaint with the protection and advocacy agency designated pursuant to section 135B.9 or section 135C.2. A copy of a complaint filed with the resident advocate committee or the long-term care resident's advocate shall be forwarded to the department. The complaint shall state in a reasonably specific manner the basis of the complaint, and a statement of the nature of the complaint shall be delivered to the facility involved at the time of the inspection. The name of the person who files a complaint with the department, resident advocate committee, or the long-term care resident's advocate shall be kept confidential and shall not be subject to discovery, subpoena, or other means of legal compulsion for its release to a person other than department employees involved in the investigation of the complaint.

99 Acts, ch 129, §6
 Section amended

135C.38 Inspections upon complaints.

1. a. Upon receipt of a complaint made in accordance with section 135C.37, the department or resident advocate committee shall make a preliminary review of the complaint. Unless the department or committee concludes that the complaint is intended to harass a facility or a licensee or is without reasonable basis, it shall within twenty working days of receipt of the complaint make or cause to be made an on-site inspection of the health care facility which is the subject of the complaint.

b. The complaint investigation shall include, at a minimum, an interview with the complainant, the alleged perpetrator, and the victim of the alleged violation, if the victim is able to communicate, if the complainant, alleged perpetrator, or victim is identifiable, and if the complainant, alleged perpetrator, or victim is available. Additionally, witnesses who have knowledge of facts related to the complaint shall be interviewed, if identifiable and available. The names of witnesses may be obtained from the complainant or the victim. The files of the facility may be reviewed to ascertain the names of staff persons on duty at the time relevant to the complaint. The department shall apply a preponderance of the evidence standard in determining whether or not a complaint is substantiated. For the purposes of this subsection, "*a preponderance of the evidence standard*" means that the evidence, considered and compared with the evidence opposed to it, produces the belief in a reasonable mind that the allegations are more likely true than not true. "*A preponderance of the evidence standard*" does not require that the investigator personally witnessed the alleged violation.

c. The department may refer to the resident advocate committee of a facility any complaint received by the department regarding that facility, for initial evaluation and appropriate action by the committee.

2. a. The complainant shall be promptly informed of the result of any action taken by the department or committee in the matter. The complainant shall also be notified of the name, address, and telephone number of the designated protection and advocacy agency if the alleged violation involves a facility with one or more residents with developmental disabilities or mental illness.

b. Upon conclusion of the investigation, the department shall notify the complainant of the results. The notification shall include a statement of the factual findings as determined by the investigator, the statutory or regulatory provisions alleged to have been violated, and a summary of the reasons for which the complaint was or was not substantiated.

c. The department shall mail the notification to the complainant without charge. Upon the request of the complainant, the department shall mail to the complainant, without charge, a copy of

the most recent final findings regarding compliance with licensing requirements by the facility against which the complaint was filed.

d. A person who is dissatisfied with any aspect of the department's handling of the complaint may contact the long-term care resident's advocate, established pursuant to section 231.42, or may contact the protection and advocacy agency designated pursuant to section 135C.2 if the complaint relates to a resident with a developmental disability or a mental illness.

3. An inspection made pursuant to a complaint filed under section 135C.37 need not be limited to the matter or matters complained of; however, the inspection shall not be a general inspection unless the complaint inspection coincides with a scheduled general inspection. Upon arrival at the facility to be inspected, the inspector shall show identification to the person in charge of the facility and state that an inspection is to be made, before beginning the inspection. Upon request of either the complainant or the department or committee, the complainant or the complainant's representative or both may be allowed the privilege of accompanying the inspector during any on-site inspection made pursuant to this section. The inspector may cancel

the privilege at any time if the inspector determines that the privacy of any resident of the facility to be inspected would otherwise be violated. The dignity of the resident shall be given first priority by the inspector and others.

4. If upon an inspection of a facility by its resident advocate committee pursuant to this section, the committee advises the department of any circumstance believed to constitute a violation of this chapter or of any rule adopted pursuant to it, the committee shall similarly advise the facility at the same time. If the facility's licensee or administrator disagrees with the conclusion of the committee regarding the supposed violation, an informal conference may be requested and if requested shall be arranged by the department as provided in section 135C.42 before a citation is issued. If the department thereafter issues a citation pursuant to the committee's finding, the facility shall not be entitled to a second informal conference on the same violation and the citation shall be considered affirmed. The facility cited may proceed under section 135C.43 if it so desires.

99 Acts, ch 129, §7, 8
Subsection 1, paragraphs a and c amended
Subsection 4 amended

CHAPTER 135H

PSYCHIATRIC MEDICAL INSTITUTIONS FOR CHILDREN

135H.6 Inspection — conditions for 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, the commission on accreditation of rehabilitation facilities, the council on accreditation of services for families and children, or by any other federally recognized accrediting organization with comparable standards.

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, unless exempt as provided in this section.

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.

6. The department of human services shall not give approval to an application which would cause the total number of beds licensed under this chapter for services reimbursed by the medical assistance program under chapter 249A to exceed four hundred thirty beds.

7. In addition to the beds authorized under subsection 6, the department of human services may establish not more than thirty beds licensed

under this chapter at the state mental health institute at Independence. The beds shall be exempt from the certificate of need requirement under subsection 4.

8. The department of human services may give approval to conversion of beds approved under subsection 6, to beds which are specialized to provide substance abuse treatment. However, the total number of beds approved under subsection 6 and this subsection shall not exceed four hundred thirty. Conversion of beds under this subsection shall not require a revision of the certificate of need issued for the psychiatric institution making the conversion.

9. 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 fa-

cility 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.

10. A psychiatric institution licensed prior to July 1, 1999, may exceed the number of beds authorized under subsection 6 if the excess beds are used to provide services funded from a source other than the medical assistance program under chapter 249A. Notwithstanding subsections 4, 5, and 6, the provision of services using those excess beds does not require a certificate of need or a review by the department of human services.

99 Acts, ch 51, §1, 2; 99 Acts, ch 98, §1
Subsections 2 and 4-8 amended

CHAPTER 136B

RADON TESTING

136B.5 Penalty for violation.

A person who violates a provision of this chapter is guilty of a serious misdemeanor.

99 Acts, ch 96, §12
Section amended

CHAPTER 136C

RADIATION MACHINES AND RADIOACTIVE MATERIALS

136C.3 Duties of department.

The department is designated the state radiation control agency and is responsible for regulating the installation and use of radiation machines and the use of radioactive materials in this state as provided in this chapter. The department shall:

1. Establish minimum criteria and safety standards for the installation, operation, and use of radiation machines and radioactive materials.

2. Establish minimum training standards including continuing education requirements, and administer examinations and disciplinary procedures for operators of radiation machines and users of radioactive materials. A state of Iowa license to practice medicine, osteopathy, chiropractic, podiatry, dentistry, dental hygiene, or veterinary medicine, or licensure as a physician assistant pursuant to chapter 148C, or certification by the board of dental examiners in dental radiography, or by the board of podiatry examiners in podiatric radiography, or enrollment in a program or course of study approved by the Iowa department of public health which includes the application of radiation

to humans satisfies the minimum training standards for operation of radiation machines only.

The department shall establish a technical advisory committee made up of four technologists, one of whom shall be a limited radiography instructor, one of whom shall represent nuclear medicine technologists, one of whom shall represent radiation therapists, and one of whom shall represent diagnostic radiographers; five physicians, including one radiologist, one chiropractor, one physician representing either radiation therapy or nuclear medicine, one podiatrist, and one private practitioner; and a representative of the department. The advisory committee shall assist the department in developing and establishing criteria for the administration of this subsection.

3. Develop programs for evaluation and control of hazards associated with the use of sources of radiation with due regard for compatibility of a proposed program with federal programs regulating byproduct, source, and special nuclear materials and considering consistency of a proposed program

with federal programs for regulation of radiation machines.

4. Adopt, publish, and amend rules in accordance with chapter 17A as necessary for the implementation and enforcement of this chapter. The rules may provide for the licensing and control of radioactive materials with due regard for compatibility with federal regulatory programs.

5. Issue orders as necessary in connection with licensing and registration of radiation machines and radioactive materials.

6. Advise, consult, and cooperate with other agencies of the state, the federal government, other states and interstate agencies, political subdivisions, and other organizations concerned with control of sources of radiation.

7. Encourage, participate in, or conduct studies, investigations, training, research, and demonstrations relating to control of sources of radiation.

8. Collect and disseminate information relating to control of sources of radiation. The department shall maintain the following information on file:

a. License applications, issuances, denials,

amendments, transfers, renewals, modifications, suspensions, and revocations.

b. A list of persons possessing sources of radiation requiring registration under this chapter and any administrative or judicial action involving each person.

c. Departmental rules relating to regulation of sources of radiation, existing or pending, and related actions.

9. Adopt rules requiring the keeping of such records with respect to activities under licenses and registration certificates issued pursuant to this chapter as the department determines necessary to effect the purposes of this chapter.

10. Adopt rules specifying the minimum training and performance standards for an individual using a radiation machine for mammography, and other rules necessary to implement section 136C.15. The rules shall complement federal requirements applicable to similar radiation machinery and shall not be less stringent than those federal requirements.

99 Acts, ch 141, §12

Subsection 2, unnumbered paragraph 2 amended

CHAPTER 137

LOCAL BOARDS OF HEALTH

137.19 Emergency request for funds.

A local board may, in emergency situations, request additional appropriations, which may, upon approval of the director, be allotted from the funds reserved for that purpose to the extent that funds are appropriated and available. On termination of

the emergency situation, the local board shall report its expenditures of emergency funds to the director and return any unexpended funds.

99 Acts, ch 141, §13

Section amended

CHAPTER 137C

HOTEL SANITATION CODE

137C.35 Bed and breakfast homes and inns.

This chapter does not apply to bed and breakfast homes as defined in section 137F.1. However, a bed and breakfast home shall have a smoke detector in proper working order in each sleeping room and a fire extinguisher in proper working order on each floor. A bed and breakfast home which does not receive its drinking water from a public water supply shall have its drinking water tested at least annually by the state hygienic laboratory or the local board of health. A violation of this section is pun-

ishable as provided in section 137C.28.

A bed and breakfast inn is subject to regulation, licensing, and inspection under this chapter, but separate toilet and lavatory facilities shall not be required for each guest room. Additionally, a bed and breakfast inn is exempt from fire safety rules adopted pursuant to section 100.35 and applicable to hotels, but is subject to fire safety rules which the state fire marshal shall specifically adopt for bed and breakfast inns.

99 Acts, ch 32, §1

Unnumbered paragraph 2 amended

CHAPTER 137D

HOME FOOD ESTABLISHMENTS

137D.9 Exemption. Repealed by 99 Acts, ch 208, § 41.

CHAPTER 137F

FOOD ESTABLISHMENTS AND FOOD PROCESSING PLANTS

137F.1 Definitions.

For the purpose of this chapter:

1. *"Bed and breakfast home"* means a private residence which provides lodging and meals for guests, in which the host or hostess resides and in which no more than four guest families are lodged at the same time and which, while it may advertise and accept reservations, does not hold itself out to the public to be a restaurant, hotel, or motel, does not require reservations, and serves food only to overnight guests.

2. *"Commissary"* means a food establishment used for preparing, fabricating, packaging, and storage of food or food products for distribution and sale through the food establishment's own food establishment outlets.

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

4. *"Director"* means the director of the department of inspections and appeals.

5. *"Farmers market"* means a marketplace which seasonally operates principally as a common market for fresh fruits and vegetables on a retail basis for off-the-premises consumption.

6. *"Food"* means a raw, cooked, or processed edible substance, ice, a beverage, an ingredient used or intended for use or sale in whole or in part for human consumption, or chewing gum.

7. *"Food code"* means the 1997 edition of the United States food and drug administration food code.

8. *"Food establishment"* means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption and includes a food service operation in a school, summer camp, residential service substance abuse treatment facility, halfway house substance abuse treatment facility, correctional facility operated by the department of corrections, the state training school, or the Iowa juvenile home. *"Food establishment"* does not include the following:

- a. A food processing plant.
- b. An establishment that offers only prepackaged foods that are nonpotentially hazardous.
- c. A produce stand or facility which sells only whole, uncut fresh fruits and vegetables.

d. Premises which are a home food establishment pursuant to chapter 137D.

e. Premises which operate as a farmers market.

f. Premises of a residence in which food that is nonpotentially hazardous is sold for consumption off the premises to a consumer customer, if the food is labeled to identify the name and address of the person preparing the food and the common name of the food.

g. A kitchen in a private home where food is prepared or stored for family consumption or in a bed and breakfast home.

h. A private home that receives catered or home-delivered food.

i. Child care facilities and other food establishment facilities located in hospitals or health care facilities which are subject to inspection by other state agencies or divisions of the department.

j. Supply vehicles, vending machine locations, or boardinghouses for permanent guests.

k. Establishments exclusively engaged in the processing of meat and poultry which are licensed pursuant to section 189A.3.

l. Premises covered by a current class "A" beer permit as provided in chapter 123.

9. *"Food processing plant"* means a commercial operation that manufactures, packages, labels, or stores food for human consumption and does not provide food directly to a consumer. *"Food processing plant"* does not include premises covered by a class "A" beer permit as provided in chapter 123.

10. *"Mobile food unit"* means a food establishment that is readily movable, which either operates up to three consecutive days at one location or returns to a home base of operation at the end of each day.

11. *"Municipal corporation"* means a political subdivision of this state.

12. *"Perishable food"* means potentially hazardous food.

13. *"Potentially hazardous food"* means a food that is natural or synthetic and is in a form capable of supporting the rapid and progressive growth of infectious or toxigenic microorganisms, or the growth and toxin production of clostridium botuli-

num. “*Potentially hazardous food*” includes an animal food that is raw or heat-treated, a food of plant origin that is heat-treated or consists of raw seed sprouts, cut melons, and garlic and oil mixtures. “*Potentially hazardous food*” does not include the following:

- a. An air-cooled hard-boiled egg with shell intact.
- b. A food with a water activity value of 0.85 or less.
- c. A food with a hydrogen ion concentration (pH) level of 4.6 or below when measured at twenty-four degrees Centigrade or seventy-five degrees Fahrenheit.
- d. A food, in an unopened hermetically sealed container, that is commercially processed to achieve and maintain commercial sterility under conditions of nonrefrigerated storage and distribution.

14. “*Pushcart*” means a non-self-propelled vehicle food establishment limited to serving nonpotentially hazardous foods or commissary-wrapped foods maintained at proper temperatures, or limited to the preparation and serving of frankfurters.

15. “*Regulatory authority*” means the department or a municipal corporation that has entered into an agreement with the director pursuant to section 137F.3 for authority to enforce this chapter in its jurisdiction.

16. “*Temporary food establishment*” means a food establishment that operates for a period of no more than fourteen consecutive days in conjunction with a single event or celebration.

17. “*Vending machine*” means a food establishment which is a self-service device that, upon insertion of a coin, paper currency, token, card, or key, dispenses unit servings of food in bulk or in packages without the necessity of replenishing the device between each vending operation.

18. “*Vending machine location*” means the physical site where a vending machine is installed and operated, including the storage and servicing areas on the premises that are used in conjunction with the vending machine.

99 Acts, ch 192, §33; 99 Acts, ch 208, §28
Terminology change applied
Subsection 8, paragraph f stricken and rewritten

137F.2 Adoption by rule.

The director shall adopt the food code with the following exceptions:

1. Places used by a nonprofit organization which engages in the serving of food not more than one day per calendar week and not on two or more consecutive days are exempt from this chapter.

2. A food processing plant shall comply with the “*Current Good Manufacturing Practices in Manufacturing, Processing, Packing, or Holding Human Food*” as found in the latest version of 21 C.F.R. pt. 110, and with rules adopted by the department to enforce the practices.

3. A vending machine commissary shall be inspected at least once each calendar year.

4. A vending machine which only dispenses prepackaged food that is nonpotentially hazardous is exempt from inspection and licensing, except upon receipt of a verified complaint by the regulatory authority.

5. 1-201.10(B)(31) and 3-403.10 shall be deleted.

6. 3-201.11(B) shall be amended to allow food prepared by a home food establishment licensed under chapter 137D to be used or offered for sale.

7. 3-301.11(B) shall be amended by deleting the section and replacing it with the following:

(1) Except when washing fruits and vegetables, food employees should, to the extent practicable, avoid contact with exposed, ready-to-eat food with their bare hands. Where ready-to-eat food is routinely handled by employees, employers should adopt reasonable sanitary procedures to reduce the risk of the transmission of pathogenic organisms.

(2) In seeking to minimize employees’ physical contact with ready-to-eat foods, no single method or device is universally practical or necessarily the most effective method to prevent the transmission of pathogenic organisms in all situations. As such, each public food service establishment shall review its operations to identify procedures where ready-to-eat food must be routinely handled by its employees and adopt one or more of the following sanitary alternatives, to be used either alone or in combination, to prevent the transmission of pathogenic organisms:

(a) The use of suitable food handling materials including, but not limited to, deli tissues, appropriate utensils, or dispensing equipment. Such materials must be used in conjunction with thorough hand washing practices in accord with paragraph (c).

(b) The use of single-use gloves, for the purpose of preparing or handling ready-to-eat foods, shall be discarded when damaged or soiled or when the process of food preparation or handling is interrupted. Single-use gloves must be used in conjunction with thorough hand washing practices in accord with paragraph (c).

(c) The use, pursuant to the manufacturer’s instructions, of anti-microbial soaps, with the additional optional use of anti-bacterial protective skin lotions or anti-microbial hand sanitizers, rinses, or dips. All such soaps, lotions, sanitizers, rinses, and dips must contain active topical anti-microbial or anti-bacterial ingredients, registered by the United States environmental protection agency, cleared by the United States food and drug administration, and approved by the United States department of agriculture.

(d) The use of such other practices, devices, or products that are found by the division to achieve a

comparable level of protection to one or more of the sanitary alternatives in paragraphs (a) through (c).

(3) Regardless of the sanitary alternatives in use, each public food service establishment shall establish:

(a) Systematic focused education and training of all food service employees involved in the identified procedures regarding the potential for transmission of pathogenic organisms from contact with ready-to-eat food. The importance of proper hand washing and hygiene in preventing the transmission of illness, and the effective use of the sanitary alternatives and monitoring systems utilized by the public food service establishment, shall be reinforced. The content and duration of this training shall be determined by the manager of the public food service establishment.

(b) A monitoring system to demonstrate the proper and effective use of the sanitary alternatives utilized by the public food service establishment.

8. 3-501.16 shall be amended by adding the following: "Shell eggs shall be received and held at an ambient temperature not to exceed forty-five degrees Fahrenheit or seven degrees Celsius."

9. 3-502.12(A) shall be amended by adding the following: "Packaging of raw meat and raw poultry using an oxygen packaging method, with a

thirty-day 'sell by' date from the date it was packaged, shall be exempt from having an HACCP Plan that contains the information required in this section and section 8-201.14."

10. 3-603.11 shall be amended by adding the following: "The following standardized language shall be used on the required consumer advisory: 'Thoroughly cooking foods of animal origin such as beef, eggs, fish, lamb, pork, poultry, or shellfish reduces the risk of food-borne illness. Individuals with certain health conditions may be at higher risk if these foods are consumed raw or undercooked. Consult your physician or public health official for further information.'"

11. A carbonating device in a food establishment shall have a dual check valve which shall be installed so that it is upstream from the carbonating device and downstream from any copper in the water supply line.

12. 3-201.16(B) shall be amended to exclude wild morel mushrooms.

13. 3-501.17 shall be amended to provide that paragraphs (C) and (D) shall not apply to aged cheese.

14. 3-603.11 shall be amended so that the rule shall not apply to whole muscle red meats.

99 Acts, ch 208, §29-32
Subsection 6 amended
NEW subsections 12-14

CHAPTER 139B

EMERGENCY CARE PROVIDERS — EXPOSURE TO DISEASE

For notification with respect to AIDS or HIV infection,
see §141A.8

139B.1 Emergency care provider notification.

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

a. "*Contagious or infectious disease*" means hepatitis in any form, meningococcal disease, tuberculosis, and any other disease with the exception of AIDS or HIV infection as defined in section 141A.1, determined to be life-threatening to a person exposed to the disease as established by rules adopted by the department based upon a determination by the state epidemiologist and in accordance with guidelines of the centers for disease prevention and control* of the United States department of health and human services.

b. "*Department*" means the Iowa department of public health.

c. "*Designated officer*" means a person who is designated by a department, agency, division, or service organization to act as an infection control liaison officer.

d. "*Emergency care provider*" means a person who is trained and authorized by federal or state law to provide emergency medical assistance or

treatment, for compensation or in a voluntary capacity, including but not limited to all of the following:

(1) An emergency medical care provider as defined in section 147A.1.

(2) A health care provider as defined in this section.

(3) A fire fighter.

(4) A peace officer.

"*Emergency care provider*" also includes a person who renders direct emergency aid without compensation.

e. "*Exposure*" means the risk of contracting disease.

f. "*Health care provider*" means a person licensed or certified under chapter 148, 148C, 150, 150A, 152, or 153 to provide professional health care service to a person during the person's medical care, treatment, or confinement.

2. a. A hospital licensed under chapter 135B shall have written policies and procedures for notification of an emergency care provider who renders assistance or treatment to an individual when in the course of admission, care, or treatment of the

individual the individual is diagnosed or is confirmed as having a contagious or infectious disease.

b. If an individual is diagnosed or confirmed as having a contagious or infectious disease, the hospital shall notify the designated officer of an emergency care provider service who shall notify persons involved in attending or transporting the individual. For blood-borne contagious or infectious diseases, notification shall only take place upon filing of an exposure report form with the hospital. The exposure report form may be incorporated into the Iowa prehospital care report, the Iowa prehospital advanced care report, or a similar report used by an ambulance, rescue, or first response service or law enforcement agency.

c. A person who renders direct emergency aid without compensation and is exposed to an individual who has a contagious or infectious disease shall also receive notification from the hospital upon the filing with the hospital of an exposure report form developed by the department.

d. The notification shall advise the emergency care provider of possible exposure to a particular contagious or infectious disease and recommend that the provider seek medical attention. The notification shall be provided as soon as is reasonably possible following determination that the individual has a contagious or infectious disease.

e. This subsection does not require a hospital to administer a test for the express purpose of determining the presence of a contagious or infectious disease. The notification shall not include the name of the individual with the contagious or infectious disease unless the individual consents.

f. The department shall adopt rules pursuant to chapter 17A to implement this subsection.

3. A health care provider may provide the notification required of hospitals in this section to emergency care providers if an individual who has a contagious or infectious disease is delivered by an emergency care provider to the office or clinic of a health care provider for treatment. The notification shall not include the name of the individual who has the contagious or infectious disease unless the individual consents.

4. This section does not preclude a hospital from providing notification to an emergency care provider or health care provider under circumstances in which the hospital's policy provides for notification of the hospital's own employees of exposure to a contagious or infectious disease that is not life-threatening if the report does not reveal a patient's name unless the patient consents.

5. A hospital or health care provider or other person participating in good faith in making a report under the notification provisions of this section or in notifying its own employees under procedures consistent with this section or in failing to make a report under this section is immune from liability, civil or criminal, which may otherwise be incurred or imposed.

6. A hospital's or health care provider's duty of notification under this section is not continuing but is limited to a diagnosis of a contagious or infectious disease made in the course of admission, care, and treatment following the rendering of emergency assistance or treatment to which notification under this section applies.

99 Acts, ch 181, §2

*"Centers for disease control and prevention" probably intended; corrective legislation is pending

Hepatitis testing and immunization; reimbursement; 98 Acts, ch 1221, §5; 99 Acts, ch 201, §5

Subsection 1, paragraph a amended

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 141A.1.

7. "Hospital" means hospital as defined in section 135B.1.

99 Acts, ch 181, §3

Subsection 6 amended

139C.2 Prevention of transmission of HIV or HBV to patients.

1. Each hospital shall adopt procedures requiring the establishment of protocols applicable on a case-by-case basis to a health care provider determined to be infected with HIV or HBV who ordinarily performs exposure-prone procedures as determined by an expert review panel, within the hospital setting. The protocols established shall be in accordance with the recommendations issued by the centers for disease control of the United States department of health and human services. The expert review panel may be an established committee of the hospital. The procedures may provide for referral of the health care provider to the expert review panel established by the department for establishment of the protocols. The procedures shall require reporting noncompliance with the protocols by a health care provider to the examining board with jurisdiction over the health care providers.

2. Each health care facility shall adopt procedures in accordance with recommendations issued by the center for disease control of the United States department of health and human services, applicable to a health care provider determined to be infected with HIV or HBV who ordinarily performs or assists with exposure-prone procedures within the facility. The procedures shall require referral of the health care provider to the expert review panel established by the department.

3. The department shall establish an expert review panel to determine on a case-by-case basis under what circumstances, if any, a health care provider determined to be infected with HIV or HBV practicing outside the hospital setting or referred to the panel by a hospital, may perform exposure-prone procedures. If a health care provider determined to be infected with HIV or HBV does not comply with the determination of the expert review panel, the panel shall report the noncompliance to the examining board with jurisdiction over the health care provider. A determination of an expert review panel pursuant to this section is a final agency action appealable pursuant to section 17A.19.

4. The health care provider determined to be infected with HIV or HBV, who works in a hospital setting, may elect either the expert review panel established by the hospital or the expert review panel established by the department for the purpose of making a determination of the circumstances under which the health care provider may perform exposure-prone procedures.

5. A health care provider determined to be infected with HIV or HBV shall not perform an exposure-prone procedure except as approved by the expert review panel established by the department pursuant to subsection 3, or in compliance with the

protocol established by the hospital pursuant to subsection 1.

6. The board of medical examiners, the board of physician assistant examiners, the board of podiatry examiners, the board of nursing, the board of dental examiners, and the board of optometry examiners shall require that licensees comply with the recommendations for preventing transmission of human immunodeficiency virus and hepatitis B virus to patients during exposure-prone invasive procedures issued by the centers for disease control of the United States department of health and human services, or with the recommendations of the expert review panel established pursuant to subsection 3, and applicable hospital protocols established pursuant to subsection 1.

7. Information relating to the HIV status of a health care provider is confidential and subject to the provisions of section 141A.9. A person who intentionally or recklessly makes an unauthorized disclosure of such information is subject to a civil penalty of one thousand dollars. The attorney general or the attorney general's designee may maintain a civil action to enforce this section. Proceedings maintained under this section shall provide for the anonymity of the individual and all documentation shall be maintained in a confidential manner. Information relating to the HBV status of a health care provider is confidential and shall not be accessible to the public. Information regulated by this section, however, may be disclosed to members of the expert review panel established by the department or a panel established by hospital protocol under this section. The information may also be disclosed to the appropriate examining board by filing a report as required by this section. The examining board shall consider the report a complaint subject to the confidentiality provisions of section 272C.6. A licensee, upon the filing of a formal charge or notice of hearing by the examining board based on such a complaint, may seek a protective order from the board.

8. The expert review panel established by the department and individual members of the panel shall be immune from any liability, civil or criminal, for the good faith performance of functions authorized or required by this section. A hospital, an expert review panel established by the hospital, and individual members of the panel shall be immune from any liability, civil or criminal, for the good faith performance of functions authorized or required by this section. Complaints, investigations, reports, deliberations, and findings of the hospital and its panel with respect to a named health care provider suspected, alleged, or found to be in violation of the protocol required by this section, constitute peer review records under section 147.135, and are subject to the specific confidentiality requirements and limitations of this section.

CHAPTER 141

ACQUIRED IMMUNE DEFICIENCY SYNDROME (AIDS)

Chapter repealed by 99 Acts, ch 181, §22; see chapter 141A

CHAPTER 141A

ACQUIRED IMMUNE DEFICIENCY SYNDROME (AIDS)

141A.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 and prevention of the United States department of health and human services.

2. *"AIDS-related conditions"* means the human immunodeficiency virus, or any other condition resulting from the human immunodeficiency virus infection.

3. *"Blinded epidemiological studies"* means studies in which specimens which were collected for other purposes are selected according to established criteria, are permanently stripped of personal identifiers, and are then tested.

4. *"Blood bank"* means a facility for the collection, processing, or storage of human blood or blood derivatives, including blood plasma, or from which or by means of which human blood or blood derivatives are distributed or otherwise made available.

5. *"Care provider"* means any emergency care provider, health care provider, or any other person providing health care services of any kind.

6. *"Department"* means the Iowa department of public health.

7. *"Emergency care provider"* means a person who is trained and authorized by federal or state law to provide emergency medical assistance or treatment, for compensation or in a voluntary capacity, including but not limited to all of the following:

- a. An emergency medical care provider as defined in section 147A.1.
- b. A health care provider.
- c. A fire fighter.
- d. A peace officer.

"Emergency care provider" also includes a person who renders emergency aid without compensation.

8. *"Good faith"* means objectively reasonable and not in violation of clearly established statutory rights or other rights of a person which a reasonable person would know or should have known.

9. *"Health care provider"* means a person licensed or certified under chapter 148, 148C, 150, 150A, 152, or 153 to provide professional health care service to a person during the person's medical care, treatment, or confinement.

10. *"Health facility"* means a hospital, health care facility, clinic, blood bank, blood center, sperm

bank, laboratory organ transplant center and procurement agency, or other health care institution.

11. *"HIV"* means the human immunodeficiency virus identified as the causative agent of AIDS.

12. *"HIV-related test"* means a diagnostic test conducted by a laboratory approved pursuant to the federal Clinical Laboratory Improvements Act for determining the presence of HIV.

13. *"Infectious bodily fluids"* means bodily fluids capable of transmitting HIV infection as determined by the centers for disease control and prevention of the United States department of health and human services and adopted by rule of the department.

14. *"Legal guardian"* means a person appointed by a court pursuant to chapter 633 or an attorney in fact as defined in section 144B.1. In the case of a minor, *"legal guardian"* also means a parent or other person responsible for the care of the minor.

15. *"Nonblinded epidemiological studies"* means studies in which specimens are collected for the express purpose of testing for the HIV infection and persons included in the nonblinded study are selected according to established criteria.

16. *"Release of test results"* means a written authorization for disclosure of HIV-related test results which is signed and dated, and which specifies to whom disclosure is authorized and the time period during which the release is to be effective.

17. *"Sample"* means a human specimen obtained for the purpose of conducting an HIV-related test.

18. *"Significant exposure"* means the risk of contracting HIV infection by means of exposure to a person's infectious bodily fluids in a manner capable of transmitting HIV infection as determined by the centers for disease control and prevention of the United States department of health and human services and adopted by rule of the department.

99 Acts, ch 181, §5
NEW section

141A.2 Lead agency.

1. The department is designated as the lead agency in the coordination and implementation of the state comprehensive AIDS-related conditions prevention and intervention plan.

2. The department shall adopt rules pursuant to chapter 17A to implement and enforce this chapter. The rules may include procedures for taking appropriate action with regard to health facilities or health care providers which violate this chapter or the rules adopted pursuant to this chapter.

3. The department shall adopt rules pursuant to chapter 17A which require that if a health care provider attending a person prior to the person's death determines that the person suffered from or was suspected of suffering from a contagious or infectious disease, the health care provider shall place with the remains written notification of the condition for the information of any person handling the body of the deceased person subsequent to the person's death. For purposes of this subsection, "contagious or infectious disease" means hepatitis in any form, meningococcal disease, tuberculosis, and any other disease including AIDS or HIV infection, determined to be life-threatening to a person exposed to the disease as established by rules adopted by the department based upon a determination by the state epidemiologist and in accordance with guidelines of the centers for disease control and prevention of the United States department of health and human services.

4. The department, in cooperation with the department of public safety, and persons who represent those who attend dead bodies shall establish for all care providers, including paramedics, ambulance personnel, physicians, nurses, hospital personnel, first responders, peace officers, and fire fighters, who provide care services to a person, and for all persons who attend dead bodies, protocol and procedures for the use of universal precautions to prevent the transmission of contagious and infectious diseases.

5. The department shall coordinate efforts with local health officers to investigate sources of HIV infection and use every appropriate means to prevent the spread of the infection.

6. The department, with the approval of the state board of health, may conduct epidemiological blinded and nonblinded studies to determine the incidence and prevalence of the HIV infection. Initiation of any new epidemiological studies shall be contingent upon the receipt of funding sufficient to cover all the costs associated with the studies. The informed consent, reporting, and counseling requirements of this chapter shall not apply to blinded studies.

99 Acts, ch 181, §6
NEW section

141A.3 Duties of the department.

1. All federal and state moneys appropriated to the department for AIDS-related activities shall be allocated in accordance with a prioritized schedule developed by rule of the department, and grants shall be awarded to the maximum extent feasible to community-based organizations.

2. The department shall do all of the following:

a. Provide consultation to agencies and organizations regarding appropriate policies for testing, education, confidentiality, and infection control.

b. Conduct health information programs for the public relating to HIV infection, including information about how the infection is transmitted and how transmittal can be prevented. The department shall prepare, for free distribution, printed information relating to HIV infection and prevention.

c. Provide educational programs concerning HIV infection in the workplace.

d. Develop and implement HIV education risk-reduction programs for specific populations at high risk for infection.

e. Provide an informational brochure for patients who provide samples for purposes of performing an HIV test which, at a minimum, shall include a summary of the patient's rights and responsibilities under the law.

f. In cooperation with the department of education, develop and update a medically correct AIDS prevention curriculum for use at the discretion of secondary and middle schools.

3. The department shall, in cooperation with the department of education and other agencies, organizations, coalitions, and local health departments, develop and implement a program of public and professional AIDS-related education.

99 Acts, ch 181, §7
NEW section

141A.4 Testing and counseling.

1. HIV testing and counseling shall be offered to the following:

a. All persons seeking treatment for a sexually transmitted disease.

b. All persons seeking treatment for injecting drug abuse or having a history of injecting drug abuse.

c. All persons who consider themselves at risk for the HIV infection.

d. Male and female prostitutes.

2. Pregnant women shall be provided information about HIV prevention, risk reduction, and treatment opportunities to reduce the possible transmission of HIV to a fetus. Pregnant women who report one or more recognized risk factors for HIV shall be strongly encouraged to undergo HIV-related testing. A pregnant woman who requests testing shall be tested regardless of the absence of risk factors.

99 Acts, ch 181, §8
NEW section

141A.5 Partner notification program — HIV.

1. The department shall maintain a partner notification program for persons known to have tested positive for the HIV infection.

2. The department shall initiate the program at alternative testing and counseling sites and at sexually transmitted disease clinics.

3. In administering the program, the department shall provide for the following:

a. A person who tests positive for the HIV infection shall receive posttest counseling, during which time the person shall be encouraged to refer for counseling and HIV testing any person with whom the person has had sexual relations or has shared drug injecting equipment.

b. The physician or other health care provider attending the person may provide to the department any relevant information provided by the person regarding any person with whom the tested person has had sexual relations or has shared drug injecting equipment. The department disease prevention staff shall then conduct partner notification in the same manner as that utilized for sexually transmitted diseases consistent with the provisions of this chapter.

c. Devise a procedure, as a part of the partner notification program, to provide for the notification of an identifiable third party who is a sexual partner of or who shares drug injecting equipment with a person who has tested positive for HIV, by the department or a physician, when all of the following situations exist:

(1) A physician for the infected person is of the good faith opinion that the nature of the continuing contact poses an imminent danger of HIV infection transmission to the third party.

(2) When the physician believes in good faith that the infected person, despite strong encouragement, has not and will not warn the third party and will not participate in the voluntary partner notification program.

Notwithstanding subsection 4, the department or a physician may reveal the identity of a person who has tested positive for the HIV infection pursuant to this subsection only to the extent necessary to protect a third party from the direct threat of transmission. This subsection shall not be interpreted to create a duty to warn third parties of the danger of exposure to HIV through contact with a person who tests positive for the HIV infection.

The department shall adopt rules pursuant to chapter 17A to implement this paragraph "c". The rules shall provide a detailed procedure by which the department or a physician may directly notify an endangered third party.

4. In making contact the department shall not disclose the identity of the person who provided the names of the persons to be contacted and shall protect the confidentiality of persons contacted.

5. The department may delegate its partner notification duties under this section to local health authorities unless the local authority refuses or neglects to conduct the contact tracing program in a manner deemed to be effective by the department.

6. In addition to the provisions for partner notification provided under this section and notwithstanding any provision to the contrary, a county

medical examiner or deputy medical examiner performing official duties pursuant to sections 331.801 through 331.805 or the state medical examiner or deputy medical examiner performing official duties pursuant to chapter 691, who determines through an investigation that a deceased person was infected with HIV, may notify directly, or request that the department notify, the immediate family of the deceased or any person known to have had a significant exposure from the deceased of the finding.

99 Acts, ch 181, §9
NEW section

141A.6 AIDS-related conditions — screening, testing, and reporting.

1. Prior to obtaining a sample for the purpose of performing a voluntary HIV-related test, a health care provider shall inform the subject of the test that the test is voluntary. Within seven days of the receipt of a test result indicating HIV infection which has been confirmed as positive according to prevailing medical technology, the physician or other health care provider at whose request the test was performed shall make a report to the department on a form provided by the department.

2. Within seven days of diagnosing a person as having an AIDS-related condition, the diagnosing physician shall make a report to the department on a form provided by the department.

3. Within seven days of the death of a person resulting from an AIDS-related condition, the attending physician shall make a report to the department on a form provided by the department.

4. Within seven days of the receipt of a test result indicating HIV infection which has been confirmed as positive according to prevailing medical technology, the director of a blood bank shall make a report to the department on a form provided by the department.

5. Within seven days of the receipt of a test result indicating HIV infection which has been confirmed as positive according to prevailing medical technology, the director of a clinical laboratory shall make a report to the department on a form provided by the department.

6. The forms provided by the department shall require inclusion of all of the following information:

- a.* The name of the patient.
- b.* The address of the patient.
- c.* The patient's date of birth.
- d.* The gender of the patient.
- e.* The race or ethnicity of the patient.
- f.* The patient's marital status.
- g.* The patient's telephone number.
- h.* The name and address of the laboratory or blood bank.
- i.* The date the test was found to be positive and the collection date.

j. The name of the physician or health care provider who performed the test.

k. If the patient is female, whether the patient is pregnant.

99 Acts, ch 181, §10
NEW section

141A.7 Test results — counseling — application for services.

1. Prior to undergoing an HIV-related test, information shall be available to the subject of the test concerning testing and any means of obtaining additional information regarding HIV infection and risk reduction. At any time that the subject of an HIV-related test is informed of confirmed positive test results, counseling concerning the emotional and physical health effects shall be initiated. Particular attention shall be given to explaining the need for the precautions necessary to avoid transmitting the virus. The subject shall be given information concerning additional counseling.

2. Notwithstanding subsection 1, the provisions of this section do not apply to any of the following:

a. The performance by a health care provider or health facility of an HIV-related test when the health care provider or health facility procures, processes, distributes, or uses a human body part donated for a purpose specified under the uniform anatomical gift Act, or semen provided prior to July 1, 1988, for the purpose of artificial insemination, or donations of blood, and such test is necessary to ensure medical acceptability of such gift or semen for the purposes intended.

b. A person engaged in the business of insurance who is subject to section 505.16.

c. The performance by a health care provider or health facility of an HIV-related test when the subject of the test is deceased and a documented significant exposure has occurred.

3. A person may apply for voluntary treatment, contraceptive services, or screening or treatment for HIV infection and other sexually transmitted diseases directly to a licensed physician and surgeon, an osteopathic physician and surgeon, or a family planning clinic. Notwithstanding any other provision of law, however, a minor shall be informed prior to testing that, upon confirmation according to prevailing medical technology of a positive HIV-related test result, the minor's legal guardian is required to be informed by the testing facility. Testing facilities where minors are tested shall have available a program to assist minors and legal guardians with the notification process which emphasizes the need for family support and assists in making available the resources necessary to accomplish that goal. However, a testing facility which is precluded by federal statute, regulation, or centers for disease control and prevention guidelines from informing the legal guardian is exempt from the notification requirement. The minor shall give written consent to these procedures and to re-

ceive the services, screening, or treatment. Such consent is not subject to later disaffirmance by reason of minority.

99 Acts, ch 181, §11
NEW section

141A.8 Care provider notification.

1. A hospital licensed under chapter 135B shall provide notification to a care provider who renders assistance or treatment to an individual, following submission of a significant exposure report by the care provider to the hospital and a diagnosis or confirmation by an attending physician that the individual has HIV infection, and determination that the exposure reported was a significant exposure. The notification shall advise the care provider of possible exposure to HIV infection. Notification shall be made in accordance with both of the following:

a. The hospital informs the individual, when the individual's condition permits, of the submission of a significant exposure report.

b. The individual consents to serological testing by or voluntarily discloses the individual's HIV status to the hospital and consents to notification.

Notwithstanding paragraphs "a" and "b", notification shall be made when the individual denies consent for or consent is not reasonably obtainable for serological testing, and in the course of admission, care, and treatment of the individual, the individual is diagnosed or is confirmed as having HIV infection.

2. The hospital shall notify the care provider involved in attending or transporting an individual who submitted a significant exposure report. This shall include a person who renders direct emergency aid without compensation, or in the case of an emergency care provider, the designated officer of the emergency care provider service, who in turn shall notify any emergency care providers. The identity of the designated officer shall not be revealed to the individual. The designated officer shall inform the hospital of those parties who received the notification, and following receipt of this information and upon request of the individual, the hospital shall inform the individual of the parties to whom notification was provided.

3. The hospital, upon request of the individual, shall inform the individual of the persons to whom notification was made.

4. The process for notification under this section shall be initiated as soon as is reasonably possible.

5. A health care provider, with consent of the individual, may provide the notification required of hospitals in this section to care providers if an individual who has HIV infection is delivered by a care provider to the office or clinic of the health care provider for treatment. The notification shall take place only upon submission of a significant exposure report form by the care provider to the health care provider and the determination by the health

care provider that a significant exposure has occurred.

6. This section does not require or permit, unless otherwise provided, a hospital or health care provider to administer a test for the express purpose of determining the presence of HIV infection, except that testing may be performed if the individual consents, and if the requirements of this section are satisfied.

7. When a care provider in the course of providing care sustains a significant exposure on the premises of a health care facility or while engaged in rendering aid or providing transportation to an individual in circumstances which lead to the individual's presence at a health care facility, the individual to whom the care provider was exposed is deemed to consent to a test to be administered by the health care facility upon the written request of the exposed care provider for the express purpose of determining the presence of HIV infection in that individual. The sample and test results shall only be identified by a number and no reports otherwise required by this chapter shall be made which identify the individual tested. However, if the test results are positive, the health care facility shall notify the individual tested and ensure performance of counseling and reporting requirements of this chapter in the same manner as for an individual from whom actual consent was obtained.

8. A hospital or health care provider, or other person participating in good faith in making a report under the notification provisions of this section, under procedures similar to this section for notification of its own employees upon filing of a significant exposure report, or in failing to make a report under this section, is immune from any liability, civil or criminal, which might otherwise be incurred or imposed.

9. Notifications made pursuant to this section shall not disclose the identity of the individual who is diagnosed or confirmed as having HIV infection unless the individual provides a specific written release as provided in subsection 1, paragraph "b". If the care provider determines the identity of the individual, the identity of the individual shall be confidential information and shall not be disclosed by the care provider to any other person unless a specific written release is obtained from the individual.

10. A hospital's duty to notify under this section is not continuing but is limited to the diagnosis of HIV infection made in the course of admission, care, and treatment following the rendering of assistance or treatment of the individual with the infection.

11. Notwithstanding subsection 10, if, following discharge or completion of care or treatment, an individual for whom a significant exposure report was submitted but which report did not result in notification, wishes to provide information regard-

ing the individual's HIV infection status to the care provider who submitted the report, the hospital shall provide a procedure for notifying the care provider.

12. The employer of a care provider who submits a report of significant exposure under this section sustained in the course of employment shall pay the costs of HIV testing for the individual and the costs of HIV testing and counseling for the care provider. However, the department shall pay the costs of HIV testing for the individual and the costs of HIV testing and counseling for a care provider who renders direct aid without compensation.

99 Acts, ch 181, §12
NEW section

141A.9 Confidentiality of information.

Any information, including reports and records, obtained, submitted, and maintained pursuant to this chapter is strictly confidential medical information. The information shall not be released, shared with an agency or institution, or made public upon subpoena, search warrant, discovery proceedings, or by any other means except as provided in this chapter. 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 persons entitled to that information under this chapter. Information shall be made available for release to the following individuals or under the following circumstances:

1. To the subject of the test or the subject's legal guardian subject to the provisions of section 141A.7, subsection 3, when applicable.

2. To any person who secures a written release of test results executed by the subject of the test or the subject's legal guardian.

3. To 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 samples, and the agent or employee has a medical need to know such information.

4. To a health care provider providing care to the subject of the test when knowledge of the test results is necessary to provide care or treatment.

5. To the department in accordance with reporting requirements for an HIV-related condition.

6. To 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.

7. Release may be made of medical or epidemiological information for statistical purposes in a manner such that no individual person can be identified.

8. Release may be made of medical or epidemiological information to the extent necessary to enforce the provisions of this chapter and related rules concerning the treatment, control, and investigation of HIV infection by public health officials.

9. Release may be made of medical or epidemiological information to medical personnel to the extent necessary to protect the health or life of the named party.

10. Release may be made of test results concerning a patient pursuant to procedures established under section 141A.5, subsection 3, paragraph "c".

11. To a person allowed access to a record by a court order which is issued in compliance with the following provisions:

a. A court has found that the person seeking the test results has demonstrated a compelling need for the test results which need 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.

b. 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.

c. 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.

d. 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.

e. 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.

12. To an employer, if the test is authorized to be required under any other provision of law.

13. To a convicted or alleged sexual assault offender; the physician or other health care provider who orders the test of a convicted or alleged 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 to provide counseling regarding the HIV-related test and results; the victim's spouse; persons with whom the victim has engaged in vaginal, anal, or oral intercourse subsequent to

the sexual assault; members of the victim's family within the third degree of consanguinity; and the county attorney who may use the results as evidence in the prosecution of sexual assault under chapter 915, subchapter IV, or prosecution of the offense of criminal transmission of HIV under chapter 709C. For the purposes of this paragraph, "victim" means victim as defined in section 915.40.

14. To employees of state correctional institutions subject to the jurisdiction of the department of corrections, employees of secure facilities for juveniles subject to the department of human services, and employees of city and county jails, if the employees have direct supervision over inmates of those facilities or institutions in the exercise of the duties prescribed pursuant to section 80.9, subsection 2, paragraph "d".

99 Acts, ch 181, §13
NEW section

141A.10 Immunities.

1. A person making a report in good faith pursuant to this chapter is immune from any liability, civil or criminal, which might otherwise be incurred or imposed as a result of the report.

2. A health care provider attending a person who tests positive for the HIV infection has no duty to disclose to or to warn third parties of the dangers of exposure to HIV infection through contact with that person and is immune from any liability, civil or criminal, for failure to disclose to or warn third parties of the condition of that person.

99 Acts, ch 181, §14
NEW section

141A.11 Remedies.

1. A person aggrieved by a violation of this chapter shall have a right of civil action for damages in district court.

2. A care provider who intentionally or recklessly makes an unauthorized disclosure under this chapter is subject to a civil penalty of one thousand dollars.

3. A person who violates a confidentiality requirement of section 141A.5 is guilty of an aggravated misdemeanor.

4. A civil action under this chapter is barred unless the action is commenced within two years after the cause of action accrues.

5. The attorney general may maintain a civil action to enforce this chapter.

6. This chapter does not limit the rights of the subject of an HIV-related test to recover damages or other relief under any other applicable law.

7. This chapter shall not be construed to impose civil liability or criminal sanctions for disclosure of HIV-related test results in accordance with any reporting requirement for a diagnosed case of AIDS or a related condition by the department or the centers for disease control and prevention of the United States public health service.

99 Acts, ch 181, §15
NEW section

CHAPTER 144

VITAL STATISTICS

Vital records modernization project; extension; temporary fee increase ending June 30, 2000; 93 Acts, ch 55, §1; 94 Acts, ch 1068, §8; 96 Acts, ch 1212, §17; 97 Acts, ch 203, §9, 22; 98 Acts, ch 1221, §9; 99 Acts, ch 201, §17, 20

144.1 Definitions.

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

1. *"Board"* means the state board of health.
2. *"Court of competent jurisdiction"* when used to refer to inspection of an original certificate of birth based upon an adoption means the court where the adoption was ordered.
3. *"Dead body"* means a lifeless human body or parts or bones of a body, if, from the state of the body, parts, or bones, it may reasonably be concluded that death recently occurred.
4. *"Department"* means the Iowa department of public health.
5. *"Division"* means a division, within the department, for records and statistics.
6. *"Fetal death"* means death prior to the complete expulsion or extraction from its mother of a product of human conception, irrespective of the duration of pregnancy. Death is indicated by the fact that after expulsion or extraction the fetus does not breathe or show any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles. In determining a fetal death, heartbeats shall be distinguished from transient cardiac contractions, and respirations shall be distinguished from fleeting respiratory efforts or gasps.
7. *"Filing"* means the presentation of a certificate, report, or other record, provided for in this chapter, of a birth, death, fetal death, adoption, marriage, dissolution, or annulment for registration by the division.
8. *"Final disposition"* means the burial, interment, cremation, removal from the state, or other disposition of a dead body or fetus.
9. *"Institution"* means any establishment, public or private, which provides inpatient medical, surgical, or diagnostic care or treatment, or nursing, custodial, or domiciliary care to two or more unrelated individuals, or to which persons are committed by law.
10. *"Live birth"* means the complete expulsion or extraction from its mother of a product of human conception, irrespective of the duration of pregnancy, which, after such expulsion or extraction, breathes or shows any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles, whether or not the umbilical cord has been cut or the placenta is attached. In determining a live birth, heartbeats shall be distinguished from tran-

sient cardiac contractions, and respirations shall be distinguished from fleeting respiratory efforts or gasps.

11. *"Registration"* means the process by which vital statistic records are completed, filed, and incorporated by the division in the division's official records.

12. *"State registrar"* means the state registrar of vital statistics.

13. *"System of vital statistics"* includes the registration, collection, preservation, amendment, and certification of vital statistics records, and activities and records related thereto including the data processing, analysis, and publication of statistical data derived from such records.

14. *"Vital statistics"* means records of births, deaths, fetal deaths, adoptions, marriages, dissolutions, annulments, and data related thereto.

99 Acts, ch 141, §14, 15
NEW subsection 2 and former subsections 2–13 renumbered as 3–14
Subsection 14 amended

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 as directed by the state registrar within seven days after the birth and shall be registered by the county registrar if it has been completed and filed in accordance with this chapter.
 - b. When a birth occurs in an institution or en route to an institution, the person in charge of the institution or the person's designated representative, shall obtain the personal data, prepare the certificate, and file the certificate as directed by the state 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 either by signature or as otherwise authorized by rule and provide the medical information required by the certificate within seven days after the birth.
 - c. When a birth occurs outside an institution and not en route to 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. The state registrar shall estab-

lish by rule the evidence required to establish the facts of birth.

d. The state registrar may share information from birth certificates for the sole purpose of identifying those children in need of immunizations.

e. If an affidavit of paternity is obtained directly from the county registrar and is filed pursuant to section 252A.3A the county registrar shall forward the original affidavit to the state registrar.

2. If the mother was married at the time of conception, birth, or at any time during the period between conception and 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 at the time of conception, birth, and at any time during the period between conception and birth, the name of the father shall not be entered on the certificate of birth, 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. If the father is not named on the certificate of birth, no other information about the father shall be entered on the certificate.

4. The division shall make all of the following available to the child support recovery unit, upon request:

- a. A copy of a child's birth certificate.
- b. The social security numbers of the mother and the father.
- c. A copy of the affidavit of paternity if filed pursuant to section 252A.3A and any subsequent rescission form which rescinds the affidavit.
- d. Information, other than information for medical and health use only, identified on a child's birth certificate or on an affidavit of paternity filed pursuant to section 252A.3A. The information may be provided as mutually agreed upon by the division and the child support recovery unit, including by automated exchange.

99 Acts, ch 141, §16
Subsection 1, paragraph d amended

144.13A Fees — use of funds.

The state registrar shall charge the parent a ten dollar fee for the registration of a certificate of birth and a separate fee established under section 144.46 for a certified copy of the certificate. The certified copy shall be mailed to the parent by the state registrar. If the person responsible for the filing of the certificate of birth under section 144.13 is not the parent, the person is entitled to collect the fee from the parent. The fee shall be remitted to the state registrar. If the expenses of the birth are reimbursed under the medical assistance program established by chapter 249A, or paid for under the statewide indigent patient care program established by chapter 255, or paid for under the obstet-

rical and newborn indigent patient care program established by chapter 255A, or if the parent is indigent and unable to pay the expenses of the birth and no other means of payment is available to the parent, the registration fee and certified copy fee are waived. If the person responsible for the filing of the certificate is not the parent, the person is discharged from the duty to collect and remit the fee under this section if the person has made a good faith effort to collect the fee from the parent. The fees collected by the state registrar shall be remitted to the treasurer of state for deposit in the general fund of the state. It is the intent of the general assembly that the funds generated from the registration fees be appropriated and used for primary and secondary child abuse prevention programs. It is the intent of the general assembly that the funds generated from the fees as established under section 144.46 for the mailing of the certified copy of the birth certificate be appropriated and used to support the distribution of the automatic birth certificate and the implementation of the electronic birth certificate system.

99 Acts, ch 96, §13; 99 Acts, ch 141, §17
See Code editor's note
Section amended

144.24 Substituting new for original birth certificates — inspection.

If a new certificate of birth is established, the actual place and date of birth shall be shown on the certificate. The certificate shall be substituted for the original certificate of birth. Thereafter, the original certificate and the evidence of adoption, paternity, legitimation, or sex change shall not be subject to inspection except under order of a court of competent jurisdiction, including but not limited to an order issued pursuant to section 600.16A, or as provided by administrative rule for statistical or administrative purposes only. However, the state registrar shall, upon the application of an adult adopted person, a biological parent, an adoptive parent, or the legal representative of the adult adopted person, the biological parent, or the adoptive parent, inspect the original certificate and the evidence of adoption and reveal to the applicant the date of the adoption and the name and address of the court which issued the adoption decree.

99 Acts, ch 141, §18
Section amended

144.36 Marriage certificate filed — prohibited information.

1. A certificate recording each marriage performed in this state shall be filed with the state registrar. The county registrar shall prepare the certificate on the form furnished by the state registrar upon the basis of information obtained from the parties to be married, who shall attest to the information by their signatures. The county registrar in each county shall keep a record book for marriages. The form of marriage record books shall be uniform throughout the state. A properly indexed perma-

ment record of marriage certificates upon microfilm, electronic computer, or data processing equipment may be kept in lieu of marriage record books.

2. Every person who performs a marriage shall certify the fact of marriage and return the certificate to the county registrar within fifteen days after the ceremony. The certificate shall be signed by the witnesses to the ceremony and the person performing the ceremony.

3. The certificate of marriage shall not contain information concerning the race of the married persons, previous marriages of the married persons, or the educational level of the married persons.

4. The county registrar shall record and forward to the state registrar on or before the tenth day of each calendar month the original certificates of marriages filed with the county registrar during the preceding calendar month and the fees collected by the county registrar on behalf of the state for applications for a license to marry in accordance with section 331.605, subsection 6.

99 Acts, ch 114, §6
Subsection 4 amended

144.43A Mutual consent voluntary adoption registry.

1. In addition to other procedures by which birth certificates may be inspected under this chapter, the state registrar shall establish a mutual consent voluntary adoption registry through which adult adopted children, adult siblings, and the biological parents of adult adoptees may register to obtain identifying birth information.

2. If all of the following conditions are met, the state registrar shall reveal the identity of the biological parent to the adult adopted child or the identity of the adult adopted child to the biological parent, shall notify the parties involved that the requests have been matched, and shall disclose the identifying information to those parties:

a. A biological parent has filed a request and provided consent to the revelation of the biological parent's identity to the adult adopted child, upon request of the adult adopted child.

b. An adult adopted child has filed a request and provided consent to the revelation of the identity of the adult adopted child to a biological parent, upon request of the biological parent.

c. The state registrar has been provided sufficient information to make the requested match.

3. Notwithstanding the provisions of this section, if the adult adopted person has a sibling who

is a minor and who has also been adopted, the state registrar shall not grant the request of either the adult adopted person or the biological parent to reveal the identities of the parties.

4. If all of the following conditions are met, the state registrar shall reveal the identity of the adult adopted child to an adult sibling and shall notify the parties involved that the requests have been matched, and disclose the identifying information to those parties:

a. An adult adopted child has filed a request and provided consent to the revelation of the adult adopted child's identity to an adult sibling.

b. The adult sibling has filed a request and provided consent to the revelation of the identity of the adult sibling to the adult adopted child.

c. The state registrar has been provided with sufficient information to make the requested match.

5. A person who has filed a request or provided consent under this section may withdraw the consent at any time prior to the release of any information by filing a written withdrawal of consent statement with the state registrar. The adult adoptee, adult sibling, and biological parent shall notify the state registrar of any change in the information contained in a filed request or consent.

6. The state registrar shall establish a fee by rule based on the average administrative costs for providing services under this section.

99 Acts, ch 141, §19
NEW section

144.46 Fee for copy of record.

The department by rule shall establish fees based on the average administrative cost which shall be collected by the state registrar or the county registrar for each certified copy or short form certification of certificates or records, or for a search of the files or records when no copy is made, or when no record is found on file. Fees collected by the state registrar and by the county registrar on behalf of the state under this section shall be deposited in the general fund of the state. Fees collected by the county registrar pursuant to section 331.605, subsection 5, shall be deposited in the county general fund. A fee shall not be collected from a political subdivision or agency of this state.

99 Acts, ch 114, §7

Temporary fee increase through June 30, 2000, for vital records modernization project; 93 Acts, ch 55, §1; 94 Acts, ch 1068, §8; 96 Acts, ch 1212, §17; 97 Acts, ch 203, §9, 22; 98 Acts, ch 1221, §9; 99 Acts, ch 201, §17, 20
Section amended

CHAPTER 144C

COMMUNITY HEALTH MANAGEMENT INFORMATION SYSTEM

Chapter repealed effective February 28, 1999;
see 98 Acts, ch 1119, §5

CHAPTER 147

GENERAL PROVISIONS, HEALTH-RELATED PROFESSIONS

147.14 Composition of boards.

The boards of examiners shall consist of the following:

1. For barbering, three members licensed to practice barbering, and two members who are not licensed to practice barbering and who shall represent the general public. A quorum shall consist of a majority of the members of the board.

2. For medical examiners, five members licensed to practice medicine and surgery, two members licensed to practice osteopathic medicine and surgery, and three members not licensed to practice either medicine and surgery or osteopathic medicine and surgery, and who shall represent the general public. A majority of members of the board constitutes a quorum.

3. For nursing examiners, four registered nurses, two of whom shall be actively engaged in practice, two of whom shall be nurse educators from nursing education programs; of these, one in higher education and one in area community and vocational-technical registered nurse education; one licensed practical nurse actively engaged in practice; and two members not registered nurses or licensed practical nurses and who shall represent the general public. The representatives of the general public shall not be members of health care delivery systems. A majority of the members of the board constitutes a quorum.

4. For dental examiners, five members shall be licensed to practice dentistry, two members shall be licensed to practice dental hygiene and two members not licensed to practice dentistry or dental hygiene and who shall represent the general public. A majority of the members of the board shall constitute a quorum. No member of the dental faculty of the school of dentistry at the state university of Iowa shall be eligible to be appointed. Beginning January 1, 2000, persons appointed to the board as dental hygienist members shall not be employed by or receive any form of remuneration from a dental or dental hygiene educational institution. The two dental hygienist board members and one dentist board member shall constitute a dental hygiene committee of the board as provided in section 153.33A.

5. For pharmacy examiners, five members licensed to practice pharmacy and two members who are not licensed to practice pharmacy and who shall represent the general public. A majority of the members of the board shall constitute a quorum.

6. For optometry examiners, five members licensed to practice optometry and two members who are not licensed to practice optometry and who shall represent the general public. A majority of the members of the board shall constitute a quorum.

7. For psychology examiners, five members who are licensed to practice psychology and two members not licensed to practice psychology and who shall represent the general public. Of the five members who are licensed to practice psychology, one member shall be primarily engaged in graduate teaching in psychology, two members shall be persons who render services in psychology, one member shall represent areas of applied psychology and may be affiliated with training institutions and shall devote a major part of the member's time to rendering service in psychology, and one member shall be primarily engaged in research psychology. A majority of the members of the board constitutes a quorum.

8. For chiropractic examiners, five members licensed to practice chiropractic and two members who are not licensed to practice chiropractic and who shall represent the general public. A majority of the members of the board shall constitute a quorum.

9. For speech pathology and audiology examiners, five members licensed to practice speech pathology or audiology at least two of which shall be licensed to practice speech pathology and at least two of which shall be licensed to practice audiology, and two members who are not licensed to practice speech pathology or audiology and who shall represent the general public. A majority of the members of the board shall constitute a quorum.

10. For physical therapy and occupational therapy, three members licensed to practice physical therapy, two members licensed to practice occupational therapy, and two members who are not licensed to practice physical therapy or occupational therapy and who shall represent the general public. A quorum shall consist of a majority of the members of the board.

11. For dietetic examiners, one licensed dietitian representing the approved or accredited dietetic education programs, one licensed dietitian representing clinical dietetics in hospitals, one licensed dietitian representing community nutrition services and two members who are not licensed dietitians and who shall represent the general public. A majority of the members of the board constitutes a quorum.

12. For the board of physician assistant examiners, three members licensed to practice as physician assistants, at least two of whom practice in counties with a population of less than fifty thousand, one member licensed to practice medicine and surgery who supervises a physician assistant, one member licensed to practice osteopathic medicine and surgery who supervises a physician assistant, and two members who are not licensed to prac-

tice either medicine and surgery or osteopathic medicine and surgery or licensed as a physician assistant and who shall represent the general public. At least one of the physician members shall be in practice in a county with a population of less than fifty thousand. A majority of members of the board constitutes a quorum.

13. For behavioral science examiners, three members licensed to practice marital and family therapy, one of whom shall be employed in graduate teaching, training, or research in marital and family therapy and two of whom shall be practicing marital and family therapists; three members licensed to practice mental health counseling, one of whom shall be employed in graduate teaching, training, or research in mental health counseling and two of whom shall be practicing mental health counselors; and three members who are not licensed to practice marital and family therapy or mental health counseling and who shall represent the general public. A majority of the members of the board constitutes a quorum.

14. For cosmetology arts and sciences examiners, a total of seven members, three who are licensed cosmetologists, one who is a licensed electrologist, esthetician, or nail technologist, one who is a licensed instructor of cosmetology arts and sciences at a public or private school and who does not own a school of cosmetology arts and sciences, and two who are not licensed in a practice of cosmetology arts and sciences and who shall represent the public.

15. For respiratory care, one licensed physician with training in respiratory care, three respiratory care practitioners who have practiced respiratory care for a minimum of six years immediately preceding their appointment to the board and who are recommended by the society for respiratory care, and one member not licensed to practice medicine or respiratory care who shall represent the general public. A majority of members of the board constitutes a quorum.

16. For mortuary science examiners, four members licensed to practice mortuary science, one member owning, operating, or employed by a crematory, and two members not licensed to practice mortuary science and not a crematory owner, operator, or employee who shall represent the general public. A majority of the members of the board constitutes a quorum.

17. For massage therapists, four members licensed to practice massage therapy and three members who are not licensed to practice massage therapy and who shall represent the general public. A majority of the members of the board constitutes a quorum.

18. For athletic trainers, three members licensed to practice athletic training, three members licensed to practice medicine and surgery, and one member not licensed to practice athletic training or medicine and surgery and who shall represent the

general public. A majority of the members of the board constitutes a quorum.

19. For podiatry examiners, five members licensed to practice podiatry and two members who are not licensed to practice podiatry and who shall represent the general public. A majority of the members of the board shall constitute a quorum.

20. For social work examiners, a total of seven members, five who are licensed to practice social work, with at least one from each of three levels of licensure described in section 154C.3, subsection 1, two employed by a licensee under chapter 237, and two who are not licensed social workers and who shall represent the general public.

99 Acts, ch 19, §1; 99 Acts, ch 96, §14
Subsections 1 and 3 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 podiatric physician may use the prefix "Dr." but shall add after the person's name the word "podiatric physician".

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 "P. T." 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 "P. T. A." 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 with an earned doctoral degree in speech pathology obtained beyond a bachelor's degree from an accredited school, college, or university, may use the suffix designating the degree, or the prefix "Doctor" or "Dr." and add after the person's name the words "speech pathologist". An audiologist with an earned doctoral degree in audiology obtained beyond a bachelor's degree from an accredited school, college, or university, may use the suffix designating the degree, or the prefix "Doctor" or "Dr." and add after the person's name the word "audiologist".

12. A bachelor social worker licensed under chapter 154C may use the words "licensed bachelor social worker" or the letters "L. B. S. W." after the person's name. A master social worker licensed under chapter 154C may use the words "licensed master social worker" or the letters "L. M. S. W." after the person's name. An independent social worker licensed under chapter 154C may use the words "licensed independent social worker", or the letters "L. I. 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. A respiratory care practitioner licensed under chapter 152B and this chapter may use the title "respiratory care practitioner" or the letters "R. C. P." after the person's name.

20. An athletic trainer licensed under chapter 152D and this chapter may use the title "licensed athletic trainer" after the person's name.

21. 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".

99 Acts, ch 101, §1
Subsection 11 stricken and rewritten

147.103A Physicians and surgeons, osteopaths, and osteopathic physicians and surgeons.

This chapter shall apply to the licensing of persons to practice as physicians and surgeons, osteopaths, and osteopathic physicians and surgeons by the board of medical examiners subject to the following provisions:

1. A person violating the provisions of section 147.2, 147.84, or 147.85, shall upon conviction be guilty of a class "D" felony.

2. The issuance of reciprocal agreements pursuant to section 147.44 is not required and is subject to the discretion of the board.

3. The board may appoint investigators, who shall not be members of the examining board, and whose compensation shall be determined pursuant to chapter 19A. Investigators appointed by the board have the powers and status of peace officers when enforcing this chapter and chapters 148, 150, 150A, and 272C.

4. Applications for a license shall be made to the chairperson, executive director, or secretary of the board. All examination, license, and renewal fees shall be paid to and collected by the chairperson, executive director, or secretary of the board, who shall transmit the fees to the treasurer of state for deposit in the general fund of the state. The salary of the executive director of the board shall be established by the governor with approval of the executive council pursuant to section 19A.9, subsection 2, under the pay plan for exempt positions in the executive branch of government.

5. The board shall give priority to the processing of applications for licensure submitted by physicians and surgeons, osteopaths, and osteopathic physicians and surgeons whose practice will primarily involve provision of service to underserved populations, including but not limited to persons who are minorities or low-income, or who live in rural areas.

6. Disciplinary hearings held pursuant to section 272C.6, subsection 1, shall be heard by the board, or by a panel of not less than three board

members, at least two of which are licensed in the profession, or by a panel of not less than three members appointed pursuant to section 272C.6, subsection 2. Notwithstanding chapters 17A and 21, a disciplinary hearing shall be open to the public at the discretion of the licensee.

99 Acts, ch 141, §20
Subsection 3 amended

147.111 Report of treatment of wounds and other injuries.

Any person licensed under the provisions of this subtitle who shall administer any treatment to any person suffering a gunshot or stab wound or other serious 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 injury occurred, stating the name of such per-

son, the person's residence if ascertainable, and giving a brief description of the gunshot or stab wound or other serious injury. Any provision of law or rule of evidence relative to confidential communications is suspended insofar as the provisions of this section are concerned.

99 Acts, ch 114, §8
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 injury and make a report of the investigation to the county attorney in whose jurisdiction the gunshot or stab wound or other serious 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.

99 Acts, ch 114, §9
Section amended

CHAPTER 147A

EMERGENCY MEDICAL CARE — TRAUMA CARE

147A.1 Definitions.

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

1. "Department" means the Iowa department of public health.
2. "Director" means the director of the Iowa department of public health.
3. "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 emergency medical care providers who have been trained in that procedure.
4. "Emergency medical care provider" means an individual trained to provide emergency and nonemergency medical care at the first-responder, EMT-basic, EMT-intermediate, EMT-paramedic level, or other certification levels adopted by rule by the department, who has been issued a certificate by the department.

5. "Emergency medical services" or "EMS" means an integrated medical care delivery system to provide emergency and nonemergency medical care at the scene or during out-of-hospital patient transportation in an ambulance.

6. "Emergency medical services instructor" means an individual who has successfully completed an EMS curriculum determined in rules in accordance with chapter 17A by the director and subject to the approval of the state board of health.

7. "Emergency rescue technician" or "ERT" means an individual trained in various rescue techniques including, but not limited to, extrication from vehicles and agricultural rescue, and who has successfully completed a curriculum approved by the department in cooperation with the Iowa fire service institute.

8. "First responder" or "FR" means an individual trained in patient-stabilizing techniques, through the use of initial emergency medical care procedures and skills prior to the arrival of an ambulance, pursuant to rules established by the department and who is currently certified as a first responder by the department.

9. "Physician" means an individual licensed under chapter 148, 150, or 150A.

99 Acts, ch 141, §21
Subsection 1 stricken and former subsections 2–10 renumbered as 1–9

147A.4 Rulemaking authority.

1. The department shall adopt rules required or authorized by this subchapter 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 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.

The director, pursuant to rule, may grant exceptions and variances from the requirements of rules adopted under this subchapter for any ambulance, rescue, or first response service. Exceptions or variations shall be reasonably related to undue hardships which existing services experience in complying with this subchapter or the rules adopted pursuant to this subchapter. However, no exception or variance may be granted unless the service has adopted a plan approved by the department prior to July 1, 1996, to achieve compliance during a period not to exceed seven years with this subchapter and rules adopted pursuant to this subchapter. Services requesting exceptions and variances shall be subject to other applicable rules adopted pursuant to this subchapter.

2. The department shall adopt rules required or authorized by this subchapter pertaining to the examination and certification of emergency medical care providers. These rules shall include, but need not be limited to, requirements concerning prerequisites, training, and experience for emergency medical care providers and procedures for determining when individuals have met these requirements. The department shall adopt rules to recognize the previous EMS training and experience of first responders and emergency medical technicians to provide for an equitable transition to the EMT-basic certification. The department may require additional training and examinations as necessary and appropriate to ensure that individuals seeking certification have met the EMT-basic knowledge and skill requirements.

3. The department shall establish the fee for the examination of the emergency medical care providers to cover the administrative costs of the examination program.

99 Acts, ch 141, §22
Subsection 2 amended

147A.7 Denial, suspension or revocation of certificates — hearing — appeal.

1. The department may deny an application for issuance or renewal of an 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 subchapter.
 - 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 subchapter or of rules adopted pursuant to this subchapter.
 - 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 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 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. 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.
3. 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.

99 Acts, ch 141, §23
Subsection 2 stricken and former subsections 3 and 4 renumbered as 2 and 3

147A.8 Authority of certified emergency medical care provider.

An emergency medical care provider properly certified under this subchapter may:

1. Render emergency and nonemergency medical care, rescue, and lifesaving services in those areas for which the 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 emergency medical care provider's certification and under the direct supervision of a physician, physician assistant, or registered nurse. An 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 emergency medical care provider may perform without direct supervision 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 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.

Nothing in this subchapter shall be construed to require any voluntary ambulance, rescue, or first response service to provide a level of care beyond

minimum basic care standards.

99 Acts, ch 141, §24
Unnumbered paragraph 2 stricken

147A.9 Remote supervision — emergency communication failure — authorization to initiate emergency 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 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 emergency medical care procedure for which that emergency medical care provider is certified.

2. If communications fail during an emergency or nonemergency situation, the emergency medical care provider may perform any emergency medical care procedure for which that individual is certified and which is included in written protocols if in the judgment of the 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 medical care procedures which can be initiated in accordance with written protocols prior to the establishment of communication.

99 Acts, ch 141, §25
Subsection 4 stricken

147A.14 Enforcement.

Investigators authorized by the department have the powers and status of peace officers when enforcing this chapter.

99 Acts, ch 141, §26
NEW section

147A.15 through 147A.19 Reserved.

CHAPTER 148

MEDICINE AND SURGERY

148.7 Procedure for suspension or revocation.

A proceeding for the revocation or suspension of a license to practice medicine and surgery, osteopathic medicine and surgery, or osteopathy or to discipline a person licensed to practice medicine and surgery, osteopathic medicine and surgery, or osteopathy shall be substantially in accord with the following procedure:

1. The medical examiners may, upon their own motion or upon verified complaint in writing, and shall, if such complaint is filed by the director of public health, issue an order fixing the time and place of hearing. A written notice of the time and place of the hearing together with a statement of the charges shall be served upon the licensee at least ten days before the hearing in the manner re-

quired for the service of notice of the commencement of an ordinary action or by restricted certified mail.

2. If the licensee has left the state, the notice and statement of the charges shall be so served at least twenty days before the date of the hearing, wherever the licensee may be found. If the whereabouts of the licensee is unknown, service may be had by publication as provided in the rules of civil procedure upon filing the affidavit required by said rules. In case the licensee fails to appear, either in person or by counsel at the time and place designated in said notice, the medical examiners shall proceed with the hearing as hereinafter provided.

3. The hearing shall be before a member or members designated by the board or before an administrative law judge appointed by the board ac-

cording to the requirements of section 17A.11, subsection 1. The presiding board member or administrative law judge may issue subpoenas, administer oaths, and take or cause depositions to be taken in connection with the hearing. The presiding board member or administrative law judge shall issue subpoenas at the request and on behalf of the licensee. The hearing shall be open to the public.

The administrative law judge shall be an attorney vested with full authority of the board to schedule and conduct hearings. The administrative law judge shall prepare and file with the medical examiners the administrative law judge's findings of fact and conclusions of law, together with a complete written transcript of all testimony and evidence introduced at the hearing and all exhibits, pleas, motions, objections, and rulings of the administrative law judge.

4. A stenographic record of the proceedings shall be kept. The licensee shall have the opportunity to appear personally and by an attorney, with the right to produce evidence in the licensee's own behalf, to examine and cross-examine witnesses and to examine documentary evidence produced against the licensee.

5. If a person refuses to obey a subpoena issued by the presiding member or administrative law judge or to answer a proper question during the hearing, the presiding member or administrative law judge may invoke the aid of a court of competent jurisdiction or judge of this court in requiring the attendance and testimony of the person and the production of papers. A failure to obey the order of the court may be punished by the court as a civil contempt may be punished.

6. Unless the hearing is before the entire board, a transcript of the proceeding, together with exhibits presented, shall be considered by the entire board at the earliest practicable time. The licensee and the licensee's attorney shall have the

opportunity to appear personally to present the licensee's position and arguments to the board. The board shall determine the charge or charges upon the merits on the basis of the evidence in the record before it.

7. If a majority of the members of the board vote in favor of finding the licensee guilty of an act or offense specified in section 147.55 or 148.6, the board shall prepare written findings of fact and its decision imposing one or more of the following disciplinary measures:

a. Suspend the licensee's license to practice the profession for a period to be determined by the board.

b. Revoke the licensee's license to practice the profession.

c. Suspend imposition of judgment and penalty or impose the judgment and penalty, but suspend enforcement and place the physician on probation. The probation ordered may be vacated upon non-compliance. The medical examiners may restore and reissue a license to practice medicine and surgery, osteopathic medicine and surgery or osteopathy, but may impose a disciplinary or corrective measure which it might originally have imposed. A copy of the medical examiners' order, findings of fact, and decision, shall be served on the licensee in the manner of service of an original notice or by certified mail return receipt requested.

8. Judicial review of the board's action may be sought in accordance with the terms of the Iowa administrative procedure Act.

9. The medical examiners' order revoking or suspending a license to practice medicine and surgery, osteopathic medicine and surgery, or osteopathy or to discipline a licensee shall remain in force and effect until the appeal is finally determined and disposed of upon its merit.

98 Acts, ch 1202, §31, 46

1998 amendment to subsection 3 is effective July 1, 1999, and applies to agency proceedings commenced, or conducted on remand from a court or other agency, on or after that date; 98 Acts, ch 1202, §31, 46
Subsection 3 amended

CHAPTER 151

CHIROPRACTIC

151.1 "Chiropractic" defined.

For the purpose of this subtitle the following classes of persons shall be deemed to be engaged in the practice of chiropractic:

1. Persons publicly professing to be chiropractors or publicly professing to assume the duties incident to the practice of chiropractic.

2. Persons who treat human ailments by the adjustment of the neuromusculoskeletal structures, primarily, by hand or instrument, through spinal care.

3. Persons utilizing differential diagnosis and

procedures related thereto, withdrawing or ordering withdrawal of the patient's blood for diagnostic purposes, performing or utilizing routine laboratory tests, performing physical examinations, rendering nutritional advice, utilizing chiropractic physiotherapy procedures, all of which are subject to and authorized by section 151.8.

99 Acts, ch 141, §27

Subsection 3 amended

151.7 Probation — advertising restrictions. Repealed by 99 Acts, ch 141, § 42.

CHAPTER 157

COSMETOLOGY

157.11 Salon licenses.

A salon shall not operate unless the owner has obtained a license issued by the department. The owner shall apply to the department on forms prescribed by the board. The department shall perform a sanitary inspection of each salon biennially and may perform a sanitary inspection of a salon prior to the issuance of a license. An inspection of a salon shall also be conducted upon receipt of a complaint by the department.

The application shall be accompanied by the biennial license fee determined pursuant to section 147.80. The license is valid for two years and may be renewed.

A licensed school of cosmetology arts and sciences at which students practice cosmetology arts and sciences is exempt from licensing as a salon.

99 Acts, ch 141, §28
Unnumbered paragraph 2 amended

CHAPTER 158

BARBERING

158.9 Barbershop licenses.

A barbershop shall not operate unless the owner has obtained a license issued by the department. The owner shall apply to the department on forms prescribed by the board. The department shall perform a sanitary inspection of each barbershop biennially and may perform a sanitary inspection of a barbershop prior to the issuance of a license. An inspection of a barbershop shall also be conducted upon receipt of a complaint by the department.

biennial license fee determined pursuant to section 147.80. The license is valid for two years and may be renewed.

A licensed barbershop shall not employ more than one licensed barber assistant for each five licensed barbers.

A licensed barber school at which students practice barbering is exempt from licensing as a barbershop.

99 Acts, ch 141, §29
Unnumbered paragraph 2 amended

The application shall be accompanied by the

CHAPTER 159

DEPARTMENT OF AGRICULTURE AND LAND STEWARDSHIP

159.5 Powers and duties.

The secretary of agriculture is the head of the department of agriculture and land stewardship which shall:

1. Carry out the objects for which the department is created and maintained.
2. Establish and maintain such divisions in the department as are necessary for the proper enforcement of the laws administered by it.
3. Consolidate the inspection service of the state in respect to the laws administered by the department so as to eliminate duplication of inspection insofar as practicable.
4. Maintain a weather division which shall, in cooperation with the national weather service, collect and disseminate weather and phenological statistics and meteorological data, and promote knowledge of meteorology, phenology and climatology of the state. The division shall be headed by the state climatologist who shall be appointed by the

secretary of agriculture, and shall be an officer of the national weather service, if one is detailed for that purpose by the federal government.

5. Establish volunteer weather stations in one or more places in each county, appoint observers thereat, supervise such stations, receive reports of meteorological events and tabulate the same for permanent record.

6. Issue weekly weather and crop bulletins from April 1 to October 1 of each year, and edit and cause to be published monthly weather reports, containing meteorological matter in its relationship to agriculture, transportation, commerce and the general public.

7. Maintain a division of agricultural statistics, which shall, in cooperation with the United States department of agriculture statistical reporting service, gather, compile, and publish statistical information concerning the condition and progress of crops, the production of crops, livestock, livestock

products, poultry, and other such related agricultural statistics, as will generally promote knowledge of the agricultural industry in the state of Iowa. The statistics, when published, constitute official agricultural statistics for the state of Iowa. The division is in the charge of an administrator, who shall be appointed by the secretary of agriculture and who shall be an officer of the United States department of agriculture statistical reporting service, if one is detailed for that purpose by the federal government.

8. Establish and maintain a marketing news service division in the department which shall, in cooperation with the federal market news and grading division of the United States department of agriculture, collect and disseminate data and information relative to the market prices and conditions of agricultural products raised, produced, and handled in the state. The division is in the charge of an administrator, who shall be appointed by the secretary of agriculture and shall be an officer of the federal market news and grading division of the United States department of agriculture, if one is detailed for that purpose by the federal government.

9. Inspect and supervise all food producing or distributing establishments including the furniture, fixtures, utensils, machinery, and other equipment so as to prevent the production, preparation, packing, storage, or transportation of food in a manner detrimental to its character or quality.

10. Approve all methods of probing for foreign material content of any type of grain.

11. Establish, publish, and enforce rules not inconsistent with law for the enforcement of the provisions of subtitles 1 through 3 of this title, excluding chapters 161A through 161C, and for the enforcement of the various laws, the administration and supervision of which are imposed upon the department.

12. Establish and maintain a sheep promotion division in the department which shall promote the consumption of lamb, mutton, and the use of wool, aid in the orderly marketing of sheep and wool, and conduct other activities which are beneficial to the sheep industry in Iowa. The division is in the charge of an administrator, who shall be appointed by the secretary of agriculture. Funds appropriated for the department of agriculture for state aid to the Iowa sheep association may be used together with other funds available for sheep promotion in establishing and maintaining the sheep promotion division, and the funds may be drawn and expended upon the order of the administrator with the approval of the secretary of agriculture.

13. Establish a swine tuberculosis eradication program including, but not limited to:

a. The inspection of swine herds in this state when the department finds that an animal from a swine herd has, or is believed to have, tuberculosis;

b. Ear tagging or otherwise physically marking all swine reacting positively to tests for tuberculosis;

c. Condemning any swine which has tuberculosis;

d. Depopulating any swine herd where tuberculosis is found to be generally present; and

e. Compensate the owners of condemned swine as provided under section 165.18, following the general procedures for filing claims and paying indemnities as provided in chapter 165.

If the department finds that the source of the tuberculosis in a swine herd is from another species of animal, except bovine, located on or near the premises on which the affected swine herd is located, the department may destroy those animals and indemnify the owners of the condemned animals as provided in chapter 163.

14. Establish and maintain a division of soil conservation. The division administrator shall be appointed by the secretary from a list of names of persons recommended by the soil conservation committee, pursuant to section 161A.4, subsection 2, and shall serve at the pleasure of the secretary.

15. Establish an inspection and regulation program regarding water sold in sealed containers for human consumption. As used in this subsection, "*water sold in sealed containers for human consumption*" includes ice sold in sealed containers and bottled water; "*bottled water*" means drinking water which is placed in sealed containers for the purpose of sale to the public for human consumption; and "*drinking water*" means water sold for drinking, culinary, or other purposes involving the likelihood of the water being ingested for human consumption but does not include distilled water, carbonated beverages, mineral water, or other beverages which contain water. The program shall include, but is not limited to, all of the following:

a. Establish, modify, or repeal rules relating to standards for testing for the presence of chemicals in water sold in sealed containers for human consumption. The standards for testing shall not be less stringent than the rules established for public drinking water supplies pursuant to chapter 455B.

b. Establish, modify, or repeal rules relating to drinking water standards for water sold in sealed containers for human consumption. The standards shall establish the maximum permissible level of any physical, chemical, biological, or radiological substance in the water and shall be as stringent as those established under the federal Food and Drug Act.

c. Establish, modify, or repeal rules relating to the labeling of water sold in sealed containers for human consumption including, but not limited to, requirements that water sold in this state shall have the words "Meets all F.D.A. standards" printed clearly and conspicuously on its label.

d. Establish, modify, or repeal rules relating to the frequency with which facilities where water is placed in sealed containers, including but not limited to ice making and bottling facilities, are inspected and tested. The frequency standard shall not be less stringent than the frequency standard for testing of public water supplies under chapter 455B.

e. A requirement that all records pertaining to sampling and analysis of water sold in sealed containers for human consumption under this subsection shall be maintained at the bottling facility or if the water is bottled outside of the state at the distributor's facility. The records shall be maintained

for at least two years and shall be available upon request for review by officials of the department.

f. Provide that enforcement of this subsection shall be pursuant to chapter 189.

g. The provisions of paragraphs "a", "b", "c", and "e" shall not apply to ice produced from a public water supply as defined and regulated in chapter 455B. Ice sold in sealed containers shall be labeled or tagged with the name and location of the ice maker and whether it is produced from a public water supply. The department shall adopt rules relating to the packaging and handling of ice sold in sealed containers.

99 Acts, ch 96, §15
Subsection 9 amended

CHAPTER 161A

SOIL AND WATER CONSERVATION

161A.35 Installments.

If the owner of any premises against which a levy exceeding one hundred dollars has been made and certified shall, within thirty days from the date of such levy, agree in writing in a separate agreement, that in consideration of having a right to pay the owner's assessment in installments, the owner will not make any objection as to the legality of the assessment for benefit, or the levy of the taxes against the owner's property, then such owner shall have the following options:

1. To pay one half of the amount of such assessment at the time of filing such agreement and the remaining one half shall become due and payable one year from the date of filing such agreement. All such installments shall be without interest if paid at said times, otherwise said assessments shall bear interest from the date of the levy at a rate fixed by the governing body of the subdistrict, but not exceeding that permitted by chapter 74A, payable annually, and be collected as other taxes on real estate, with like penalty for delinquency.

2. To pay such assessments in not less than ten nor more than forty equal installments, the number to be fixed by the governing body of the subdistrict and interest at the rate fixed by the governing body of the subdistrict, not exceeding that permitted by chapter 74A. The first installment of each assessment shall become due and payable at the September semiannual tax paying date after the date of filing such agreement, unless the agreement is filed with the county treasurer less than ninety days prior to such September semiannual tax paying date, in that event, the first installment shall become due and payable at the next succeeding September semiannual tax paying date. The second and each subsequent installment shall become due and payable at the September semiannual tax paying date each year thereafter. All such in-

stallments shall be collected with interest accrued on the unpaid balance to the September semiannual tax paying date and as other taxes on real estate, with like penalty for delinquency.

99 Acts, ch 83, §1
Unnumbered paragraph 1 amended

161A.80 Blufflands protection program and revolving fund.

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

a. For purposes of this section only, "bluffland" means a cliff, headland, or hill with a broad, steep face along the channel or floodplain of the Missouri or Mississippi river and their tributaries.

b. "Conservation organization" means a non-profit corporation incorporated in Iowa or an entity organized and operated primarily to enhance and protect natural resources in this state.

2. A blufflands protection revolving fund is created in the state treasury. All proceeds shall be divided into two equal accounts. One account shall be used for the purchase of blufflands along the Mississippi river and its tributaries and the other account shall be used for the purchase of blufflands along the Missouri river and its tributaries. The proceeds of the revolving fund are appropriated to make loans to conservation organizations which agree to purchase bluffland properties adjacent to state public lands. The department of agriculture and land stewardship, in conjunction with the department of natural resources, shall adopt rules pursuant to chapter 17A to administer the disbursement of funds. Notwithstanding section 12C.7, interest or earnings on investments made pursuant to this section or as provided in section 12B.10 shall be credited to the blufflands protection revolving fund. Notwithstanding section 8.33, unobligated or unencumbered funds credited to the

blufflands protection revolving fund shall not revert at the close of a fiscal year. However, the maximum balance in the blufflands protection revolving fund shall not exceed two million five hundred thousand dollars. Any funds in excess of two million five hundred thousand dollars shall be credited to the rebuild Iowa infrastructure fund.

- a. This section is repealed on July 1, 2005.
- b. The principal and interest from any bluff-

lands protection loan outstanding on July 1, 2005, and payable to the blufflands protection revolving fund, shall be paid to the administrative director of the division of soil conservation on or after July 1, 2005, pursuant to the terms of the loan agreement and shall be credited to the rebuild Iowa infrastructure fund.

99 Acts, ch 96, §16; 99 Acts, ch 204, §26, 42
See Code editor's note to §10A.202
Subsection 2, unnumbered paragraph 1 amended

CHAPTER 161C

WATER PROTECTION PROJECTS AND PRACTICES

161C.7 Watershed protection.

1. The department of agriculture and land stewardship shall initiate and coordinate the establishment of a watershed protection task force and provide staffing assistance to the task force. It is the intent of the general assembly that the task force include representatives of the department of agriculture and land stewardship, the department of natural resources, the emergency management division of the department of public defense, county conservation boards, soil and water conservation districts, and any other appropriate stakeholders. The task force shall study the condition of watershed protection in the state and provide recommendations to the department of agriculture and land stewardship regarding soil conservation, water quality protection, flood control, and other natural resource conservation issues. The task force shall submit recommendations to the department by January 1 of each year through January 1, 2001.

2. The department of agriculture and land stewardship shall implement and administer a watershed protection program. The department of agriculture and land stewardship, in consultation with the department of natural resources, shall

annually establish a prioritized list of watersheds that are of the highest importance to the state's water quality. The watershed protection program shall, to the extent practical, target for assistance those watersheds on the prioritized list. A soil and water conservation district, in cooperation with state agencies, local units of government, and private organizations, may submit an application for assistance to the department which provides a strategy for protecting soil, water quality, and other natural resources, and improving flood control in the watershed. Upon approval of an application, the department may provide a grant to the soil and water conservation district for purposes of carrying out the strategy provided in the application.

3. A watershed protection account is created within the water protection fund created in section 161C.4. Moneys credited to the account shall be distributed under the watershed protection program.

4. Administrative rules used for water quality protection projects under the water protection fund shall be used to administer the watershed protection program.

99 Acts, ch 204, §27
NEW section

CHAPTER 161D

LOESS HILLS AND SOUTHERN IOWA DEVELOPMENT AND CONSERVATION

SUBCHAPTER 1

LOESS HILLS DEVELOPMENT AND CONSERVATION

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 reim-

bursed 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 cooperate with appropriate federal agencies, including the United States environmental protection agency, the United States department of interior, and the United States department of agriculture natural resources conservation service. 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 chapter* 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.

99 Acts, ch 119, §1

*"Subchapter" probably intended; corrective legislation is pending
Subsection 4 amended

161D.2 Loess hills development and conservation fund.

A loess hills development and conservation fund is created in the state treasury. The fund shall include a hungry canyons account and a loess hills alliance account which shall be administered by the loess hills development and conservation authority. The proceeds of the respective accounts shall be used for the purposes specified in section 161D.1 or

161D.6 as applicable. 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 respective accounts and any interest earned shall be credited to the respective accounts to be used for the purposes specified in section 161D.1 or 161D.6 as applicable. 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.

99 Acts, ch 119, §2
Section amended

161D.3 Definitions.

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

1. "Alliance" means the loess hills alliance created in section 161D.5.

2. "Authority" means the loess hills development and conservation authority created in section 161D.1.

3. "Fund" means the loess hills development and conservation fund created in section 161D.2.

99 Acts, ch 119, §3

**"Subchapter" probably intended; corrective legislation is pending
NEW section

161D.4 Mission statement.

The mission of the loess hills alliance is to create a common vision for Iowa's loess hills, protecting special natural and cultural resources while ensuring economic viability and private property rights of the region.

99 Acts, ch 119, §4
NEW section

161D.5 Loess hills alliance created.

1. A loess hills alliance is created. The alliance shall carry out its responsibilities under the general direction of the loess hills development and conservation authority. The alliance shall encompass the geographic region including the counties of Plymouth, Woodbury, Monona, Harrison, Pottawattamie, Mills, and Fremont. Membership and participation in projects of the alliance is not required. The alliance shall be governed by a board of directors appointed as follows:

a. Three members appointed by the board of supervisors of each county participating in the alliance and at least one of the appointees shall be a member of the board of supervisors of a county participating in the alliance.

b. Seven additional voting members who shall be persons with experience in the fields of environmental affairs, conservation, finance, development, tourism, or related fields, and who shall be appointed by the authority.

2. Each voting member of the board of directors shall be a resident of a county which is eligible for membership in the authority pursuant to section 161D.1 and shall be appointed to a term of office as determined by the authority. The directors of the alliance shall carry out their responsibilities pursuant to bylaws approved by the authority.

99 Acts, ch 119, §5
NEW section

161D.6 Responsibilities.

1. The board of directors of the alliance shall have the following responsibilities:

a. To prepare and adopt a comprehensive plan for the development and conservation of the loess hills area subject to the approval of the authority. The plan shall provide for the designation of significant scenic areas, the protection of native vegetation, the education of the public on the need for and methods of preserving the natural resources of the loess hills area, and the promotion of tourism and related business and industry in the loess hills area.

b. To apply for, accept, and expend public and private funds for planning and implementing projects, programs, and other components of the mission of the alliance subject to approval of the authority.

c. To study different options for the protection and preservation of significant historic, scenic, geologic, and recreational areas of the loess hills including but not limited to a federal or state park, preserve, or monument designation, fee title acquisition, or restrictive easement.

d. To make recommendations to and coordinate the planning and projects of the alliance with the authority.

e. To develop and implement pilot projects for the protection of loess hills areas with the use of restrictive easements from willing sellers and fee title ownership from willing sellers subject to approval of the authority.

f. To report annually not later than January 15 to the general assembly the activities of the alliance during the preceding fiscal year including, but not limited to, its projects, funding, and expenditures.

2. A restrictive easement authorized pursuant to this section shall be recorded as provided in section 457A.3. Any compensation agreed to for a restrictive easement shall be paid in equal annual installments during the lifetime of the restrictive easement. At the expiration of a restrictive easement or upon termination for nonperformance, the holder of the restrictive easement shall record an affidavit with the county recorder of the county in which the servient land is located releasing the servient land from the restrictive easement. The holder of the restrictive easement shall send, by certified mail, a copy of the affidavit verifying the recording of the release of the restrictive easement to the landowner. If a holder of the restrictive ease-

ment fails to record the release of a restrictive easement at its expiration or for nonperformance, the owner of the servient land may petition the district court for an order removing the restrictive easement. As used in this subsection, “*nonperformance*” means the failure to make an annual payment of any compensation within ninety days of the annual due date.

99 Acts, ch 119, §6, 7, 9

Subsection 2 to be stricken effective July 1, 2004; 99 Acts, ch 119, §7, 9
NEW section

161D.7 Program coordination.

The department of natural resources shall coordinate the blufflands protection program with the program and projects of the loess hills alliance.

99 Acts, ch 119, §8

Blufflands protection program established in §161A.80
NEW section

161D.8 through 161D.10 Reserved.

SUBCHAPTER 2

SOUTHERN IOWA DEVELOPMENT AND CONSERVATION AUTHORITY

161D.11 Southern Iowa development and conservation authority created — membership and duties.

1. A southern Iowa development and conservation authority is created. The counties of Appanoose, Clarke, Davis, Decatur, Jefferson, Lucas, Monroe, Van Buren, Wapello, and Wayne 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 resources, rural development, and infrastructure problems of counties in the most fragile areas of the southern Iowa drift plain. The authority’s mission is established in part as a response to the erosion of soils, degradation of water resources, and the destabilization of stream channels in the fragile glacial till soils of southern Iowa that have occurred in a large part due to unchecked conversion of grassland to cropland. This land use conversion was brought about by the economic pressures of past federal agricultural policies that disregarded the fragile nature of the southern Iowa

soil resource and the incompatibility of these soils with the subsidized commodities. The resulting erosion of the land has damaged the rural infrastructure of this area, destroyed public roads and bridges, adversely impacted stream water quality and riparian habitat, affected other public and private improvements, and severely threatens the potable water supply of the region. Reducing soil erosion, preventing sedimentation, and stopping nutrients and pesticides from entering water resources are all necessary to protect the rural infrastructure in the southern area of the state. Important protection measures include structural improvements and the reestablishment of grasslands for sustainable economic uses.

3. 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 cooperate with appropriate federal agencies, including the United States environmental protection agency, the United States department of interior, and the United States department of agriculture natural resources conservation service. The authority shall make use of technical resources available through member counties and cooperating agencies.

4. The authority shall administer the southern Iowa development and conservation fund created under section 161D.12 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.

5. 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.

99 Acts, ch 30, §1
NEW section

161D.12 Southern Iowa development and conservation fund.

A southern Iowa development and conservation fund is created in the state treasury, to be administered by the southern Iowa development and conservation authority. The proceeds of the fund shall be used for the purposes specified in section 161D.11. The southern Iowa 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 moneys in the fund shall be credited to the fund to be used for the purposes specified in section 161D.11. 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.

99 Acts, ch 30, §2
NEW section

CHAPTER 166

HOG-CHOLERA VIRUS AND SERUM

166.6 Dealer's permit.

An application for a permit to deal in biological products shall be accompanied by a separate bond for each place of business, with sureties to be approved by the department, in the sum of five thousand dollars for each place of business, which bond shall be conditioned:

1. To faithfully comply with all laws governing the warehousing, sale, and distribution of biological products, and with all the rules of the department relating to such biological products.

2. To indemnify any person who uses any such biological products sold by the principal and is damaged by the negligence of the principal, or any of the principal's agents, in the warehousing, handling, sale, or distribution of such biological products.

3. To pay to the state all penalties which may be adjudged against the principal.

99 Acts, ch 114, §10
Unnumbered paragraph 1 amended

166.42 Biological products reserve — use.

The secretary may establish a reserve supply of biological products of approved modified live virus hog-cholera vaccine and of anti-hog-cholera serum or its equivalent in antibody concentrate to be used as directed by the secretary in the event of an emergency resulting from a hog-cholera outbreak. Vaccine and serum or antibody concentrate from the reserve supply, if used for such an emergency, shall be made available to swine producers at a price which will not result in a profit. Payment shall be made by the producer to the department and such

vaccine shall be administered by a licensed practicing veterinarian. The secretary may cooperate with other states in the accumulation, maintenance and disbursement of such reserve supply of biological products. The secretary, with the advice and written consent of the state veterinarian, and the advice and written consent of the veterinarian-in-charge for Iowa of the animal, plant, and health inspection service—veterinary services, United States department of agriculture, shall determine

when an emergency resulting from a hog-cholera outbreak exists.

The secretary is authorized to sell or otherwise dispose of such vaccine and serum at such time as the state is declared a hog-cholera-free state by the United States department of agriculture, or if the potency of such vaccine and serum is in doubt. Money received under provisions of this section shall be paid into the state treasury.

99 Acts, ch 96, §17
Unnumbered paragraph 1 amended

CHAPTER 169

VETERINARY PRACTICE

169.5 Board of veterinary medicine.

1. The governor shall appoint, subject to confirmation by the senate, a board of five individuals, three of whom shall be licensed veterinarians and two of whom shall not be licensed veterinarians, but shall be knowledgeable in the area of animal husbandry and who shall represent the general public. The representatives of the general public shall not prepare, grade or otherwise administer examinations to applicants for license to practice veterinary medicine. The board shall be known as the Iowa board of veterinary medicine. Each licensed veterinarian shall be actively engaged in veterinary medicine and shall have been so engaged for a period of five years immediately preceding appointment, the last two of which shall have been in Iowa. A member of the board shall not be employed by or have any material or financial interest in any wholesale or jobbing house dealing in supplies, equipment or instruments used or useful in the practice of veterinary medicine. The person designated as the state veterinarian shall serve as secretary of the board.

Professional associations or societies composed of licensed veterinarians may recommend the names of potential board members to the governor, but the governor is not bound by the recommendations.

2. The members of the board shall be appointed for a term of three years except the terms of the members of the initial board shall be rotated in such a manner that at least one member shall retire each year and a successor be appointed. The term of each member shall commence and end as provided by section 69.19. Members shall serve no more than three terms or nine years total, whichever is less.

3. Any vacancy in the membership of the board caused by death, resignation, removal, or otherwise, shall be filled for the period of the unexpired term in the same manner as original appointments.

4. Members of the board shall, in addition to necessary traveling and other expenses, set their own per diem compensation at a rate not exceeding the per diem specified in section 7E.6 for each day actually engaged in the discharge of their duties including compensation for the time spent traveling to and from the place of conducting the examination and for a reasonable number of days for the preparation of examination and the reading of papers, in addition to the time actually spent in conducting examinations, within the limits of funds appropriated to the board.

5. The department shall furnish the board with all articles and supplies required for the public use and necessary to enable the board to perform the duties imposed upon it by law. Such articles and supplies shall be obtained by the department in the same manner in which the regular supplies for the department are obtained, and the department shall assess the costs to the board for such articles and supplies. The board shall also reimburse the department for direct and indirect administrative costs incurred in issuing and renewing the licenses.

6. The board shall meet at least once each year as determined by the board. Other necessary meetings may be called by the president of the board by giving proper notice. Except as provided, a majority of the board constitutes a quorum. Meetings shall be open and public except that the board may meet in closed session to prepare, approve, administer, or grade examinations, or to deliberate the qualifications of an applicant for license or the disposition of a proceeding to discipline a licensed veterinarian.

7. At its annual meeting, the board shall organize by electing a president and such other officers as may be necessary. Officers of the board serve for terms of one year and until a successor is elected, without limitation on the number of terms an officer may serve. The president shall serve as chairperson of board meetings.

The duties of the board shall include carrying on the correspondence of the board, keeping permanent accounts and records of all receipts and disbursements by the board and of all board proceedings, including the disposition of all applications for license, and keeping a register of all persons currently licensed by the board. All board records shall be open to public inspection during regular office hours.

At the end of each fiscal year, the president and secretary shall submit to the governor a report on the transactions of the board, including an account of moneys received and disbursed.

8. The board shall set the fees by rule for a license to practice veterinary medicine issued upon the basis of the examination. It shall also set the fees by rule for a license granted on the basis of reciprocity, a renewal of a license to practice veterinary medicine, a certified statement that a licensee is licensed to practice in this state, and an issuance of a duplicate license when the original is lost or destroyed. The fee shall be based upon the administrative costs of sustaining the board and shall include, but shall not be limited to, the following:

a. Per diem, expenses, and travel of board members.

b. Costs to the department for administration of this chapter.

9. Upon a three-fifths vote, the board may:

a. Examine and determine the qualifications and fitness of applicants for a license to practice veterinary medicine in the state.

b. Issue, renew, or deny issuance or renewal of licenses and temporary permits to practice veterinary medicine in this state.

c. Establish and publish annually a schedule of fees for licensing and registration of veterinarians. The fee schedule shall be based on the board's anticipated financial requirements for the year.

d. Conduct investigations for the purpose of discovering violations of this chapter or grounds for disciplining licensed veterinarians.

e. Hold hearings on all matters properly brought before the board and administer oaths, receive evidence, make the necessary determinations, and enter orders consistent with the findings. The board may require by subpoena the attendance and testimony of witnesses and the production of papers, records, or other documentary evidence and commission depositions. An administrative law judge may be appointed pursuant to section 17A.11 to perform those functions which properly repose in an administrative law judge.

f. Employ full-time or part-time personnel, professional, clerical, or special, as are necessary to effectuate the provisions of this chapter.

g. Appoint from its own membership one or more members to act as representatives of the board at any meeting within or without the state where such representation is deemed desirable.

h. Bring proceedings in the courts for the enforcement of this chapter or any regulations made pursuant to this chapter.

i. Adopt, amend, or repeal rules relating to the standards of conduct for, testing of, and revocation or suspension of certificates issued to veterinary assistants. However, a certificate shall not be suspended or revoked by less than a two-thirds vote of the entire board in a proceeding conducted in compliance with section 17A.12.

j. Adopt, amend, or repeal all rules necessary for its government and all regulations necessary to carry into effect the provision of this chapter, including the establishment and publication of standards of professional conduct for the practice of veterinary medicine.

The powers enumerated above are granted for the purpose of enabling the board to effectively supervise the practice of veterinary medicine and are to be construed liberally to accomplish this objective.

98 Acts, ch 1202, §32, 46

1998 amendment to subsection 9, paragraph e is effective July 1, 1999, and applies to agency proceedings commenced, or conducted on remand from a court or other agency, on or after that date; 98 Acts, ch 1202, §32, 46

Subsection 9, paragraph e amended

169.14 Procedure for suspension or revocation.

A proceeding for the revocation or suspension of a license to practice veterinary medicine or to discipline a person licensed to practice veterinary medicine shall be substantially in accord with the following:

1. The board, upon its own motion or upon a verified complaint in writing, may request the department of inspections and appeals to conduct an investigation of the charges contained in the complaint. The department of inspections and appeals shall report its findings to the board, and the board may issue an order fixing the time and place for hearing if a hearing is deemed warranted. A written notice of the time and place of the hearing, together with a statement of the charges, shall be served upon the licensee at least ten days before the hearing in the manner required for the service of notice of the commencement of an ordinary action.

2. If the licensee has left the state, the notice and statement of the charges shall be so served at least twenty days before the date of the hearing, wherever the licensee may be found. If the whereabouts of the licensee is unknown, service may be had by publication as provided in the rules of civil procedure upon filing the affidavit required by those rules. If the licensee fails to appear either in person or by counsel at the time and place designated in the notice, the board shall proceed with the hearing.

3. The hearing shall be before a member or members designated by the board or before an ad-

ministrative law judge appointed by the board according to the requirements of section 17A.11, subsection 1. The presiding board member or administrative law judge may issue subpoenas, administer oaths, and take or cause depositions to be taken in connection with the hearing. The member or officer shall issue subpoenas at the request and on behalf of the licensee.

4. A mechanized or stenographic record of the proceedings shall be kept. The licensee shall be given the opportunity to appear personally and by attorney, with the right to produce evidence in one's own behalf, to examine and cross-examine witnesses, and to examine documentary evidence produced against the licensee.

5. If a person refuses to obey a subpoena issued by the presiding member or administrative law judge or to answer a proper question put to that person during the hearing, the presiding member or administrative law judge may invoke the aid of a court of competent jurisdiction in requiring the attendance and testimony of that person and the production of papers. A failure to obey the order of the court may be punished by the court as a civil contempt may be punished.

6. Unless the hearing is before the entire board, a transcript of the proceeding, together with exhibits presented, shall be considered by the entire board at the earliest practicable time. The licensee and attorney shall be given the opportunity to appear personally to present the licensee's position and arguments to the board. The board shall

determine the charge upon the merits on the basis of the evidence in the record before it.

7. Upon three members of the board voting in favor of finding the licensee guilty of an act or offense specified in section 169.13, the board shall prepare written findings of fact and its decision imposing one or more of the following disciplinary measures:

a. Suspend the license to practice veterinary medicine for a period to be determined by the board.

b. Revoke the license to practice veterinary medicine.

c. Suspend imposition of judgment and penalty or impose the judgment and penalty, but suspend enforcement and place the veterinarian on probation. The probation ordered may be vacated upon noncompliance. The board may restore and reissue a license to practice veterinary medicine, and may impose a disciplinary or corrective measure which it might originally have imposed.

8. Judicial review of the board's action may be sought in accordance with chapter 17A.

9. The filing of a petition for review does not in itself stay execution or enforcement of board action. Upon application, the board or the review court, in appropriate cases, may order a stay pending the outcome of the review proceedings.

98 Acts, ch 1202, §33, 46

1998 amendment to subsection 3 is effective July 1, 1999, and applies to agency proceedings commenced, or conducted on remand from a court or other agency, on or after that date; 98 Acts, ch 1202, §33, 46

Subsection 3 amended

CHAPTER 173

STATE FAIR

173.2 Convention.

A convention shall be held at a time and place in Iowa to be designated by the Iowa state fair board each year, to elect members of the state fair board and conduct other business of the board. The board shall give sixty days' notice of the location of the convention to all agricultural associations and persons eligible to attend. The convention shall be composed of:

1. The members of the state fair board as then organized.

2. The president or secretary of each county or district agricultural society entitled to receive aid from the state, or a regularly elected delegate therefrom accredited in writing, who shall be a resident of the county.

3. One delegate, a resident of the county, to be appointed by the board of supervisors in each county where there is no such society, or when such society fails to report to the association of Iowa fairs in the manner provided by law as a basis for state

aid. The association shall promptly report such failure to the county auditor.

99 Acts, ch 204, §28
Subsection 3 amended

173.6 Terms of office.

The term of the president and vice president of the board shall be one year. A person shall not hold the office of president for more than three consecutive years, plus any portion of a year in which the person was first elected by the board to fill a vacancy.

A member of the board who is a board congressional director, elected as provided in section 173.1, shall serve a term of two years. The term of a board congressional director shall begin following the adjournment of the convention at which the board congressional director was elected and shall continue until a successor is elected and qualified as provided in this chapter.

99 Acts, ch 96, §18
Unnumbered paragraph 2 amended

CHAPTER 174

COUNTY AND DISTRICT FAIRS

174.3 Control of grounds.

An ordinance or resolution of a county or city shall not in any way impair the authority of the society, but it shall have sole and exclusive control over and management of such fair.

99 Acts, ch 204, §29
Section amended

174.9 State aid.

Each eligible society which is a member of the association of Iowa fairs and which conducts a county fair shall be entitled to receive aid from the state as provided in this chapter. In order to be eligible for state aid, a society must file with the association of Iowa fairs on or before November 1 of each year, a statement which shall show:

1. The actual amount paid by it in cash premiums at its fair for the current year, which statement must correspond with its published offer of premiums.

2. That no part of said amount was paid for speed events, or to secure games or amusements.

3. A full and accurate statement of the receipts and expenditures of the society for the current year and other statistical data relative to exhibits and attendance for the year.

4. A copy of the published financial statement published as required by law, together with proof of such publication and a certified statement showing an itemized list of premiums awarded, and such other information as the association of Iowa fairs may require.

99 Acts, ch 204, §30, 31
Unnumbered paragraph 1 amended
Subsection 4 amended

174.10 Appropriation — availability.

1. Any moneys appropriated for state aid for county or local fairs shall be paid to the office of treasurer of state to be allocated to the association of Iowa fairs for payments to be made by the association to eligible societies pursuant to this chapter.

2. *a.* The association of Iowa fairs shall maintain a list of each society in a county which is a member of the association and conducts a fair in that county as provided in this chapter. If a county has more than one fair, the association shall list the name of each society conducting a fair in that county for three or more years. The association of Iowa fairs shall not make a payment to a society under this chapter unless the society complies with section 174.9 and the name of the society appears on the association's list.

b. The association shall prepare a report at the end of each fiscal year concerning the state aid appropriated for county or local fairs, the manner in which such aid was allocated to eligible societies,

and the manner in which the aid was expended by the societies. The association shall submit the report to the governor and the general assembly by January 1 of each year. The association shall not use moneys appropriated for state aid for county or local fairs, or interest earned on such moneys, for administrative or other expenses.

3. The amount of state aid for each fair which is eligible for state aid shall be equal.

4. If no society in a county qualifies to receive state aid, that county's share shall be divided equally among the counties with societies eligible for state aid, as provided in this section.

5. The board of supervisors, upon receiving a petition seeking to designate an official county fair which meets the requirements of section 331.306, shall submit to the registered voters of the county at the next general election following submission of the petition or at a special election if requested by the petitioners at no cost to the county, the question of which fair shall be designated as the official county fair. Notice of the election shall be given as provided in section 49.53. The fair receiving a majority of the votes cast on the question shall be designated the official county fair.

99 Acts, ch 204, §32
Subsections 1 and 2 amended

174.11 Amount allowed as state aid. Repealed by 99 Acts, ch 204, § 38.

174.12 Payment of state aid.

The association of Iowa fairs shall pay a society the amount due in state aid, less one thousand dollars, as provided in this chapter. The association of Iowa fairs must certify to the treasurer that the society is eligible under this chapter to receive the amount to be paid to the society by the association. The association shall pay the society the remaining one thousand dollars, if all of the following apply:

1. The secretary of the state fair board certifies to the association that the society had an accredited delegate in attendance at the annual convention for the election of members of the state fair board as provided in section 173.2.

2. A district director of the association of Iowa fairs representing the district in which the county is located, and the director of the Iowa state fair board representing the congressional district in which the county is located, certify to the association that the society had an accredited delegate in attendance at the district meeting.

Any state aid moneys remaining due to the failure of a society to comply with this section shall be distributed equally among the societies which have qualified for state aid under this section. The trea-

surer of state shall allocate to the association of Iowa fairs the total amount to be paid by the association to eligible societies under this chapter.

99 Acts, ch 204, §33
Section amended

174.17 Issuance of revenue bonds — standby tax levy.

1. The governing body of a society may issue bonds payable from revenue generated by the operations of the county fair and the use or rental of the real and personal property owned or leased by the society. The governing body of a society shall comply with all of the following procedures in issuing such bonds:

a. A society may institute proceedings for the issuance of bonds by causing a notice of the proposal to issue the bonds to be published at least once in a newspaper of general circulation within the county at least ten days prior to the meeting at which the society proposes to take action for the issuance of the bonds. The notice shall include a statement of the amount and purpose of the bonds, the maximum rate of interest the bonds are to bear, and the right to petition for an election.

b. If at any time before the date fixed for taking action for the issuance of the bonds, a petition signed by three percent of the registered voters of the county is filed with the board of supervisors, asking that the question of issuing the bonds be submitted to the registered voters, the board of supervisors shall either by resolution declare the proposal to issue the bonds to have been abandoned or shall direct the county commissioner of elections to call a special election upon the question of issuing the bonds. The proposition of issuing bonds under this subsection is not approved unless the vote in favor of the proposition is equal to at least sixty percent of the vote cast. If a petition is not filed, or if a petition is filed and the proposition of issuing the bonds is approved at an election, the board of supervisors acting on behalf of the society may proceed with the authorization and issuance of the bonds. Bonds may be issued for the purpose of refunding outstanding and previously issued bonds under this subsection without otherwise complying with the provisions of this subsection.

c. All bonds issued under this subsection shall be payable solely from and shall be secured by an irrevocable pledge of a sufficient portion of the net rents, profits, and income derived from the operation of the county fair and the use or rental of the real and personal property owned or leased by the society. Bonds issued pursuant to this section shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction, and shall not be subject to the provisions of any other law or charter relating to the authorization, issuance, or sale of bonds. Bonds issued under this subsection shall not limit or restrict the authority of the society as otherwise provided by law.

2. To further secure the payment of the bonds, the board of supervisors may, by resolution, provide for the assessment of an annual levy of a standby tax upon all taxable property within the county. A copy of the resolution shall be sent to the county auditor. The revenues from the standby tax shall be deposited in a special fund and shall be expended only for the payment of principal of and interest on the bonds issued as provided in this section, when the receipt of revenues pursuant to subsection 1 is insufficient to pay the principal and interest. If payments are necessary and made from the special fund, the amount of the payments shall be promptly repaid into the special fund from the first available revenues received which are not required for the payment of principal of or interest on bonds due. Reserves shall not be built up in the special fund in anticipation of a projected default. The board of supervisors shall adjust the annual standby tax levy for each year to reflect the amount of revenues in the special fund and the amount of principal and interest which is due in that year.

3. For purposes of this section, "society" means a society, as defined by section 174.1, that conducts a county or local fair that has a verifiable annual attendance of at least one hundred fifty thousand persons and annual outside gate admission revenues of at least four hundred thousand dollars.

99 Acts, ch 204, §34
NEW section

CHAPTER 176A

COUNTY AGRICULTURAL EXTENSION

176A.7 Terms — meetings.

1. Except as otherwise provided pursuant to law for members elected in 1990, the term of office of an extension council member is four years. The term shall commence on the first day of January following the date of the member's election which is not a Sunday or legal holiday.

2. Each extension council shall meet at least two times during a calendar year and at other times during the year as the council determines. The date, time, and place of each meeting shall be fixed by the council.

99 Acts, ch 133, §1
Subsection 2 amended

176A.8 Powers and duties of county agricultural extension council.

The extension councils of each extension district of the state shall have, exercise, and perform the following powers and duties:

1. To elect from their own number annually a chairperson, vice chairperson, secretary and a treasurer who shall serve and be the officers of the extension council for a term of one year, and perform the functions and duties as herein in this chapter provided.

2. To serve as an agency of the state and to manage and transact all of the business and affairs of its district and have control of all of the property acquired by it and necessary for the conduct of the business of the district for the purposes of this chapter.

3. To and shall, at least ninety days prior to the date fixed for the election of council members, appoint a nominating committee consisting of four persons who are not council members and designate the chairperson. The membership of the nominating committee shall be gender balanced. The nominating committee shall consider the geographic distribution of potential nominees in nominating one or more resident registered voters of the extension district as candidates for election to each office to be filled at the election. To qualify for the election ballot, each nominee shall file a nominating petition signed by at least twenty-five eligible electors of the district with the county commissioner of elections at least sixty-nine days before the date of election.

The council shall also provide for the nomination by petition of candidates for election to membership on the extension council. A nominating petition shall be signed by at least twenty-five registered voters of the extension district and shall be filed with the county commissioner of elections at least sixty-nine days before the date of the election.

4. To enter into a Memorandum of Understanding with the extension service setting forth the cooperative relationship between the extension service and the extension district.

5. To employ all necessary extension professional personnel from qualified nominees furnished to it and recommended by the director of extension and not to terminate the employment of any such without first conferring with the director of extension, and to employ such other personnel as it shall determine necessary for the conduct of the business of the extension district, and to fix the compensation for all such personnel in cooperation with the extension service and in accordance with the Memorandum of Understanding entered into with such extension service.

6. To prepare annually before March 15 a budget for the fiscal year beginning July 1 and ending the following June 30, in accordance with the provisions of chapter 24 and certify the same to the

board of supervisors of the county of their extension district as required by law.

7. To and shall be responsible for the preparation and adoption of the educational program on extension work in agriculture, home economics and 4-H club work, and periodically review said program and for the carrying out of the same in cooperation with the extension service in accordance with the Memorandum of Understanding with said extension service.

8. To make and adopt such rules not inconsistent with the law as it may deem necessary for its own government and the transaction of the business of the extension district.

9. To fill all vacancies in its membership to serve for the unexpired term of the member creating the vacancy by appointing a resident registered voter of the extension district. However, if an unexpired term in which the vacancy occurs has more than seventy days to run after the date of the next pending election and the vacancy occurs seventy-four or more days before the election, the vacancy shall be filled at the next pending election.

10. To and shall, as soon as possible following the meeting at which the officers are elected, file in the office of the board of supervisors and of the county treasurer a certificate signed by its chairperson and secretary certifying the names, addresses and terms of office of each member, and the names and addresses of the officers of the extension council with the signatures of the officers affixed thereto, and said certificate shall be conclusive as to the organization of the extension district, its extension council, and as to its members and its officers.

11. To and shall deposit all funds received from the "county agricultural extension education fund" in a bank or banks approved by it in the name of the extension district. These receipts shall constitute a fund known as the "county agricultural extension education fund" which shall be disbursed by the treasurer of the extension council on vouchers signed by its chairperson and secretary and approved by the extension council and recorded in its minutes.

12. To expend the "county agricultural extension education fund" for salaries and travel, expense of personnel, rental, office supplies, equipment, communications, office facilities and services, and in payment of such other items as shall be necessary to carry out the extension district program; provided, however, it shall be unlawful for the county agricultural extension council to lease any office space which is occupied or used by any other farm organization or farm cooperative, and provided further, that it shall be lawful for the county agricultural extension council to lease space in a building owned or occupied by a farm organization or farm cooperative.

13. To carry over unexpended county agricultural extension education funds into the next year so that funds will be available to carry on the program until such time as moneys received from taxes are collected by the county treasurer. However, the unencumbered funds in the county agricultural extension education fund in excess of one-half the amount expended from the fund in the previous year shall be paid over to the county treasurer. The treasurer of the extension council with the approval of the council may invest agricultural extension education funds retained by the council and not needed for current expenses in the manner authorized for treasurers of political subdivisions under section 12C.1.

14. To file with the county auditor and to publish in two newspapers of general circulation in the district before August 1 full and detailed reports under oath of all receipts, from whatever source derived, and expenditures of such county agricultural extension education fund showing from whom received, to whom paid and for what purpose for the last fiscal year.

99 Acts, ch 133, §2, 3
 Subsection 1 amended
 Subsection 2 stricken and former subsection 3 renumbered as 2
 Subsection 4 stricken and former subsections 5–16 renumbered as 3–14
 Subsection 6 amended

176A.9 Limitation on powers and activities of extension council.

1. The extension council has for its sole purpose the dissemination of information, the giving of instruction and practical demonstrations on subjects relating to agriculture, home economics, and community and economic development, and the encouragement of the application of the information, instruction, and demonstrations to and by all persons in the extension district, and the imparting to the persons of information on those subjects through field demonstrations, publications, or other media.

2. The extension district, its council, or a member or an employee as a representative of either one or the other shall not engage in commercial or other private enterprises, legislative programs, nor attempt in any manner by the adoption of resolutions or otherwise to influence legislation, either state or national, or other activities not authorized by this chapter.

3. The extension council or a member or employee thereof as a representative of either the extension district or the extension council shall not give preferred services to any individual, group or organization or sponsor the programs of any group, organization or private agency other than as herein provided by this chapter.

4. The extension council may collect reasonable fees and may seek and receive grants, donations, gifts, bequests, or other moneys from public and private sources to be used for the purposes set forth in this section, and may enter into contracts to provide educational services.

5. The extension council and its employed personnel may cooperate with, give information and advice to organized and unorganized groups, but shall not promote, sponsor or engage in the organization of any group for any purpose except the promoting, organization and the development of the programs of 4-H clubs. Nothing in this chapter shall prevent the county extension council or extension agents employed by it from using or seeking opportunities to reach an audience of persons interested in agricultural extension work through the help of interested farm organizations, civic organizations or any other group: Provided, that in using or seeking such opportunities, the county extension council or agents employed by it shall make available to all groups and organizations in the county equal opportunity to cooperate in the educational extension program.

6. Members of the council shall serve without compensation, but may receive actual and necessary expenses, including in-state travel expenses at not more than the state rate, incurred in the performance of official duties other than attendance at regular local county extension council meetings. Payment shall be made from funds available pursuant to section 176A.8, subsection 12.

Section not amended; internal reference change applied

176A.10 County agricultural extension education tax.

The extension council of each extension district shall, at a meeting held before March 15, estimate the amount of money required to be raised by taxation for financing the county agricultural extension education program authorized in this chapter. The annual tax levy and the amount of money to be raised from the levy for the county agricultural extension education fund shall not exceed the following:

1. *a.* Except as provided in paragraph "b", for an extension district having a population of less than thirty thousand, an annual levy of twenty and one-fourth cents per thousand dollars of the assessed valuation of the taxable property in the district up to a maximum of seventy thousand dollars for the fiscal year commencing July 1, 1985, and seventy-five thousand dollars for each subsequent fiscal year.

b. For an extension district having a population of less than thirty thousand and as provided in subsection 6, an annual levy of thirty cents per thousand dollars of the assessed valuation of the taxable property in the district up to a maximum of eighty-seven thousand dollars payable during the fiscal year commencing July 1, 1992, and an increase of six thousand dollars in the amount payable during each subsequent fiscal year.

2. *a.* Except as provided in paragraph "b", for an extension district having a population of thirty thousand or more but less than fifty thousand, an annual levy of twenty and one-fourth cents per thousand dollars of the assessed valuation of the

taxable property in the district up to a maximum of eighty-four thousand dollars for the fiscal year commencing July 1, 1985, and ninety thousand dollars for each subsequent fiscal year.

b. For an extension district having a population of thirty thousand or more but less than fifty thousand and as provided in subsection 6, an annual levy of twenty and one-fourth cents per thousand dollars of the assessed valuation of the taxable property in the district up to a maximum of one hundred four thousand dollars payable during the fiscal year commencing July 1, 1992, and an increase of seven thousand dollars in the amount payable during each subsequent fiscal year.

3. a. Except as provided in paragraph "b", for an extension district having a population of fifty thousand or more but less than ninety-five thousand, an annual levy of thirteen and one-half cents per thousand dollars of the assessed valuation of the taxable property in the district up to a maximum of one hundred five thousand dollars for the fiscal year commencing July 1, 1985, and one hundred twelve thousand five hundred dollars for each subsequent fiscal year.

b. For an extension district having a population of fifty thousand or more but less than ninety thousand and as provided in subsection 6, an annual levy of thirteen and one-half cents per thousand dollars of the assessed valuation of the taxable property in the district up to a maximum of one hundred thirty thousand five hundred dollars payable during the fiscal year commencing July 1, 1992, and an increase of nine thousand dollars in the amount payable during each subsequent fiscal year.

4. a. Except as provided in paragraph "b", for an extension district having a population of ninety-five thousand or more, an annual levy of thirteen and one-half cents per thousand dollars of the assessed valuation of the taxable property in the district up to a maximum of one hundred forty thousand dollars for the fiscal year commencing July 1, 1985, and one hundred fifty thousand dollars for each subsequent fiscal year.

b. For an extension district having a population of ninety thousand or more but less than two hundred thousand and as provided in subsection 6,

an annual levy of thirteen and one-half cents per thousand dollars of the assessed valuation of the taxable property in the district up to a maximum of one hundred eighty thousand dollars payable during the fiscal year commencing July 1, 1992, and an increase of fifteen thousand dollars in the amount payable during each subsequent fiscal year.

5. For an extension district having a population of two hundred thousand or more and as provided in subsection 6, an annual levy of five cents per thousand dollars of the assessed valuation of the taxable property in the district up to a maximum of two hundred thousand dollars payable during the fiscal year commencing July 1, 1992, and an increase of twenty-five thousand dollars in the amount payable during each subsequent fiscal year.

6. An extension council of an extension district may choose to be subject to the levy and revenue limits specified in paragraphs "b" of subsections 1, 2, 3, and 4 and subsection 5 for the purpose of the annual levy for the fiscal year commencing July 1, 1991, which levy is payable in the fiscal year beginning July 1, 1992. Before an extension district may be subject to the levy and revenue limits specified in paragraphs "b" of subsections 1, 2, 3, and 4 and subsection 5, for fiscal years beginning on or after July 1, 1992, which levy is payable in fiscal years beginning on or after July 1, 1993, the question of whether the district shall be subject to the levy and revenue limits as specified in such subsections must be submitted to the registered voters of the district. The question shall be submitted at the time of a state general election. If the question is approved by a majority of those voting on the question the levy and revenue limits specified in paragraphs "b" of subsections 1, 2, 3, and 4 and subsection 5, shall thereafter apply to the extension district. The question need only be approved at one state general election. If a majority of those voting on the question vote against the question, the district may continue to submit the question at subsequent state general elections until approved.

The extension council in each extension district shall comply with chapter 24.

99 Acts, ch 133, §4
Unnumbered paragraph 1 amended

CHAPTER 182

IOWA SHEEP AND WOOL PROMOTION BOARD

182.1 Definitions.

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

1. "Assessment" means an excise tax on the sale of sheep or wool as provided in this chapter.

2. "Board" means the Iowa sheep and wool promotion board established pursuant to section 182.5.

3. "Concentration point" means a location or facility where sheep are assembled for purposes of

sale or resale for feeding, breeding, or slaughtering, and where contact may occur between groups of sheep from various sources. "Concentration point" includes a public stockyard, auction market, street market, state or federal market, untested consignment sales location, buying station, or a livestock dealer's yard, truck, or facility.

4. "District" means an official crop reporting district formed by the United States department of agriculture and set out in the annual farm census published by the Iowa department of agriculture and land stewardship.

5. "Eligible voter" means a person who has been a producer for the three hundred sixty-five days preceding the date of a referendum conducted pursuant to section 182.4.

6. "First purchaser" means a person who purchases sheep or wool from a producer.

7. "Producer" means a person who is actively engaged within this state in the business of producing or marketing sheep or wool and who receives income from the production of sheep or wool.

8. "Sale" or "sold" means a transaction in which the property in or to sheep or wool is transferred from the producer to a first purchaser for full or partial consideration.

9. "Sheep" means an animal of the ovine species, regardless of age, produced or marketed in this state.

10. "Wool" means the natural fiber produced by sheep.

99 Acts, ch 50, §1-4
Former subsection 1 stricken
NEW subsections 1 and 3 and former subsections 3-9 renumbered as 4-10
Subsections 6 and 9 amended

182.2 Petition for referendum election.

Upon receipt of a petition signed by at least fifty producers in each district requesting a referendum by election to determine whether to establish the board and to impose an assessment, the secretary shall call a referendum to be conducted within sixty days following receipt of the petition.

99 Acts, ch 50, §5
Section amended

182.14 Assessment.

1. If approved by a majority of voters at a referendum, an assessment to be set* by the board at not more than two cents for each pound of wool produced and sold by a producer and not more than ten cents per head on sheep sold by a producer.

2. The assessment shall be imposed on the producer as follows:

a. If the producer sells wool or sheep to the first purchaser within this state, the following shall apply:

(1) If the sale occurs at a concentration point, the assessment shall be imposed at the time of delivery. The first purchaser shall deduct the assessment from the price paid to the producer at the time of sale.

(2) If the sale does not occur at a concentration point, the producer shall deduct the assessment from the amount received from the sale and shall forward the amount deducted to the board within thirty days following each calendar quarter.

b. If the producer sells, ships, or otherwise disposes of wool or sheep to any person outside this state, the producer shall deduct the assessment from the amount received from the sale and shall forward the amount deducted to the board.

3. The assessment imposed by this section shall be remitted to the board not later than thirty days following each calendar quarter during which the assessment amount was deducted.

99 Acts, ch 50, §6

*"An assessment shall be set" probably intended; corrective legislation is pending
Section amended

182.15 Invoice required.

At the time of sale, the first purchaser shall sign and deliver to the producer separate invoices for each purchase. The invoices shall show:

1. The name and address of the producer and the seller, if different from the producer.
2. The name and address of the first purchaser.
3. The pounds of wool or head of sheep sold.
4. The date of the purchase.
5. The rate of withholding and the total amount of the assessment withheld.

Invoices shall be legibly written and shall not be altered.

99 Acts, ch 50, §7
Subsection 3 amended

182.16 Deposit and disbursement of funds.

The board shall deposit amounts collected from the assessment imposed pursuant to section 182.14 in an account established pursuant to section 182.12. Expenses and disbursements incurred and made pursuant to this chapter shall be made by voucher, draft, or check bearing the signature of a person designated by majority vote of the board.

99 Acts, ch 50, §8
Section amended

CHAPTER 184

IOWA EGG COUNCIL

184.7 Terms and administration procedures.

1. A person shall serve as a member on the council for a term of three years. A person may serve as a member on the council for more than one term.

2. The council shall elect a chairperson, and other officers as needed, from among its voting members.

3. A majority of voting members of the council present during a meeting shall constitute a quorum. A majority of the members present during a meeting is necessary to carry out the duties and exercise the powers of the council as provided in this chapter, unless the council requires a greater number.

4. The council shall meet at least once every three months and at other times the council determines are necessary.

99 Acts, ch 109, §1, 8
Subsections 1 and 2 amended

184.10 Powers of council.

The council may perform any function related to the production and marketing of eggs or egg products, including but not limited to doing any of the following:

1. Employ and discharge assistants and professional counsel as necessary, prescribe their duties and powers and fix their compensation.

2. Establish offices, incur expenses and enter into any contracts or agreements necessary to carry out the purposes of this chapter.

3. Adopt, rescind and amend all proper and necessary rules for the exercise of its powers and duties.

4. Enter into arrangements for the collection of the assessment.

5. Receive gifts, rents, royalties, license fees or other moneys for deposit in the Iowa egg fund as provided in section 184.13.

6. Become a dues-paying member of an organization carrying out a purpose related to the in-

creased consumption and utilization of eggs or egg products.

7. Fund research and education programs directed toward better and more efficient production, marketing, and utilization of eggs and egg products.

99 Acts, ch 109, §2, 3, 8
Unnumbered paragraph 1 amended
NEW subsections 6 and 7

184.11 Prohibited actions.

The Iowa egg council shall not do any of the following:

1. Execute a contract or act as an agent of a person who executes a contract for any of the following:

a. Selling eggs or egg products.

b. Selling equipment used in the manufacturing of egg products.

2. *a.* Make any contribution of council moneys, either directly or indirectly, to any political party or organization or in support of a political candidate for public office.

b. Make payments to a political candidate including but not limited to a member of Congress or the general assembly for honorariums, speeches, or for any other purposes above actual and necessary expenses.

99 Acts, ch 109, §4, 5, 8
Former subsections 1 and 2 stricken
Former subsections 3 and 4 stricken, rewritten, and renumbered as 1
Former subsection 5 renumbered as 2

184.12 Compensation.

Members of the council may receive payment for their actual expenses and travel in performing official council functions. A voting member of the council shall not be a salaried employee of the council or any organization or agency receiving moneys from the council.

99 Acts, ch 109, §6, 8
Section amended

184.15 Bond required.

The council shall provide a bond for all persons holding positions of trust under this chapter.

99 Acts, ch 109, §7, 8
Section amended

CHAPTER 184A

EXCISE TAX ON TURKEYS

184A.1 Definitions.

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

1. “*Account*” means the turkey council account created pursuant to section 184A.4.

2. “*Council*” means the Iowa turkey marketing council established pursuant to sections 184A.1A and 184A.1B.

3. “*Fund*” means the Iowa turkey fund created pursuant to section 184A.4.

4. “*Integrator*” means any person who is both a producer and a processor.

5. “*Market development*” means research and education programs to provide better and more efficient production, marketing, and utilization of turkey and turkey products produced for resale. The programs may include, but are not limited to, supporting public relations, promotion, and research efforts. The programs may provide for all of the following:

a. The maintenance of present markets and the development of new or larger domestic or foreign markets.

b. The prevention, modification, or elimination of trade barriers which obstruct the free flow of commerce.

c. The education of consumers regarding the benefits of purchasing and consuming turkey products and the role of turkey producers and processors.

d. Participation in activities and events sponsored by the national turkey federation, and the national turkey federation research fund which provide for research and promotion regarding the production and marketing of turkeys and turkey products.

6. “*Processor*” means a person who purchases more than one thousand turkeys for slaughter each year. A processor includes an integrator.

7. “*Producer*” means a person residing within this state or outside this state who does business in this state and who raises more than five thousand turkeys for slaughter each year. A producer includes an integrator.

8. “*Qualified financial institution*” means a bank, credit union, or savings and loan as defined in section 12C.1.

9. “*Qualified producer*” means a producer who resides within this state.

10. “*Turkey*” means a turkey raised for slaughter.

11. “*Turkey product*” means a product produced in whole or in part from a turkey.

99 Acts, ch 158, §1, 18, 19
Section amended

184A.1A Referendum conducted to establish an Iowa turkey marketing council and impose an assessment.

1. The department shall call and conduct a referendum upon the department’s receipt of a petition which is signed by at least twenty eligible voters requesting a referendum to determine whether to establish an Iowa turkey marketing council as provided in section 184A.1B and impose an assessment as provided in section 184A.2. In order to be an eligible voter under this section, a petitioner must be a qualified producer. The referendum shall be conducted by election within sixty days following receipt of the petition. The petitioners shall guarantee payment of the cost of the referendum

by providing evidence of financial security as required by the department.

2. The department shall give notice of the referendum on the question whether to establish a council and to impose an assessment by publishing the notice for a period of not less than five days in at least one newspaper of general circulation in the state, and for a similar period in other newspapers as prescribed by the department. The notice shall state the voting places, period of time for voting, the manner of voting, the amount of the assessment, and other information deemed necessary by the department. A referendum shall not be commenced until five days after the last date of publication.

3. a. Each eligible voter who signs a statement certifying that the eligible voter is a qualified producer shall be an eligible voter under this section. An eligible voter is entitled to cast one vote in each referendum conducted under this section. The department may conduct the referendum by mail, electronic means, or a general meeting of eligible voters.

b. At the close of the referendum, the department shall count and tabulate the ballots cast.

(1) If a majority of eligible voters who vote in the referendum approve establishing the council and imposing an assessment, a council shall be established, and an assessment shall be imposed commencing not more than sixty days following the referendum as determined by the council. The council and assessment shall continue for five years as provided in section 184A.12.

(2) If a majority of eligible voters who vote in the referendum do not approve establishing the council and imposing the assessment, the council shall not be established and an assessment shall not be imposed until another referendum is held under this section and a majority of the eligible voters voting approve establishing a council and imposing the assessment. If a referendum should fail, another referendum shall not be held within one hundred eighty days from the date of the last referendum.

4. Within thirty days after approval at the referendum to establish a council to impose an assessment, the department shall organize the council as provided in section 184A.1B.

99 Acts, ch 158, §2, 18, 19
NEW section

184A.1B Turkey marketing council — composition and procedures.

1. The council shall consist of the following members:

a. The secretary of agriculture or the secretary’s designee who shall serve at the pleasure of the secretary.

b. Six persons appointed by the board of the Iowa turkey federation. The appointees shall be knowledgeable about the care and management of

poultry. The board shall appoint and replace the appointees by election as provided by the board. An appointee shall serve on the council at the pleasure of the board.

c. Any number of ex officio nonvoting members appointed by the board of the Iowa turkey federation. The board shall appoint and replace the appointees by election as provided by the board. An appointee shall serve on the council at the pleasure of the board.

2. The council shall elect a chairperson, and other officers, as needed, from among its members. An officer shall serve for a term as provided by the council and may be reelected to serve subsequent terms unless otherwise provided by the council.

3. A majority of voting members of the council present during a meeting shall constitute a quorum. A majority of the voting members present during a meeting is necessary to carry out the duties and exercise the powers of the council as provided in this chapter, unless the council requires a greater number.

4. The council shall meet on the call of the chairperson or as otherwise provided by the council.

99 Acts, ch 158, §3, 18, 19
NEW section

184A.1C Powers of the council.

The council may do all of the following:

1. Employ, manage, and discharge assistants and professional counsel as necessary, prescribe their duties and powers, and provide for their compensation.

2. Establish offices, incur expenses, and enter into any contracts or agreements necessary to carry out the purposes of this chapter.

3. Adopt rules necessary to administer the functions of the council as provided in this chapter.

4. Enter into arrangements for the collection and deposit of the assessment.

5. Require that any administrator, employee, or other person occupying a position of trust under this chapter give bond in the amount required by the council. The premiums for bonds shall be part of the costs of collecting the assessment.

6. Receive money, including in the form of gifts, rents, royalties, or license fees which shall be deposited in the turkey council account as provided in section 184A.4.

99 Acts, ch 158, §4, 18, 19
NEW section

184A.2 Assessment.

1. If an assessment is approved by a majority of the eligible voters voting at a referendum as provided in section 184A.1A or 184A.12, all of the following shall apply:

a. The assessment shall be imposed on each turkey delivered for processing.

b. The council shall establish a rate of assessment for each turkey delivered for processing. The council may establish different rates based on at-

tributes or characteristics of turkeys. However, a rate shall not be more than three cents for each turkey delivered for processing.

c. The assessment shall be imposed on the producer and collected at the time of delivery of a turkey to the processor. The assessment shall be deducted by the processor at the time of delivery from the price paid to the producer at the time of the sale to the processor. A processor shall remit assessments to the council on a monthly basis as provided by the council. The council shall deposit the remitted assessments in the Iowa turkey fund as provided in section 184A.4.

2. The council may enter into agreements with processors from outside this state for the payment of the assessment.

3. The council shall provide for a refund of an assessment according to rules adopted by the council.

99 Acts, ch 158, §5, 18, 19
Section amended

184A.3 Assessment documentation.

A processor receiving turkeys for slaughter shall do all of the following:

1. At the time of payment to the producer, the processor shall sign and submit a receipt to the producer which includes the rate of assessment imposed and the amount of the assessment for all turkeys delivered for processing.

2. Within a period established by rules adopted by the council, the processor shall regularly sign and submit to the council an invoice or other records required by the council to expedite collection of the assessment. The council may require that the processor submit a separate invoice for each purchase. The invoice shall be legibly printed and shall not be altered. An invoice shall include all of the following:

a. The name and address of the producer and the seller, if the seller's name is different from the producer.

b. The name and address of the processor.

c. The number of turkeys sold.

d. The date of the delivery.

99 Acts, ch 158, §6, 18, 19
Section amended

184A.4 Administration of moneys.

1. The assessments collected by the council as provided in section 184A.2 shall be deposited in the office of the treasurer of state in a special fund known as the Iowa turkey fund. The department of revenue and finance shall transfer moneys from the fund to the council for deposit into the turkey council account established by the council pursuant to this section. The department shall transfer the moneys as provided in a resolution adopted by the council. However, the department is only required to transfer moneys once during each day and only during hours when the offices of the state are open.

2. The council shall establish a turkey council account in a qualified financial institution. The council shall provide for the deposit of all of the following into the account:

a. The assessment collected, deposited in the Iowa turkey fund, and transferred to the council as provided in this section.

b. Moneys, other than assessments, including moneys in the form of gifts, rents, royalties, or license fees received by the council pursuant to section 184A.1C.

99 Acts, ch 158, §7, 18, 19
Section stricken and rewritten

184A.5 Monthly remittal. Repealed by 99 Acts, ch 158, § 17, 19.

184A.6 Use of moneys.

1. All moneys deposited in the turkey council account pursuant to section 184A.4 shall be used by the council for purposes of administering this chapter.

2. The council shall expend moneys from the account first for the payment of expenses for the collection of assessments, and then for the payment of expenses related to connecting* a referendum as provided in section 184A.12. The council shall expend remaining moneys for market development, producer education, and the payment of refunds to producers as provided in this chapter.

99 Acts, ch 158, §§, 18, 19
**"Conducting" probably intended; corrective legislation is pending
Section amended

184A.8 Refund. Repealed by 99 Acts, ch 158, § 17, 19.

184A.9 Audit.

Moneys required to be deposited in the turkey council account as provided in section 184A.4 shall be subject to audit by the auditor of state.

99 Acts, ch 158, §9, 18, 19
Section amended

184A.11 Notice. Repealed by 99 Acts, ch 158, § 17, 19.

184A.12 Referendum conducted to continue the council and the imposition of the assessment.

1. The council shall call for a referendum to continue the council established pursuant to section 184A.1A, and to continue the assessment established pursuant to section 184A.2. The council shall call and conduct the referendum by election as provided in this section. The department shall oversee the conduct of the referendum. The referendum shall be conducted in the fifth year following the referendum establishing the council and assessment.

2. The following procedures shall apply to a referendum conducted pursuant to this section:

a. The council shall publish a notice of the referendum for a period of not less than five days in at least one newspaper of general circulation in the state and for a similar period in other newspapers as prescribed by the council. The notice shall state the voting places, period of time for voting, manner of voting, and other information deemed necessary by the council. A referendum shall not be commenced until five days after the last date of publication.

b. Upon signing a statement certifying to the council that a producer is an eligible voter, the producer is entitled to one vote in each referendum conducted pursuant to this section. In order to be an eligible voter under this section, a producer must be a qualified producer who paid an assessment in the year in which the referendum is held. The council may conduct the referendum by mail, electronic means, or a general meeting of eligible voters. The council shall conduct the referendum and count and tabulate the ballots filed during the referendum within thirty days following the close of the referendum.

(1) If a majority of eligible voters who vote in the referendum approves the continuation of the council and the imposition of the assessment, the council and the imposition of the assessment shall continue as provided in this chapter.

(2) If a majority of eligible voters who vote in the referendum does not approve continuing the council and the imposition of the assessment, the department shall terminate the collection of the assessment on the first day of the year for which the referendum was to continue. The department shall terminate the activities of the council in an orderly manner as soon as practicable after the referendum. A subsequent referendum may be held as provided in section 184A.1A. However, the subsequent referendum shall not be held within one hundred eighty days from the date of the last referendum.

99 Acts, ch 158, §10, 18, 19
Section stricken and rewritten

184A.12A Referendum conducted to abolish the council and terminate the imposition of the assessment.

1. A referendum may be called to abolish the council established pursuant to sections 184A.1A and 184A.1B, and to terminate the imposition of the assessment established pursuant to section 184A.2. The department shall call and conduct the referendum upon the department's receipt of a petition requesting the referendum. The petition must be signed by at least twenty eligible voters or fifty percent of all eligible voters, whichever is greater. In order to be an eligible voter under this section, a producer must be a qualified producer who paid an assessment in the year in which the referendum is held. The referendum shall be conducted by election within sixty days following receipt of the petition. The petitioners shall guarantee payment of the cost of the referendum by

providing evidence of financial security as required by the department.

2. The following procedures shall apply to a referendum conducted pursuant to this section:

a. The department shall publish a notice of the referendum for a period of not less than five days in at least one newspaper of general circulation in the state and for a similar period in other newspapers as prescribed by the department. The notice shall state the voting places, period of time for voting, manner of voting, and other information deemed necessary by the department. A referendum shall not be commenced until five days after the last date of publication.

b. Upon signing a statement certifying to the department that a producer is an eligible voter, the producer is entitled to one vote in each referendum conducted pursuant to this section. The department may conduct the referendum by mail, electronic means, or a general meeting of eligible voters. The department shall conduct the referendum and count and tabulate the ballots filed during the referendum within thirty days following the close of the referendum.

(1) If a majority of eligible voters who vote in the referendum approves the continuation of the council and the imposition of the assessment, the council and the imposition of the assessment shall continue as provided in this chapter.

(2) If a majority of eligible voters who vote in the referendum does not approve continuing the council and the imposition of the assessment, the department shall terminate the collection of the assessment on the first day of the year for which the referendum was to continue. The department shall terminate the activities of the council in an orderly manner as soon as practicable after the referendum. A subsequent referendum may be held as provided in section 184A.1A. However, the subsequent referendum shall not be held within one hundred eighty days from the date of the last referendum.

99 Acts, ch 158, §11, 18, 19
NEW section

184A.13 Bonds. Repealed by 99 Acts, ch 158, § 17, 19.

184A.14 Examination of books.

Any person subject to the provisions of this chapter shall furnish, on forms provided by the council, information required by the council to effectuate the provisions of this chapter. In order to administer this chapter, the council may examine books, papers, records, copies of tax returns, accounts, correspondence, contracts, or other documents and

memoranda that it deems relevant which are in the control of a person subject to this chapter and which are not otherwise confidential as provided by law. The council may hold hearings, take testimony, administer oaths, subpoena witnesses, and issue subpoenas duces tecum in connection with the administration of this section.

99 Acts, ch 158, §12, 18, 19
Section amended

184A.15 Misdemeanor.

A person is guilty of a simple misdemeanor for willfully violating any provision of this chapter, or for willfully rendering or furnishing a false or fraudulent report, statement, or record required by the council.

99 Acts, ch 158, §13, 18, 19
Section amended

184A.16 Agreement with processors.
Repealed by 99 Acts, ch 158, § 17, 19.

184A.17 Report.

The council shall prepare and submit a report summarizing the activities of the council under this chapter each year to the auditor of state and the secretary of agriculture. The report shall show all income, expenses, and other relevant information concerning assessments collected and expended under the provisions of this chapter.

99 Acts, ch 158, §14, 18, 19
Section amended

184A.18 Not a state agency.

The council is not a state agency.

99 Acts, ch 158, §15, 18, 19
Section amended

184A.19 Prohibited activities.

The council shall not do any of the following:

1. Operate with a deficit or use deficit financing for administration of this chapter.

2. Expend moneys from the account in a manner that is not authorized pursuant to section 184A.6.

3. Become involved in supporting a political campaign or issue, by making a contribution of moneys from the account, either directly or indirectly, to any political party or organization or in support of a political candidate for public office. The council shall not expend the moneys to a political candidate including but not limited to a member of Congress or the general assembly for honoraria, speeches, or for any other purposes above actual and necessary expenses.

99 Acts, ch 158, §16, 18, 19
Section amended

CHAPTER 189

GENERAL PROVISIONS

189.16 Possession and control of adulterated and improperly labeled articles.

1. Except as provided in subsection 2, a person in possession or having control of an article which is adulterated or which is improperly labeled according to the provisions of this subtitle shall be presumed to know that the article is adulterated or improperly labeled. A person's possession of an adulterated or improperly labeled article shall be prima facie evidence that the person intends to vio-

late the provisions of this subtitle.

2. This section does not apply to the possession or control of any of the following:

a. Grain by a person regulated under chapter 203, 203A, 203C, or 203D.

b. Mining materials including coal by a person regulated under chapter 207 or 208.

c. A controlled substance as provided in chapter 124.

99 Acts, ch 12, §7
Section amended

CHAPTER 190C

ORGANIC AGRICULTURAL PRODUCTS

190C.1 Definitions.

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

1. *"Advertise"* means to present a commercial message in any medium including but not limited to print, radio, television, sign, display, label, tag, or articulation.

2. *"Agricultural commodity"* includes but is not limited to livestock, crops, fiber, or food, such as vegetables, nuts, seeds, honey, eggs, or milk existing in an unprocessed state, which is produced on a farm and marketed for human or livestock consumption.

3. *"Agricultural product"* means an agricultural commodity or an agricultural processed product.

4. *"Agricultural processed product"* means an agricultural commodity that has been processed.

5. *"Board"* means the organic standards board established in section 190C.2.

6. *"Certified"* means any farm, wild crop harvesting, or handling operation that is verified annually, through an on-site inspection and comprehensive review of the operation by a certifying agent under 21 U.S.C. § 2115 or by the department's certification program, as producing and handling agricultural products in accordance with this chapter and rules adopted pursuant to this chapter.

7. *"Department"* means the department of agriculture and land stewardship.

8. *"Farm"* means a site where the agricultural commodities are produced.

9. *"Food"* means an agricultural product or an agricultural product ingredient which is used or intended for use in whole or in part for human consumption.

10. *"Handler"* means a person engaged in the business of handling agricultural products, includ-

ing but not limited to distributors, wholesalers, brokers, and repackers. *"Handler"* does not include a person selling agricultural products to consumers on a retail basis, including a food establishment as defined in section 137F.1, retail grocery, meat market, or bakery, if the person does not process the agricultural product.

11. *"Label"* means a commercial message in a printed medium which is affixed by any method to a product or to a receptacle including a container or package.

12. *"Livestock"* means an animal belonging to the bovine, caprine, equine, ovine, or porcine species; ostriches, rheas, or emus; farm deer as defined in section 481A.1; or poultry.

13. *"Organic agricultural product"* means food or fiber that is one of the following:

a. If the food or fiber is an agricultural commodity, it is produced and handled according to the requirements of this chapter.

b. If the food or fiber is an agricultural processed product, it is produced, handled, and processed according to the requirements of this chapter.

14. *"Processing"* means turning an agricultural commodity into an agricultural processed product by physical or chemical modification, including but not limited to canning, freezing, drying, dehydrating, cooking, pressing, powdering, packaging, repacking, baking, heating, mixing, grinding, churning, separating, extracting, cutting, fermenting, eviscerating, preserving, jarring, brewing, or slaughtering.

15. *"Processor"* means a person who processes an agricultural commodity.

16. *"Produce"* means to grow, raise, collect, or harvest an agricultural commodity.

17. “*Producer*” means a person who produces an agricultural commodity.

18. “*Regional organic association*” means a corporation organized under former chapter 504 or chapter 504A which has certifying members, elects its own officers and directors, and is independent from the department.

19. “*Retailer*” means a person, other than an operator of a food establishment, who is engaged in the business of selling food at retail to the ultimate customer.

20. “*Sale*” or “*sell*” means a commercial transfer or offer for sale and distribution in any manner.

21. “*Secretary*” means the secretary of agriculture.

22. “*System of organic farming*” means a system that is designed to produce agricultural products by the use of methods and substances that maintain the integrity of organic agricultural products until they reach the consumer. This includes a management system which promotes and enhances agroecosystem health, including biodiversity, biological cycles, and soil biological activity. This is accomplished by using cultural, biological, and mechanical methods, as opposed to using synthetic materials, to fulfill any specific function within the system.

23. “*System of organic handling*” means a system that is designed to handle agricultural products without the use of synthetic additives, aids, or ingredients that are used during processing, packaging, or storing agricultural products in accordance with this chapter and by the use of methods and substances that maintain the integrity of organic agricultural products until they reach the

consumer.

99 Acts, ch 96, §19
Subsections 10, 18, and 19 amended

190C.4 Administrative authority.

1. The department, upon approval by the board, shall adopt all rules necessary to administer this chapter.

a. The rules may include regulations governing the production, handling, processing, and selling of agricultural products by persons advertising an agricultural product as organic. These rules may provide for standards, certification, inspections, testing, the assessment and collection of state fees, the maintenance of records, disciplinary action, and the issuance of stop sale orders as provided in this chapter.

b. The rules adopted under this section shall be consistent with federal regulations adopted pursuant to the federal Organic Food Production Act of 1990. The department may adopt rules which are stricter than federal regulations to the extent allowed by federal law.

2. The secretary, who may act through an authorized agent, shall serve as a certifying agent under 21 U.S.C. § 2115. The secretary or the secretary’s agent may serve as an inspector in order to conduct investigations at times and places and to such an extent as the secretary and the board deem necessary to determine whether a person is in compliance with this chapter, according to rules adopted by the department.

3. A violation of this chapter includes a violation of any rule adopted or order issued pursuant to this chapter as provided in this chapter and under chapter 17A.

99 Acts, ch 96, §20
Subsection 3 amended

CHAPTER 200

FERTILIZERS AND SOIL CONDITIONERS

200.14 Rules.

1. The secretary is authorized, after public hearing, following due notice, to adopt rules setting forth minimum general safety standards for the design, construction, location, installation and operation of equipment for storage, handling, transportation by tank truck or tank trailer, and utilization of anhydrous ammonia. The rules shall be such as are reasonably necessary for the protection and safety of the public and persons using anhydrous ammonia, and shall be in substantial conformity with the generally accepted standards of safety.

It is hereby declared that rules in substantial conformity with the published standards of the agricultural ammonia institute for the design, installation and construction of containers and per-

tinuous equipment for the storage and handling of anhydrous ammonia, shall be deemed to be in substantial conformity with the generally accepted standards of safety.

2. Anhydrous ammonia equipment shall be installed and maintained in a safe operating condition and in conformity with rules adopted by the secretary.

3. The secretary is hereby charged with the enforcement of this chapter, and after due publicity and due public hearing, is empowered to promulgate and adopt such reasonable rules as may be necessary in order to carry into effect the purpose and intent of this chapter or to secure the efficient administration thereof.

4. Nothing in this chapter shall prohibit the use of storage tanks smaller than transporting

tanks nor the transfer of all kinds of fertilizer including anhydrous ammonia directly from transporting tanks to implements of husbandry, if proper safety precautions are observed.

99 Acts, ch 12, §§
Subsection 1A amended and renumbered as 2
Former subsections 2 and 3 renumbered as 3 and 4

200.18 Violations.

1. If it shall appear from the examination of any commercial fertilizer or soil conditioner or any anhydrous ammonia installation, equipment, or operation that any of the provisions of this chapter or the rules and regulations issued thereunder have been violated, the secretary shall cause notice of the violations to be given to the registrant, distributor, or possessor from whom said sample was taken; any person so notified shall be given opportunity to be heard under such rules and regulations as may be prescribed by the secretary. If it appears after such hearing, either in the presence or absence of the person so notified, that any of the provisions of this chapter or rules and regulations issued thereunder have been violated, the secretary may certify the facts to the proper prosecuting attorney.

2. A person violating this chapter or rules

adopted by the secretary pursuant to this chapter shall be guilty of a simple misdemeanor. However, a person who tampers with, possesses, or transports anhydrous ammonia or anhydrous ammonia equipment commits a serious misdemeanor under section 124.401F.

3. Nothing in this chapter shall be construed as requiring the secretary or the secretary's representative to report for prosecution or for the institution of seizure proceedings minor violations of the chapter when the secretary believes that the public interest will be best served by a suitable notice of warning in writing.

4. It shall be the duty of each county attorney to whom any violation is reported, to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay.

5. The secretary is hereby authorized to apply for and the court to grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this chapter or any rule or regulation promulgated under the chapter notwithstanding the existence of other remedies at law, said injunction to be issued without bond.

99 Acts, ch 12, §9
Subsection 2 amended

CHAPTER 200A

BULK DRY ANIMAL NUTRIENT PRODUCTS

200A.3 Definitions.

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

1. *"Advertise"* means to present a commercial message in any medium including but not limited to print, radio, television, sign, display, label, tag, or articulation.

2. *"Bulk dry animal nutrient product"* or *"bulk product"* means a dry animal nutrient product delivered to a purchaser in bulk form to which a label cannot be attached.

3. *"Department"* means the department of agriculture and land stewardship.

4. *"Distribute"* means to offer for sale, sell, hold out for sale, exchange, barter, supply, or furnish a bulk dry animal nutrient product on a commercial basis.

5. *"Distributor"* means a person who distributes a bulk dry animal nutrient product.

6. *"Dry animal nutrient product"* means any unmanipulated animal manure composed primarily of animal excreta, if all of the following apply:

a. The manure contains one or more recognized plant nutrients which are used for their plant

nutrient content.

b. The manure promotes plant growth.

c. The manure does not flow perceptibly under pressure.

d. The manure is not capable of being transported through a mechanical pumping device designed to move a liquid.

e. The constituent molecules of the manure do not flow freely among themselves but do show the tendency to separate under stress.

7. *"Guaranteed analysis"* means the minimum percentage of plant nutrients claimed and reported to the department pursuant to section 200A.6.

8. *"Official sample"* means any sample of a bulk dry animal nutrient product taken by the department according to procedures established by the department consistent with this chapter.

9. *"Percent"* or *"percentage"* means percentage by weight.

10. *"Purchaser"* means a person to whom a dry animal nutrient product is distributed.

11. *"Ton"* means a net weight of two thousand pounds avoirdupois.

99 Acts, ch 96, §21; 99 Acts, ch 114, §11
Subsections 2 and 4 amended

CHAPTER 202

COMMODITY PRODUCTION CONTRACTS

202.1 Definitions.

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

1. “*Active contractor*” means a person who owns a commodity that is produced by a contract producer at the contract producer’s contract operation pursuant to a production contract executed pursuant to section 202.2.

2. “*Commodity*” means livestock, raw milk, or a crop.

3. “*Contract crop field*” means farmland where a crop is produced according to a production contract executed pursuant to section 202.2 by a contract producer who holds a legal interest in the farmland.

4. “*Contract livestock facility*” means an animal feeding operation as defined in section 455B.161, in which livestock or raw milk is produced according to a production contract executed pursuant to section 202.2 by a contract producer who holds a legal interest in the animal feeding operation. “*Contract livestock facility*” includes a confinement feeding operation as defined in section 455B.161, an open feedlot, or an area which is used for the raising of crops or other vegetation and upon which livestock is fed for slaughter or is allowed to graze or feed.

5. “*Contract operation*” means a contract livestock facility or contract crop field.

6. “*Contract producer*” means a person who holds a legal interest in a contract operation and who produces a commodity at the contract producer’s contract operation under a production contract executed pursuant to section 202.2.

7. “*Contractor*” means an active contractor or a passive contractor.

8. *a.* “*Crop*” means a plant used for food, animal feed, fiber, or oil, if the plant is classified as a forage or cereal plant, including but not limited to alfalfa, barley, buckwheat, corn, flax, forage, millet, oats, popcorn, rye, sorghum, soybeans, sunflowers, wheat, and grasses used for forage or silage.

b. A “*crop*” does not include trees or nuts or fruit grown on trees; sod; shrubs; greenhouse plants; or plants or plant parts produced for pre-commercial, experimental, or research purposes.

9. “*Farmland*” means agricultural land that is suitable for use in farming as defined in section 9H.1.

10. “*Livestock*” means beef cattle, dairy cattle, sheep, or swine.

11. “*Open feedlot*” means an unroofed or partially roofed animal feeding operation in which no crop, vegetation, or forage growth or residue cover

is maintained during the period that animals are confined in the operation.

12. “*Passive contractor*” means a person who furnishes management services to a contract producer, and who does not own a commodity that is produced by the contract producer at the contract producer’s contract operation according to a production contract which is executed pursuant to section 202.2.

13. “*Produce*” means to do any of the following:

a. Provide feed or services relating to the care and feeding of livestock. If the livestock is dairy cattle, “*produce*” includes milking the dairy cattle and storing raw milk at the contract producer’s contract livestock facility.

b. Provide for planting, raising, harvesting, and storing a crop. “*Produce*” includes preparing the soil for planting and nurturing the crop by the application of fertilizers or soil conditioners as defined in section 200.3 or pesticides as defined in section 206.2.

14. “*Production contract*” means an oral or written agreement executed pursuant to section 202.2 that provides for the production of a commodity or the provision of management services relating to the production of a commodity by a contract producer.

99 Acts, ch 169, §2, 22–24
NEW section

202.2 Production contracts governed by this chapter.

1. This chapter applies to a production contract that relates to the production of a commodity owned by an active contractor and produced by a contract producer at the contract producer’s contract operation, if one of the following applies:

a. The contract is executed by an active contractor and a contract producer for the production of the commodity.

b. The contract is executed by an active contractor and a passive contractor for the provision of management services to the contract producer in the production of the commodity.

c. The contract is executed by a passive contractor and a contract producer, if all of the following apply:

(1) The contract provides for management services furnished by the passive contractor to the contract producer in the production of the commodity.

(2) The passive contractor has a contractual relationship with the active contractor involving the production of the commodity.

2. A production contract is executed when it is signed or orally agreed to by each party or by a person who is authorized by a party to act on the party's behalf.

99 Acts, ch 169, §3, 22-24
NEW section

202.3 Production contracts — confidentiality prohibited.

1. A contractor shall not on or after May 24, 1999, enforce a provision in a production contract if the provision provides that information contained in the production contract is confidential.

2. A provision which is part of a production contract is void if the provision states that information contained in the production contract is confidential. The confidentiality provision is void whether the confidentiality provision is express or implied; oral or written; required or conditional; contained in the production contract, another production contract, or in a related document, policy, or agreement. This section does not affect other provisions of a production contract or a related document, policy, or agreement which can be given effect without the voided provision. This section does not require a party to a production contract to divulge the information in the production contract to another person.

99 Acts, ch 169, §4, 22-24
NEW section

202.4 Enforcement.

1. The attorney general's office is the primary agency responsible for enforcing this chapter.

2. In enforcing the provisions of this chapter, the attorney general may do all of the following:

a. Apply to the district court for an injunction to do any of the following:

(1) Restrain a contractor from engaging in conduct or practices in violation of this chapter.

(2) Require a contractor to comply with a provision of this chapter.

b. Apply to district court for the issuance of a subpoena to obtain a production contract for purposes of enforcing this chapter.

c. Bring an action in district court to enforce penalties provided in section 202.5, including the assessment and collection of civil penalties.

99 Acts, ch 169, §5, 22-24
NEW section

202.5 Penalties.

A contractor who executes a production contract that includes a confidentiality provision in a production contract in violation of section 202.3 is guilty of a fraudulent practice as provided in section 714.8.

99 Acts, ch 169, §6, 22-24
NEW section

CHAPTER 202A

LIVESTOCK MARKETING PRACTICES

For future amendments, rules, and applicability and repeal provisions; see 99 Acts, ch 88, §2-13; 99 Acts, ch 208, §49, 74

202A.1 through 202A.3 Reserved.

For future amendments establishing definitions, requiring the filing of purchase reports, and the posting of purchase notices, effective July 1, 2000, see 99 Acts, ch 88, §2-4, 10, 13; 99 Acts, ch 208, §49, 74

For rules, applicability, conditional future repeal provisions, and rule-making authority, effective July 1, 2000, see 99 Acts, ch 88, §6, 11-13

202A.4 Confidentiality provisions in contracts prohibited.

1. A packer shall not include a provision in a contract executed on or after April 29, 1999, for the purchase of livestock providing that information contained in the contract is confidential.

2. A provision which is part of a contract for the purchase of livestock executed on and after April 29, 1999, for the purchase of livestock is void, if the provision states that information contained in the contract is confidential. The provision is void regardless of whether the confidentiality provision is express or implied; oral or written; required or conditional; contained in the contract, another contract, or in a related document, policy, or agreement. This section does not affect other provisions of a contract or a related document, policy, or agree-

ment which can be given effect without the voided provision. This section does not require either party to the contract to divulge the information in the contract to another person.

99 Acts, ch 88, §5, 13
NEW section

202A.5 Reserved.

For text of section providing for rules and for applicability, conditional future repeal provisions, and rulemaking authority, effective July 1, 2000, see 99 Acts, ch 88, §6, 11-13

202A.6 Enforcement.

1. Reserved.

2. In enforcing the provisions of this chapter, the attorney general may do all of the following:

a. Apply to the district court for an injunction to do any of the following:

(1) Restrain a packer from engaging in conduct or practices in violation of this chapter.

(2) Require a packer to comply with a provision of this chapter.

b. Apply to district court for the issuance of a subpoena to obtain contracts, documents, or other records for purposes of enforcing this chapter.

c. Bring an action in district court to enforce penalties provided in this chapter, including the imposition, assessment, and collection of monetary penalties.

3. Reserved.

99 Acts, ch 88, §7, 11, 13

For text of subsections 1 and 3 and rules, applicability, and conditional future repeal provisions effective July 1, 2000, see 99 Acts, ch 88, §6, 7, 11–13
NEW section

202A.7 Penalties.

1. Reserved.

2. Reserved.

3. A packer who includes a confidentiality provision in a contract with a livestock seller in violation of section 202A.4 is guilty of a fraudulent practice as provided in section 714.8.

99 Acts, ch 88, §8, 11, 13

For text of subsections 1 and 2 and rules, applicability, and conditional future repeal provisions effective July 1, 2000, see 99 Acts, ch 88, §6–8, 11–13

NEW section

CHAPTER 203

GRAIN DEALERS

203.1 Definitions.

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

1. “*Bond*” means a bond issued by a surety company or an irrevocable letter of credit issued by a financial institution described in subsection 5.

2. “*Credit-sale contract*” means a contract for the sale of grain pursuant to which the sale price is to be paid more than thirty days after the delivery of the grain to the buyer, or a contract which is titled as a credit-sale contract, including but not limited to those contracts commonly referred to as deferred-payment contracts, deferred-pricing contracts, and price-later contracts.

3. “*Custom livestock feeder*” means a person who buys grain for the sole purpose of feeding it to livestock owned by another person in a feedlot as defined in section 172D.1, subsection 6, or a confinement building owned or operated by the custom livestock feeder and located in this state.

4. “*Department*” means the department of agriculture and land stewardship.

5. “*Financial institution*” means a bank or savings and loan association authorized by the state of Iowa or by the laws of the United States, which is a member of the federal deposit insurance corporation or the federal savings and loan insurance corporation, respectively; or the national bank for cooperatives established in the Agricultural Credit Act, Pub. L. No. 100-233.

6. “*Good cause*” means that the department has cause to believe that the net worth or current asset to current liability ratio of a grain dealer presents a danger to sellers with whom the grain dealer does business, based on evidence of any of the following:

a. The making of a payment by use of a financial instrument which is a check, share draft, draft, or written order on a financial institution, and a financial institution refuses payment on the instrument because of insufficient funds in a grain dealer’s account.

b. A violation of recordkeeping requirements provided in this chapter or rules adopted pursuant to this chapter by the department.

c. A substantial risk of loss to the grain depositors and sellers indemnity fund caused by the possible insolvency of the grain dealer based on a statistical model provided in section 203.22.

7. “*Grain*” means any grain for which the United States department of agriculture has established standards including, but not limited to, corn, wheat, oats, soybeans, rye, barley, grain sorghum, flaxseeds, sunflower seed, spelt (emmer) and field peas.

8. “*Grain dealer*” means a person who buys during any calendar month one thousand bushels of grain or more directly from the producers of the grain for purposes of resale, milling, or processing. However, “*grain dealer*” does not include any of the following:

a. A producer of grain who is buying grain for the producer’s own use as seed or feed.

b. A person solely engaged in buying grain future contracts on the board of trade.

c. A person who purchases grain only for sale in a feed regulated under chapter 198.

d. A person who purchases grain only from grain dealers licensed under this chapter.

e. A person engaged in the business of selling agricultural seeds regulated by chapter 199.

f. A person buying grain only as a farm manager.

g. An executor, administrator, trustee, guardian, or conservator of an estate.

h. A bargaining agent as defined in section 203A.1.

i. A custom livestock feeder.

j. A cooperative corporation organized under chapter 501, if the cooperative buys grain from producers who are members or a licensed grain dealer, and the cooperative does not resell that grain.

9. “*Producer*” means the owner, tenant, or operator of land in this state who has an interest in

and receives all or a part of proceeds from the sale of grain produced on that land.

10. "Seller" means a person who sells grain which the person has produced or caused to be produced to a licensed grain dealer, and includes a person who executes a credit-sale contract as a seller.

99 Acts, ch 106, §1-3
Subsection 8, unnumbered paragraph 1 and paragraph c amended
Subsection 8, paragraph d stricken and rewritten

203.2A Notice requirement for grain purchasers who are not grain dealers.

A person shall not purchase grain from a producer for purposes of resale, milling, feeding, or processing, unless one of the following applies:

1. The person is a grain dealer licensed pursuant to section 203.3.

2. The person has purchased less than fifty thousand bushels of grain from all producers in the twelve months prior to purchasing grain from the producer.

3. *a.* The person provides notice to the producer. The notice shall be in the following form:

ATTENTION TO PRODUCERS:

THE PERSON PURCHASING THIS GRAIN IS NOT A LICENSED GRAIN DEALER AND THIS IS NOT A COVERED TRANSACTION ELIGIBLE FOR INDEMNIFICATION FROM THE GRAIN DEPOSITORS AND SELLERS INDEMNITY FUND AS PROVIDED IN IOWA CODE SECTION 203D.3.

b. The notice shall be provided prior to or at the time of the purchase. The notice may appear on a separate statement or as part of a document received by the producer, including a contract or receipt, as required by the department.

c. The form of the notice shall be prescribed by the department. The notice shall appear in a printed boldface font in at least ten point type.

99 Acts, ch 106, §4
NEW section

203.11A Civil penalties.

1. The department shall establish, by rule, civil penalties which may be administratively or judicially assessed against a grain dealer for a violation of this chapter.

2. The amount of a civil penalty shall not exceed one thousand five hundred dollars. Each day that a violation continues shall constitute a separate violation. The amount of the civil penalty that may be assessed in a case shall not exceed the amount recommended by the grain industry peer review panel established pursuant to section 203.11B. Moneys collected in civil penalties by the department or the attorney general shall be deposited in the general fund of the state.

3. A civil penalty may be administratively assessed only after an opportunity for a contested

case hearing under chapter 17A. The department may be represented in an administrative hearing or judicial proceeding by the attorney general. A civil penalty shall be paid within thirty days from the date that an order or judgment for the penalty becomes final. When a person against whom a civil penalty is administratively assessed under this section seeks timely judicial review of an order imposing the penalty as provided under chapter 17A, the order is not final until all judicial review processes are completed. When a person against whom a civil penalty is judicially assessed under this section seeks a timely appeal of judgment, the judgment is not final until the right of appeal is exhausted.

4. A person who fails to timely pay a civil penalty as provided in this section shall pay, in addition to the penalty, interest at the rate of one and one-half percent of the unpaid balance of the assessed penalty for each month or part of a month that the penalty remains unpaid.

99 Acts, ch 106, §5
NEW section

203.11B Grain industry peer review panel.

1. The department shall establish a grain industry peer review panel to assist the department in assessing civil penalties pursuant to this section and section 203C.36A. The secretary of agriculture shall appoint to the panel the following members:

a. Two natural persons who are grain dealers licensed under this chapter and actively engaged in the grain dealer business.

b. Two natural persons who are warehouse operators licensed pursuant to chapter 203C and actively engaged in the grain warehouse business.

c. One natural person who is a producer actively engaged in grain farming.

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 of agriculture 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 three or more members. Three 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 employees of the department.

3. The panel may propose a schedule of civil penalties for minor and serious violations of this chapter and chapter 203C. The department may adopt rules based on the recommendations of the panel as approved by the secretary of agriculture.

4. a. The panel shall review cases of grain dealers regulated under this chapter and warehouse operators regulated under chapter 203C who are subject to civil penalties as provided in section 203.11A or 203C.36A. A review shall be performed upon the request of the department or the person subject to the civil penalty.

b. The department shall present reports to the panel in regard to investigations of cases under review which may result in the assessment of a civil penalty against a person. The reports may be reviewed by the panel in closed session pursuant to section 21.5, and are confidential records. In presenting the reports, the department shall make available to the panel records of persons which are otherwise confidential under section 22.7, 203.16, or 203C.24. The panel members shall maintain the confidentiality of records made available to the panel. However, a determination to assess a civil penalty against a person shall be made exclusively by the department.

c. 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 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 or the Iowa rules of civil procedure. The rules adopted by the department may exclude review of minor violations. The review may also include the manner of assessing and collecting the civil penalty.

d. The findings and recommendations of the panel shall be included in a response delivered to the department and the person subject to the civil 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 grain dealer or warehouse operator.

5. This section does not apply to an action by the department for a license suspension or revocation. This section also does not require a review or response if the case is subject to criminal prosecution or involves a petition seeking injunctive relief.

6. A response by the panel may be used as evidence in an administrative hearing or in a civil or criminal case except to the extent that information contained in the response is considered confidential pursuant to section 22.7, 203.16, or 203C.24.

99 Acts, ch 106, §6
NEW section

203.15 Credit-sale contracts.

1. A grain dealer shall not purchase grain by a credit-sale contract except as provided in this section.

2. A grain dealer shall give written notice to the department prior to engaging in the purchase of grain by credit-sale contracts. Notice shall be on forms provided by the department. The notice shall contain information required by the department.

3. All credit-sale contract forms in the possession of a grain dealer shall have been permanently and consecutively numbered at the time of printing of the forms. A grain dealer shall maintain an accurate record of all credit-sale contract forms and numbers obtained by that dealer. The record shall include the disposition of each numbered form, whether by execution, destruction, or otherwise.

4. A grain dealer who purchases grain by credit-sale contracts shall maintain books, records, and other documents as required by the department to establish compliance with this section.

5. In addition to other information as may be required, a credit-sale contract shall contain or provide for all of the following:

- a. The seller's name and address.
- b. The conditions of delivery.
- c. The amount and kind of grain delivered.
- d. The price per bushel or basis of value.
- e. The date payment is to be made.

f. The duration of the credit-sale contract, which shall not exceed twelve months from the date the contract is executed.

6. Title to all grain sold by a credit-sale contract is in the purchasing dealer as of the time the contract is executed, unless the contract provides otherwise. The contract must be signed by both parties and executed in duplicate. One copy shall be retained by the grain dealer and one copy shall be delivered to the seller. Upon revocation, termination, or cancellation of a grain dealer license, the payment date for all credit-sale contracts shall be advanced to a date not later than thirty days after the effective date of the revocation, termination, or cancellation, and the purchase price for all unpriced grain shall be determined as of the effective date of revocation, termination, or cancellation in accordance with all other provisions of the contract. However, if the business of the grain dealer is sold to another licensed grain dealer, credit-sale contracts may be assigned to the purchaser of the business.

7. *a.* A grain dealer shall not purchase grain on credit-sale contract during any time period in which the grain dealer fails to maintain fifty cents of net worth for each outstanding bushel of grain purchased under credit. The grain dealer may maintain a deficiency bond or an irrevocable letter of credit in the amount of two thousand dollars for each one thousand dollars or fraction thereof of deficiency in net worth.

b. A grain dealer holding a federal or state warehouse license who does not have a sufficient quantity or quality of grain to satisfy the warehouse operator's obligations based on an examination by the department or the United States department of agriculture shall not purchase grain on credit-sale contract to correct the shortage of grain.

c. A grain dealer must meet at least either of the following conditions:

(1) The grain dealer's last financial statement required to be submitted to the department pursuant to section 203.3 is accompanied by an unqualified opinion based upon an audit performed by a certified public accountant licensed in this state.

(2) The grain dealer files a bond with the department in the amount of one hundred thousand dollars payable to the department. The bond shall be used to indemnify sellers for losses resulting from a breach of a credit-sale contract as provided by rules adopted by the department. The rules shall include, but are not limited to, procedures and criteria for providing notice, filing claims, valuing losses, and paying claims. The bond provided in this paragraph shall be in addition to any other bond required in this chapter.

A bond filed with the department under this paragraph shall not be canceled by the issuer on less than ninety days notice by certified mail to the department and the principal. However, if an adequate replacement bond is filed with the department, the department may authorize the cancellation of the original bond before the end of the ninety-day period. If an adequate replacement bond is not received by the department within sixty days of the issuance of the notice of cancellation, the department shall automatically suspend the grain dealer's license. The department shall cause an inspection of the licensed grain dealer immediately at the end of the sixty-day period. If a replacement bond is not filed within another thirty days following the suspension, the grain dealer license shall be automatically revoked. When a license is revoked, the department shall provide notice of the revocation by ordinary mail to the last known address of each holder of an outstanding credit-sale contract and all known sellers.

8. The department may adopt rules to suspend the right of a grain dealer to purchase grain by credit-sale contract based on any of the following conditions:

a. The grain dealer holding a federal or state warehouse license does not have a sufficient quantity or quality of grain to satisfy the warehouse operator's obligations based on an examination by the department or the United States department of agriculture.

b. The grain dealer holding a state or federal warehouse license issues back to the grain dealer a warehouse receipt for purposes of providing collateral, if the grain which is the subject of the warehouse receipt was purchased on credit and is unpaid for by the grain dealer.

c. The grain dealer fails to maintain requirements relating to net worth or fails to maintain a ratio of current assets to current liabilities, as required in section 203.3.

d. The grain dealer violates this section.

e. The grain dealer's total liabilities are greater than seventy-five percent of the grain dealer's total assets.

f. The grain dealer has made payment by use of a financial instrument which is a check, share draft, draft, or written order on a financial institution, and a financial institution refuses payment on the instrument because of insufficient funds in a grain dealer's account.

g. The department discovers that a grain dealer has delayed payment for grain purchased since the department last inspected the grain dealer pursuant to section 203.9.

9. A licensed grain dealer who purchases grain by credit-sale contract shall obtain from the seller a signed acknowledgment stating that the seller has received notice that grain purchased by credit-sale contract is not protected by the grain depositors and sellers indemnity fund. The form for the acknowledgment shall be prescribed by the department, and the licensed grain dealer and the seller shall each be provided a copy.

99 Acts, ch 106, §7
Subsection 7, paragraph c, subparagraph (2), unnumbered paragraph 2 amended

203.16 Confidentiality of records.

Notwithstanding chapter 22, all financial statements of grain dealers under this chapter shall be kept confidential by the department and its agents and employees and are not subject to disclosure except as follows:

1. Upon waiver by the licensee.

2. In actions or administrative proceedings commenced under this chapter or chapter 203C.

3. Disclosure to the Iowa grain indemnity fund board in regard to licensees who present liability to the fund.

4. When required by subpoena or court order.

5. Disclosure to law enforcement agencies in regard to the detection and prosecution of public offenses.

6. When released to a bonding company approved by the department, or released to the

United States department of agriculture or any of its divisions.

7. Where released at the request of the Iowa board of accountancy for licensee review and discipline in accordance with chapters 272C and 542C and subject to the confidentiality requirements of

section 272C.6.

8. Disclosure to the grain industry peer review panel as provided in section 203.11B.

99 Acts, ch 106, §8
NEW subsection 8

CHAPTER 203C

WAREHOUSES FOR AGRICULTURAL PRODUCTS

203C.1 Definitions.

As used in this chapter:

1. *"Agricultural product"* shall mean any product of agricultural activity suitable for storage in quantity, including refined or unrefined sugar and canned agricultural products and shall also mean any product intended for consumption in the production of other agricultural products, such as stock salt, binding twine, bran, cracked corn, soybean meal, commercial feeds, and cottonseed meal.

2. *"Bond"* means a bond issued by a surety company or an irrevocable letter of credit issued by a financial institution described in subsection 25.

3. *"Bulk grain"* shall mean grain which is not contained in sacks.

4. *"Credit-sale contract"* means a contract for the sale of grain pursuant to which the sale price is to be paid more than thirty days after the delivery of the grain to the buyer, or a contract which is titled as a credit-sale contract, including but not limited to those contracts commonly referred to as deferred-payment contracts, deferred-pricing contracts, and price-later contracts.

5. *"Department"* means the department of agriculture and land stewardship.

6. *"Depositor"* means any person who deposits an agricultural product in a warehouse for storage, handling, or shipment, or who is the owner or legal holder of an outstanding warehouse receipt, or who is lawfully entitled to possession of the agricultural product.

7. *"Financial institution"* means a bank or savings and loan association authorized by the state of Iowa or by the laws of the United States, which is a member of the federal deposit insurance corporation or the federal savings and loan insurance corporation, respectively; or the national bank for cooperatives established in the Agricultural Credit Act, Pub. L. No. 100-233.

7A. *"Good cause"* means that the department has cause to believe that the net worth or current asset to current liability ratio of a warehouse operator presents a danger to depositors with whom the warehouse operator does business, based on evidence of any of the following:

a. The making of a payment by use of a financial instrument which is a check, share draft, draft, or written order on a financial institution, and a fi-

ancial institution refuses payment on the instrument because of insufficient funds in the warehouse operator's account.

b. A violation of recordkeeping requirements provided in this chapter or rules adopted pursuant to this chapter by the department.

c. A quality or quantity shortage in the warehouse facility.

d. A high risk of loss to the grain depositors and sellers indemnity fund caused by the possible insolvency of the warehouse operator based on a statistical model provided in section 203C.40.

8. *"Grain"* shall mean wheat, corn, oats, barley, rye, flaxseed, field peas, soybeans, grain sorghums, spelt, and similar agricultural products, as defined in the Grain Standards Act.

9. *"Grain bank"* means grain owned by a depositor and held temporarily by the warehouse operator for use in the formulation of feed or to be processed and returned to the depositor on demand.

10. *"Grain Standards Act"* means the United States Grain Standards Act, 7 U.S.C. ch. 3.

11. *"Incidental warehouse operator"* means a person regulated under chapter 198 whose grain storage capacity does not exceed twenty-five thousand bushels which is used exclusively for grain owned or grain which will be returned to the depositor for use in a feeding operation or as an ingredient in a feed.

12. *"Incidental warehouse operator's obligation"* means a sufficient quantity and quality of grain to cover company owned grain and deposits of grain for which actual payment has not been made.

13. *"License"* means a license issued under this chapter.

14. *"Licensed warehouse"* shall mean a warehouse for the operation of which the department has issued a license in accordance with the provisions of section 203C.6.

15. *"Licensed warehouse operator"* shall mean a warehouse operator who has obtained a license for the operation of a warehouse under the provisions of section 203C.6.

16. *"Official grain standards"* means the standards of quality and condition of grain which establishes the grade, fixed and established by the secretary of agriculture under the Grain Standards Act.

17. "Open storage" means grain or agricultural products which are received by a warehouse operator from a depositor for which warehouse receipts have not been issued or a purchase made and the records documented accordingly.

18. "Person" shall mean an individual, corporation, partnership, or two or more persons having a joint or common interest in the same venture, and, except with respect to the privilege of operating a warehouse under this chapter, shall include the United States or Iowa state government, or any subdivision or agency of either.

19. "Receiving and loadout charge" shall mean the charge made by the warehouse operator for receiving grain into and loading grain from the warehouse, exclusive of the warehouse operator's other charges.

20. "Scale weight ticket" means a load slip or other evidence, other than a receipt, given to a depositor by a warehouse operator licensed under this chapter upon initial delivery of the agricultural product to the warehouse.

21. "Station" means a warehouse located more than three miles from the central office of the warehouse.

22. "Storage" means any grain or other agricultural products that have been received and have come under care, custody or control of a warehouse operator either for the depositor for which a contract of purchase has not been negotiated or for the warehouse operator operating the facility.

23. "Unlicensed warehouse operator" means a warehouse operator who retains grain in the warehouse not to exceed thirty days and is not licensed under the provisions of this chapter or Title VII, U.S.C.

24. "Warehouse" shall mean any building, structure, or other protected enclosure in this state used or usable for the storage of agricultural products. Buildings used in connection with the operation of the warehouse shall be deemed to be a part of the warehouse.

25. "Warehouse operator" means a person engaged in the business of operating or controlling a warehouse for the storing, shipping, handling or processing of agricultural products, but does not include an incidental warehouse operator.

26. "Warehouse operator's obligation" means a sufficient quantity and quality of grain or other products for which a warehouse operator is licensed including company owned grain and grain of depositors as the warehouse operator's records indicate. For an unlicensed warehouse operator it means a sufficient quantity and quality of grain to cover company owned grain and all deposits of grain for which actual payment has not been made.

99 Acts, ch 106, §9-11

Subsection 11 amended

NEW subsection 12 and former subsections 12-21 renumbered as 13-22

Former subsection 25 renumbered as 23 to alphabetize and former subsections 22-24 renumbered as 24-26

Subsection 26 amended

203C.10 Suspension or revocation of license.

The department is empowered after hearing before it and upon information being filed with the department by the duly authorized head of the warehouse bureau of the department or upon complaint filed by any person to suspend or revoke the license of anyone licensed under this chapter for the violation of or failure to comply with the provisions of this chapter or any rule made in pursuance of the authority therefor granted under this chapter. An information or a verified complaint stating the grounds for suspension or revocation shall be filed with the department in triplicate, and thereupon the department shall serve the licensee complained against with a copy of the information or the complaint and a copy of the order of the department fixing the time for hearing thereon, which time shall be at least ten days from the date of service.

If upon the filing of the information or complaint the department finds that the licensee has failed to meet the warehouse operator's obligation or otherwise has violated or failed to comply with the provisions of this chapter or any rule promulgated under this chapter, and if the department finds that the public health, safety or welfare imperatively requires emergency action, then the department without hearing may order a summary suspension of the license in the manner provided in section 17A.18A. When so ordered, a copy of the order of suspension shall be served upon the licensee at the time the information or complaint is served as provided in this section.

Judicial review of the actions of the department may be sought in accordance with the terms of the Iowa administrative procedure Act.

98 Acts, ch 1202, §34, 46

1998 amendment to unnumbered paragraph 2 is effective July 1, 1999, and applies to agency proceedings commenced, or conducted on remand from a court or other agency, on or after that date; 98 Acts, ch 1202, §34, 46

Unnumbered paragraph 2 amended

203C.17 Receiving bulk grain at licensed and unlicensed warehouses.

1. Any grain which has been received at any licensed warehouse for which the actual sale price is not fixed and proper documentation made or payment made shall be construed to be grain held for storage within the meaning of this chapter. Grain may be held in open storage or placed on warehouse receipt. A warehouse receipt shall be issued for all grain held in open storage within one year from the date of delivery to the warehouse, unless the depositor has signed a statement that the depositor does not desire a warehouse receipt. The warehouse operator's tariff shall apply for any grain that is retained in open storage or under warehouse receipt.

2. Bulk grain deposited with a licensed warehouse operator for processing, cleaning, drying, shipping for the account of the depositor or any oth-

er purpose shall be removed within thirty days or such grain shall be determined as stored grain and the warehouse operator's tariff charges shall apply.

3. Grain received on a scale ticket which fails to have the price fixed and properly documented on the records of the warehouse operator shall be construed to be in open storage.

4. All bulk grain whether open storage or having been placed on warehouse receipt is covered by the grain depositors and sellers indemnity fund created in chapter 203D.

5. Any grain which has been received at any unlicensed warehouse and for which the actual sale price has not been fixed and payment made within thirty days from receipt of the grain, unless covered by a credit-sale contract, shall be construed to be unlawful storage within the meaning of this chapter. Bulk grain received at any unlicensed warehouse for any other purpose must either be returned to the depositor or disposed of by order of the depositor within thirty days from date of actual deposit of the bulk grain.

6. If the depositor of bulk grain in an unlicensed warehouse fails to sell the grain or orders other disposition of the grain, the warehouse operator may purchase the grain, if otherwise allowed by law, on the thirtieth day after deposit at not less than the local market price at the close of business on the thirtieth day or return the grain to the depositor by the thirtieth day.

7. A licensed warehouse operator who does not have a sufficient quantity or quality of grain to satisfy the warehouse operator's obligations based on an examination by the department shall not purchase grain on credit-sale contract to correct the shortage of grain. A licensed warehouse operator shall not issue a warehouse receipt for purposes of providing collateral, if the grain which is the subject of the warehouse receipt was purchased by credit-sale contract and is unpaid for by the warehouse operator.

8. Every licensed warehouse operator shall, on or before July 1 of each year, send a statement for each holder of a warehouse receipt covering grain held for more than one year at that warehouse to the holder's last known address. The statement shall show the amount of all grain held pursuant to warehouse receipt for such warehouse receipt holder and the amount of any storage charges held by the licensed warehouse operator against that grain. However, a licensed warehouse operator need not prepare this annual statement for a holder of a warehouse receipt, if the licensed warehouse operator prepares such statements monthly, quarterly or for any other period more frequent than annually. The failure to prepare a statement required by this subsection is a simple misdemeanor.

Violation of this section shall not constitute grounds for suspension, revocation, or modification of the license of anyone licensed under this chapter.

99 Acts, ch 106, §12
Subsection 1 amended

203C.23 Warehouse operator's obligation.

1. A warehouse operator shall maintain at all times sufficient quantity and quality of grain or other agricultural products to cover the warehouse operator's obligation. A warehouse operator shall not at any time have less grain or other agricultural products in the warehouse than the obligations to depositors, as determined by an investigation of the warehouse operator's records.

2. An incidental warehouse operator shall maintain at all times sufficient quantity and quality of grain to cover the incidental warehouse operator's obligation. An incidental warehouse operator shall not at any time have less grain in a warehouse than the obligations to depositors, as determined by an investigation of the incidental warehouse operator's records.

99 Acts, ch 106, §13
Section amended

203C.24 Confidentiality of records.

Notwithstanding the provisions of chapter 22, all financial statements of warehouse operators under this chapter shall be kept confidential by the department and its agents and employees and are not subject to disclosure except as follows:

1. Upon waiver by the licensee.
2. In actions or administrative proceedings commenced under this chapter or chapter 203.
3. Disclosure to the Iowa grain indemnity fund board in regard to licensees who present liability to the fund.
4. When required by subpoena or other court orders.
5. Disclosure to law enforcement agencies in regards to the detection and prosecution of public offenses.
6. Where released to a bonding company approved by the department or to the United States department of agriculture or any of their divisions.
7. Where released at the request of the Iowa board of accountancy for licensee review and discipline in accordance with chapters 272C and 542C and subject to the confidentiality requirements of section 272C.6.
8. Disclosure to the grain industry peer review panel as provided in section 203.11B.

99 Acts, ch 106, §14
NEW subsection 8

203C.36A Civil penalties.

1. The department shall establish, by rule, civil penalties which may be administratively or judicially assessed against a warehouse operator for a violation of this chapter.

2. The amount of a civil penalty shall not exceed one thousand five hundred dollars. Each day that a violation continues shall constitute a separate violation. The amount of the civil penalty that may be assessed in an administrative case shall not exceed the amount recommended by the grain industry peer review panel established pursuant to

section 203.11B. Moneys collected in civil penalties by the department or the attorney general shall be deposited in the general fund of the state.

3. A civil penalty may be administratively assessed only after an opportunity for a contested case hearing under chapter 17A. The department may be represented in an administrative hearing or judicial proceeding by the attorney general. A civil penalty shall be paid within thirty days from the date that an order or judgment for the penalty becomes final. When a person against whom a civil penalty is administratively assessed under this section seeks timely judicial review of an order imposing the penalty as provided under chapter 17A,

the order is not final until all judicial review processes are completed. When a person against whom a civil penalty is judicially assessed under this section seeks a timely appeal of judgment, the judgment is not final until the right of appeal is exhausted.

4. A person who fails to timely pay a civil penalty as provided in this section shall pay, in addition to the penalty, interest at the rate of one and one-half percent of the unpaid balance of the assessed penalty for each month or part of a month that the penalty remains unpaid.

99 Acts, ch 106, §15
NEW section

CHAPTER 207

COAL MINING

207.14 Enforcement.

1. When on the basis of an inspection, the administrator determines that a condition or practice exists which creates an imminent danger to the health or safety of the public or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources, the administrator shall immediately order a cessation of coal mining and reclamation operations to the extent necessary until the administrator determines that the condition, practice, or violation has been abated, or until the order is modified, vacated, or terminated by the division pursuant to procedures set out in this section.

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

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

If upon expiration of the time as fixed the administrator finds in writing that the violation has not been abated, the administrator, notwithstanding sections 17A.18 and 17A.18A, shall immediately order a cessation of coal mining and reclamation operations relating to the violation until the order is modified, vacated, or terminated by the adminis-

trator pursuant to procedures outlined in this section. In the order of cessation issued by the administrator under this subsection, the administrator shall include the steps necessary to abate the violation in the most expeditious manner possible.

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

4. A permittee may request in writing an appeal to the committee of a decision made in a hearing under subsection 3 within thirty days of the decision. The committee shall review the record made in the contested case hearing, and may hear additional evidence upon a showing of good cause for failure to present the evidence in the hearing, or if evidence concerning events occurring after the hearing is deemed relevant to the proceeding. However, the committee shall not review a decision in a proceeding if the division seeks to collect a civil penalty pursuant to section 207.15, and those decisions are final agency actions subject to direct judicial review as provided in chapter 17A.

The contested case hearing shall be scheduled within thirty days of receipt of the request by the division. If the decision in the contested case is to revoke the permit, the permittee shall be given a specific period to complete reclamation, or the at-

torney general shall be requested to institute bond forfeiture proceedings.

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

6. Notices and orders issued pursuant to this section shall set forth with reasonable specificity the nature of the violation and the remedial action required, the period of time established for abatement, and a reasonable description of the portion of the coal mining and reclamation operation to which the notice or order applies. Each notice or order issued under this section shall be given promptly to the operator or an agent and all notices and orders shall be in writing and signed. A notice or order issued pursuant to this section may be modified, vacated, or terminated by the administrator. Any notice or order issued pursuant to this section which requires cessation of mining by the operator expires within thirty days of actual notice to the operator unless a public hearing is held at or near the site so that any viewings of the site can be conducted during the course of the hearing.

7. A permittee issued a notice or order under this section or any person having an interest which is or may be adversely affected by the notice or order or by its modification, vacation or termination may apply to the committee for review within thirty days of receipt of the notice or order or within thirty days of its modification, vacation or termination. The review shall be treated as a contested case under chapter 17A. Pending completion of any investigation or hearings required by this section, the applicant may file with the division a written request that the administrator grant temporary relief

from any notice or order issued under this section together with a detailed statement giving reasons for granting such relief. The administrator shall issue an order or decision granting or denying the request for relief within five days of its receipt. The administrator may grant such relief under such conditions as the administrator may prescribe if all of the following occur:

a. A hearing has been held in the locality of the permit area in which all parties were given an opportunity to be heard. The hearing need not be held as a contested case under chapter 17A.

b. The applicant shows that there is substantial likelihood that the findings of the committee will be favorable to the applicant.

c. Such relief will not adversely affect the health or safety of the public or cause significant, imminent environmental harm to land, air or water resources.

8. At the request of the division, the attorney general shall institute any legal proceedings, including an action for an injunction or a temporary injunction necessary to enforce the penalty provisions of this chapter or to obtain compliance with this chapter. Injunctive relief may be requested to enforce a cessation order issued by the administrator pending a hearing pursuant to subsection 4.

9. When on the basis of an inspection, or other information available to the division, the administrator has reasonable cause to believe that the operator is unable to complete reclamation of all or a portion of the permit area as required by law, the administrator shall issue an order to the operator to show cause as to why all or a portion of the performance bond required by section 207.10 should not be revoked.

98 Acts, ch 1202, §35, 46
1998 amendment to subsection 2, unnumbered paragraph 2 is effective July 1, 1999, and applies to agency proceedings commenced, or conducted on remand from a court or other agency, on or after that date; 98 Acts, ch 1202, §35, 46

Subsection 2, unnumbered paragraph 2 amended

CHAPTER 214A

MOTOR VEHICLE FUEL

214A.2 Tests and standards.

1. The secretary shall adopt rules pursuant to chapter 17A for carrying out this chapter. The rules may include, but are not limited to, specifications relating to motor fuel or oxygenate octane enhancers. In the interest of uniformity, the secretary shall adopt by reference or otherwise specifications relating to tests and standards for motor fuel or oxygenate octane enhancers, established by the American society for testing and materials (A.S.T.M.), unless the secretary determines those specifications are inconsistent with this chapter or are not appropriate to the conditions which exist in this state.

2. Octane number shall conform to the average of values obtained from the A.S.T.M. D-2699 research method and the A.S.T.M. D-2700 motor method.

Octane number for regular grade leaded gasoline shall follow the specifications of A.S.T.M. but shall not be less than eighty-eight.

Octane number for premium grade leaded gasoline shall follow the specifications of A.S.T.M. but shall not be less than ninety-three.

Octane number for regular grade unleaded gasoline shall follow the specifications of A.S.T.M. but shall not be less than eighty-seven.

Octane number for premium grade unleaded gasoline shall follow the specifications of A.S.T.M. but shall not be less than ninety.

3. *a.* Gasoline with a mixture of ten percent or more ethanol, but not more than thirteen percent, shall be known as conventional blend ethanol.

b. Gasoline with a mixture of more than thirteen percent ethanol, but not more than twenty-five percent, shall be known as high blend ethanol. For purposes of chapters 323A, 422, and 452A, high

blend ethanol shall be treated as conventional blend ethanol.

c. Gasoline shall not contain a mixture of more than twenty-five percent ethanol.

4. Gasoline shall not contain methanol without an equal amount of cosolvent, and shall not contain more than five percent methanol.

Limitation on sale of motor vehicle fuel containing methyl tertiary butyl ether on or after February 1, 2000; rules; 99 Acts, ch 204, §15, 20
Section not amended; footnote added

CHAPTER 216

CIVIL RIGHTS COMMISSION

216.15 Complaint — hearing.

1. Any person claiming to be aggrieved by a discriminatory or unfair practice may, in person or by an attorney, make, sign, and file with the commission a verified, written complaint which shall state the name and address of the person, employer, employment agency, or labor organization alleged to have committed the discriminatory or unfair practice of which complained, shall set forth the particulars thereof, and shall contain such other information as may be required by the commission. The commission, a commissioner, or the attorney general may in like manner make, sign, and file such complaint.

2. Any place of public accommodation, employer, labor organization, or other person who has any employees or members who refuse or threaten to refuse to comply with the provisions of this chapter may file with the commission a verified written complaint in triplicate asking the commission for assistance to obtain their compliance by conciliation or other remedial action.

3. *a.* After the filing of a verified complaint, a true copy shall be served within twenty days by certified mail on the person against whom the complaint is filed. An authorized member of the commission staff shall make a prompt investigation and shall issue a recommendation to an administrative law judge employed either by the commission or by the division of administrative hearings created by section 10A.801, who shall then issue a determination of probable cause or no probable cause.

b. For purposes of this chapter, an administrative law judge issuing a determination of probable cause or no probable cause under this section is exempt from section 17A.17.

c. If the administrative law judge concurs with the investigating official that probable cause exists regarding the allegations of the complaint, the staff of the commission shall promptly endeavor to eliminate the discriminatory or unfair practice by conference, conciliation, and persuasion. If the administrative law judge finds that no probable cause

exists, the administrative law judge shall issue a final order dismissing the complaint and shall promptly mail a copy to the complainant and to the respondent by certified mail. A finding of probable cause shall not be introduced into evidence in an action brought under section 216.16.

d. The commission staff must endeavor to eliminate the discriminatory or unfair practice by conference, conciliation, and persuasion for a period of thirty days following the initial conciliation meeting between the respondent and the commission staff after a finding of probable cause. After the expiration of thirty days, the director may order the conciliation conference and persuasion procedure provided in this section to be bypassed when the director determines the procedure is unworkable by reason of past patterns and practices of the respondent, or a statement by the respondent that the respondent is unwilling to continue with the conciliation. The director must have the approval of a commissioner before bypassing the conciliation, conference and persuasion procedure. Upon the bypassing of conciliation, the director shall state in writing the reasons for bypassing.

4. The members of the commission and its staff shall not disclose the filing of a complaint, the information gathered during the investigation, or the endeavors to eliminate such discriminatory or unfair practice by mediation, conference, conciliation, and persuasion, unless such disclosure is made in connection with the conduct of such investigation.

5. When the director is satisfied that further endeavor to settle a complaint by conference, conciliation, and persuasion is unworkable and should be bypassed, and the thirty-day period provided for in subsection 3 has expired without agreement, the director with the approval of a commissioner, shall issue and cause to be served a written notice specifying the charges in the complaint as they may have been amended and the reasons for bypassing conciliation, if the conciliation is bypassed, and requiring the respondent to answer the charges of the complaint at a hearing before the commission, a commissioner, or a person designated by the com-

mission to conduct the hearing, hereafter referred to as the administrative law judge, and at a time and place to be specified in the notice.

6. The case in support of such complaint shall be presented at the hearing by one of the commission's attorneys or agents. The investigating official shall not participate in the hearing except as a witness nor participate in the deliberations of the commission in such case.

7. The hearing shall be conducted in accordance with the provisions of chapter 17A for contested cases. The burden of proof in such a hearing shall be on the commission.

8. If upon taking into consideration all of the evidence at a hearing, the commission determines that the respondent has engaged in a discriminatory or unfair practice, the commission shall state its findings of fact and conclusions of law and shall issue an order requiring the respondent to cease and desist from the discriminatory or unfair practice and to take the necessary remedial action as in the judgment of the commission will carry out the purposes of this chapter. A copy of the order shall be delivered to the respondent, the complainant, and to any other public officers and persons as the commission deems proper.

a. For the purposes of this subsection and pursuant to the provisions of this chapter "remedial action" includes but is not limited to the following:

(1) Hiring, reinstatement or upgrading of employees with or without pay. Interim earned income and unemployment compensation shall operate to reduce the pay otherwise allowable.

(2) Admission or restoration of individuals to a labor organization, admission to or participation in a guidance program, apprenticeship training program, on-the-job training program or other occupational training or retraining program, with the utilization of objective criteria in the admission of individuals to such programs.

(3) Admission of individuals to a public accommodation or an educational institution.

(4) Sale, exchange, lease, rental, assignment or sublease of real property to an individual.

(5) Extension to all individuals of the full and equal enjoyment of the advantages, facilities, privileges, and services of the respondent denied to the complainant because of the discriminatory or unfair practice.

(6) Reporting as to the manner of compliance.

(7) Posting notices in conspicuous places in the respondent's place of business in form prescribed by the commission and inclusion of notices in advertising material.

(8) Payment to the complainant of damages for an injury caused by the discriminatory or unfair practice which damages shall include but are not limited to actual damages, court costs and reasonable attorney fees.

b. In addition to the remedies provided in the preceding provisions of this subsection, the com-

mission may issue an order requiring the respondent to cease and desist from the discriminatory or unfair practice and to take such affirmative action as in the judgment of the commission will carry out the purposes of this chapter as follows:

(1) In the case of a respondent operating by virtue of a license issued by the state or a political subdivision or agency, if the commission, upon notice to the respondent with an opportunity to be heard, determines that the respondent has engaged in a discriminatory or unfair practice and that the practice was authorized, requested, commanded, performed or knowingly or recklessly tolerated by the board of directors of the respondent or by an officer or executive agent acting within the scope of the officer's or agent's employment, the commission shall so certify to the licensing agency. Unless the commission finding of a discriminatory or unfair practice is reversed in the course of judicial review, the finding of discrimination is binding on the licensing agency. If a certification is made pursuant to this subsection, the licensing agency may initiate licensee disciplinary procedures.

(2) In the case of a respondent who is found by the commission to have engaged in a discriminatory or unfair practice in the course of performing under a contract or subcontract with the state or political subdivision or agency, if the practice was authorized, requested, commanded, performed, or knowingly or recklessly tolerated by the board of directors of the respondent or by an officer or executive agent acting within the scope of the officer's or agent's employment, the commission shall so certify to the contracting agency. Unless the commission's finding of a discriminatory or unfair practice is reversed in the course of judicial review, the finding of discrimination is binding on the contracting agency.

(3) Upon receiving a certification made under this subsection, a contracting agency may take appropriate action to terminate a contract or portion thereof previously entered into with the respondent, either absolutely or on condition that the respondent carry out a program of compliance with the provisions of this chapter; and assist the state and all political subdivisions and agencies thereof to refrain from entering into further contracts.

c. The election of an affirmative order under paragraph "b" of this subsection shall not bar the election of affirmative remedies provided in paragraph "a" of this subsection.

9. The terms of a conciliation or mediation agreement reached with the respondent may require the respondent to refrain in the future from committing discriminatory or unfair practices of the type stated in the agreement, to take remedial action as in the judgment of the commission will carry out the purposes of this chapter, and to consent to the entry in an appropriate district court of a consent decree embodying the terms of the conciliation or mediation agreement. Violation of such a

consent decree may be punished as contempt by the court in which it is filed, upon a showing by the commission of the violation at any time within six months of its occurrence. At any time in its discretion, the commission may investigate whether the terms of the agreement are being complied with by the respondent.

Upon a finding that the terms of the conciliation or mediation agreement are not being complied with by the respondent, the commission shall take appropriate action to assure compliance.

10. If, upon taking into consideration all of the evidence at a hearing, the commission finds that a respondent has not engaged in any such discriminatory or unfair practice, the commission shall issue an order denying relief and stating the findings of fact and conclusions of the commission, and shall cause a copy of the order dismissing the complaint to be served by certified mail on the complainant and the respondent.

11. The commission shall establish rules to govern, expedite, and effectuate the procedures established by this chapter and its own actions thereunder.

12. A claim under this chapter shall not be maintained unless a complaint is filed with the commission within one hundred eighty days after the alleged discriminatory or unfair practice occurred.

13. The commission or a party to a complaint may request mediation of the complaint at any time during the commission's processing of the complaint. If the complainant and respondent participate in mediation, any mediation agreement may be enforced pursuant to this section. Mediation may be discontinued at the request of any party or the commission.

98 Acts, ch 1202, §36, 46
1998 amendment to subsection 3, paragraph a is effective July 1, 1999, and applies to agency proceedings commenced, or conducted on remand from a court or other agency, on or after that date; 98 Acts, ch 1202, §36, 46
Subsection 3, paragraph a amended

216.15B Mediation — confidentiality.

1. A mediator shall be designated in writing by the commission to conduct mediation of a complaint filed under this chapter. The written designation must specifically refer to this section.

2. If mediation is conducted pursuant to this section, the confidentiality of all mediation communications and mediation documents is protected as provided in section 679C.2.

99 Acts, ch 114, §12
Subsection 1 amended

216.17 Judicial review — enforcement.

1. Judicial review of the actions of the commission may be sought in accordance with the terms of the Iowa administrative procedure Act. Notwithstanding the terms of said Act, petition for judicial review may be filed in the district court in which an enforcement proceeding under subsection 2 may be brought.

For purposes of the time limit for filing a petition for judicial review under the Iowa administrative procedure Act, specified by section 17A.19, the issuance of a final decision of the commission under this chapter occurs on the date notice of the decision is mailed by certified mail, to the parties.

Notwithstanding the time limit provided in section 17A.19, subsection 3, a petition for judicial review of no-probable-cause decisions and other final agency actions which are not of general applicability must be filed within thirty days of the issuance of the final agency action.

2. The commission may obtain an order of court for the enforcement of commission orders in a proceeding as provided in this section. Such an enforcement proceeding shall be brought in the district court of the district in the county in which the alleged discriminatory or unfair practice which is the subject of the commission's order was committed, or in which any respondent required in the order to cease or desist from a discriminatory or unfair practice or to take other affirmative action, resides, or transacts business.

3. Such an enforcement proceeding shall be initiated by the filing of a petition in such court and the service of a copy thereof upon the respondent. Thereupon the commission shall file with the court a transcript of the record of the hearing before it. The court shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript an order enforcing, modifying, and enforcing as so modified, or setting aside the order of the commission, in whole or in part.

4. An objection that has not been urged before the commission shall not be considered by the court in an enforcement proceeding, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances.

5. Any party to the enforcement proceeding may move the court to remit the case to the commission in the interests of justice for the purpose of adducing additional specified and material evidence and seeking findings thereof, providing such party shall show reasonable grounds for the failure to adduce such evidence before the commission.

6. In the enforcement proceeding the court shall determine its order on the same basis as it would in a proceeding reviewing commission action under section 17A.19.

7. The commission'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 commission's orders.

8. The commission may appear in court by its own attorney.

9. Petitions filed under this section shall be heard expeditiously and determined upon the transcript filed without requirement for printing.

10. If no proceeding to obtain judicial review is instituted within thirty days from the issuance of an order of the commission under section 216.15 or 216.15A, the commission may obtain an order of the court for the enforcement of the order upon showing that respondent is subject to the jurisdiction of the commission and resides or transacts

business within the county in which the petition for enforcement is brought.

98 Acts, ch 1202, §37, 46
1998 amendment to subsection 6 is effective July 1, 1999, and applies to agency proceedings commenced, or conducted on remand from a court or other agency, on or after that date; 98 Acts, ch 1202, §37, 46
Subsection 6 amended

CHAPTER 216A

DEPARTMENT OF HUMAN RIGHTS

216A.2 Appointment of department director and administrators.

The governor shall appoint a director of the department of human rights, subject to confirmation by the senate. The department director shall serve at the pleasure of the governor. The department director shall:

1. Establish general operating policies for the department to provide general uniformity among the divisions while providing for necessary flexibility.

2. Receive budgets submitted by each commission and reconcile the budgets among the divisions. The department director shall submit a budget for the department, subject to the budget requirements pursuant to chapter 8.

3. Coordinate and supervise personnel services and shared administrative support services to assure maximum support and assistance to the divisions.

4. Identify and, with the chief administrative officers of each division, facilitate the opportunities for consolidation and efficiencies within the department.

5. In cooperation with the commissions, make recommendations to the governor regarding the appointment of the administrator of each division.

6. Serve as an ex officio member of all commissions or councils within the department.

7. Serve as chairperson of the human rights administrative-coordinating council.

8. Evaluate each administrator, after receiving recommendations from the appropriate commissions or councils, and submit a written report of the completed evaluations to the governor and the appropriate commissions or councils, annually.

The governor shall appoint the administrators of each of the divisions subject to confirmation by the senate. Each administrator shall serve at the pleasure of the governor and is exempt from the merit system provisions of chapter 19A. The governor shall set the salary of the division administrators within the ranges set by the general assembly.

99 Acts, ch 201, §10, 11
Subsection 9 stricken
Unnumbered paragraph 2 amended

216A.71 Definitions.

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

1. "Administrator" means the administrator of the division of persons with disabilities of the department of human rights.

2. "Commission" means the commission of persons with disabilities.

3. "Division" means the division of persons with disabilities of the department of human rights.

99 Acts, ch 201, §12
Subsection 1 amended

216A.73 Ex officio members.

The following or designee shall serve as ex officio members of the commission:

1. The director of public health.
2. The director of the department of human services and any administrators of that department so assigned by the director.

3. The director of the department of education.

4. The administrator of the division of vocational rehabilitation of the department of education.

5. The director of the department for the blind.

6. The labor commissioner.

7. The workers' compensation commissioner.

8. The director of the department of workforce development.

9. The director of the department of personnel.

99 Acts, ch 96, §22
Subsection 4 amended

216A.78 Administrator.

The commission officers may designate the duties and obligations of the position of administrator. The administrator may appoint such other personnel as may be necessary for the efficient performance of the duties prescribed by this part. The administrator shall carry out programs and policies as determined by the commission.

99 Acts, ch 114, §13
Section amended

216A.92A Commission established.

1. The commission on community action agencies is created, composed of nine members appointed by the governor, subject to confirmation by the senate. The membership of the commission shall reflect the composition of local community action agency boards as follows:

a. One-third of the members shall be elected officials.

b. One-third of the members shall be representatives of business, industry, labor, religious, welfare, and educational organizations, or other major interest groups.

c. One-third of the members shall be persons who, according to federal guidelines, have incomes at or below poverty level.

2. Commission members shall serve three-year terms which shall begin and end pursuant to section 69.19, and shall serve the entire term even if the member experiences a change in the status

which resulted in their appointment under subsection 1. Vacancies on the commission shall be filled for the remainder of the term of the original appointment. Members whose terms expire may be reappointed. Members of the commission shall receive actual expenses for their services. Members may also be eligible to receive compensation as provided in section 7E.6. Members as specified under subsection 1, paragraph "c", however, shall receive per diem compensation as provided in section 7E.6 and actual expenses. The membership of the commission shall also comply with the political party affiliation and gender balance requirements of sections 69.16 and 69.16A.

3. The commission shall select from its membership a chairperson and other officers as it deems necessary. A majority of the members of the commission shall constitute a quorum.

99 Acts, ch 201, §13
Subsection 2 amended

CHAPTER 216B**DEPARTMENT FOR THE BLIND****216B.2 Commission created.**

The commission for the blind is established consisting of three members appointed by the governor, subject to confirmation by the senate. Members of the commission shall serve three-year terms beginning and ending as provided in section 69.19. The commission shall adopt rules concerning programs and services for blind persons provided under this chapter.

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. The members of the commission shall appoint officers for the commission. A majority of the members of the commission shall constitute a quorum.

99 Acts, ch 96, §23
Unnumbered paragraph 1 amended

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, upkeep, repair, and alteration of the buildings and grounds designated as centers for the blind including the expenditure of funds appropriated for that purpose. Nonresidents may be admitted to Iowa centers for the blind as space is available, upon terms determined by rule.

7. Establish and maintain offices for the department and commission.

8. Accept gifts, grants, devises, or bequests of real or personal property from any source for the use and purposes of the department. Notwithstanding sections 8.33 and 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 persons who are blind and persons with physical disabilities.

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 plastic products with recycled content, including but not limited to plastic garbage can liners. For purposes of this subsection, "recycled content" means that the content of the product contains a minimum of thirty percent postconsumer material.

a. By July 1, 1991, one hundred 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.

b. By July 1, 1995, a minimum of ten percent of the purchases of garbage can liners made by the commission shall be plastic garbage can liners with recycled content. The percentage purchased shall increase by ten percent annually until fifty percent of the purchases of garbage can liners are plastic garbage can liners with recycled content.

c. By July 1, 1993, one hundred 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.

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

(1) A listing of plastic products which are regularly purchased by the commission for which recycled content product alternatives are available, including the cost of the plastic products purchased and the cost of the recycled content product alternatives.

(2) Information relating to soybean-based inks and plastic garbage can liners with recycled content regularly purchased by the commission, including the cost of purchasing soybean-based inks and plastic garbage can liners with recycled content and the percentages of soybean-based inks and plastic garbage can liners with recycled content that have been purchased.

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 recycled content and soybean-based inks.

f. The department of natural resources shall assist the commission in locating suppliers of products with recycled content and soybean-based inks, and collecting data on recycled content 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. 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; and, in accordance with section 18.6, require product content statements 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. 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.

b. Of all new passenger vehicles and light pickup trucks purchased by the commission, 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 any of the following:

(1) A flexible fuel which is either of the following:

(a) A fuel blended with not more than fifteen percent gasoline and at least eighty-five percent ethanol.

(b) A fuel which is a mixture of diesel fuel and processed soybean oil. At least twenty percent of the mixed fuel by volume must be processed soybean oil.

(c) A renewable fuel approved by the office of renewable fuels and coproducts pursuant to section 159A.3.

(2) Compressed or liquefied natural gas.

(3) Propane gas.

(4) Solar energy.

(5) Electricity.

The provisions of this paragraph "b" do not apply to vehicles and trucks purchased and directly used for law enforcement or off-road maintenance work.

17. Comply with the requirements for the pur-

chase of lubricating oils, industrial oils, and hydraulic fluids as established pursuant to section 18.22.

99 Acts, ch 114, §14; 99 Acts, ch 121, §8
See Code editor's note to §10A.202
Subsection 14 amended

216B.6 Powers.

The commission shall have all powers necessary to carry out the functions and duties specified in this chapter, including, but not limited to the power to establish advisory committees on special studies, to solicit and accept gifts and grants, to adopt rules according to chapter 17A for the commission and department, and to contract with public and private groups to conduct its business. All departments, divisions, agencies, and offices of the state shall make available upon request of the commission information which is pertinent to the subject matter of the study and which is not by law confidential.

99 Acts, ch 96, §24
Section amended

CHAPTER 217

DEPARTMENT OF HUMAN SERVICES

217.9A Commission on children, youth, and families. Repealed by 98 Acts, ch 1206, § 19. See § 28.3.

Section not amended; reference change applied

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 grants to public or private organizations for provision of family development services to families at risk of long-term welfare dependency. Grant proposals for the family development and self-sufficiency grant program 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 grant.

b. Designation of the services to be provided for the families served, including assistance regarding job-seeking skills, family budgeting, nutrition, self-esteem, methamphetamine education, 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, child 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 appropriateness 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.

g. Designation of agreement provisions for tracking and reporting performance measures developed pursuant to subsection 4.

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 grant funded under the program, that include measurement of the grantee'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 program shall be selected from those meeting the criteria established in the program 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 grants under the program, including but not limited to 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.

99 Acts, ch 192, §33; 99 Acts, ch 195, §5
Terminology change applied
Subsection 3, paragraph b amended

CHAPTER 222

PERSONS WITH MENTAL RETARDATION

222.13A Voluntary admissions — minors.

1. If a minor is believed to be a person with mental retardation, the minor's parent, guardian, or custodian may request the county board of supervisors to apply for admission of the minor as a voluntary patient in a state hospital-school. If the hospital-school does not have appropriate services for the minor's treatment, the board of supervisors may arrange for the admission of the minor in a public or private facility within or without the state, approved by the director of human services, which offers appropriate services for the minor's treatment.

2. Upon receipt of an application for voluntary admission of a minor, the board of supervisors shall provide for a preadmission diagnostic evaluation of the minor to confirm or establish the need for the admission. The preadmission diagnostic evaluation shall be performed by a person who meets the qualifications of a qualified mental retardation professional who is designated through the single entry point process.

3. During the preadmission diagnostic evaluation, the minor shall be informed both orally and in writing that the minor has the right to object to the voluntary admission. If the preadmission diagnostic evaluation determines that the voluntary admission is appropriate but the minor objects to the admission, the minor shall not be admitted to the state hospital-school unless the court approves of

the admission. A petition for approval of the minor's admission may be submitted to the juvenile court by the minor's parent, guardian, or custodian.

4. As soon as practicable after the filing of a petition for approval of the voluntary admission, the court shall determine whether the minor has an attorney to represent the minor in the proceeding. If the minor does not have an attorney, the court shall assign to the minor an attorney. If the minor is unable to pay for an attorney, the attorney shall be compensated by the county at an hourly rate to be established by the county board of supervisors in substantially the same manner as provided in section 815.7.

5. The court shall order the admission of a minor who objects to the admission, only after a hearing in which it is shown by clear and convincing evidence that both of the following circumstances exist:

a. The minor needs and will substantially benefit from treatment or habilitation.

b. A placement which involves less restriction of the minor's liberties for the purposes of treatment or habilitation is not feasible.

99 Acts, ch 135, §15
Subsection 4 amended

222.22 Time of appearance.

The time of appearance shall not be less than five days after completed service unless the court or-

ders otherwise. Appearance on behalf of the person who is alleged to have mental retardation may be made by any citizen of the county or by any relative. The district court shall assign counsel for the person who is alleged to have mental retardation. Counsel shall prior to proceedings personally consult with the person who is alleged to have mental retardation unless the judge appointing counsel

certifies that in the judge's opinion, consultation shall serve no useful purpose. The certification shall be made a part of the record. An attorney assigned by the court shall be compensated by the county at an hourly rate to be established by the county board of supervisors in substantially the same manner as provided in section 815.7.

99 Acts, ch 135, §16
Section amended

CHAPTER 225C

MENTAL ILLNESS, MENTAL RETARDATION, DEVELOPMENTAL DISABILITIES, OR BRAIN INJURY

225C.4 Administrator's duties.

1. To the extent funding is available, the administrator shall perform the following duties:

- a. Prepare and administer state mental health and mental retardation plans for the provision of disability services within the state and prepare and administer the state developmental disabilities plan. The administrator shall consult with the Iowa department of public health, the state board of regents or a body designated by the board for that purpose, the department of management or a body designated by the director of the department for that purpose, the department of education, the department of workforce development and any other appropriate governmental body, in order to facilitate coordination of disability services provided in this state. The state mental health and mental retardation plans shall be consistent with the state health plan, and shall incorporate county disability services plans.
- b. Assist county boards of supervisors and mental health and developmental disabilities regional planning councils in planning for community-based disability services.
- c. Emphasize the provision of outpatient services by community mental health centers and local mental retardation providers as a preferable alternative to inpatient hospital services.
- d. Encourage and facilitate coordination of disability services with the objective of developing and maintaining in the state a disability service delivery system to provide disability services to all persons in this state who need the services, regardless of the place of residence or economic circumstances of those persons.
- e. Encourage and facilitate applied research and preventive educational activities related to causes and appropriate treatment for disabilities. The administrator may designate, or enter into agreements with, private or public agencies to carry out this function.
- f. Promote coordination of community-based services with those of the state mental health institutes and state hospital-schools.

g. Administer state programs regarding the care, treatment, and supervision of persons with mental illness or mental retardation, except the programs administered by the state board of regents.

h. Administer and control the operation of the state institutions established by chapters 222 and 226, and any other state institutions or facilities providing care, treatment, and supervision to persons with mental illness or mental retardation, except the institutions and facilities of the state board of regents.

i. Administer state appropriations to the mental health and developmental disabilities community services fund established by section 225C.7.

j. Act as compact administrator with power to effectuate the purposes of interstate compacts on mental health.

k. Establish and maintain a data collection and management information system oriented to the needs of patients, providers, the department, and other programs or facilities.

l. Prepare a division budget and reports of the division's activities.

m. Establish suitable agreements with other state agencies to encourage appropriate care and to facilitate the coordination of disability services.

n. Provide consultation and technical assistance to patients' advocates appointed pursuant to section 229.19, in cooperation with the judicial branch and the resident advocate committees appointed for health care facilities pursuant to section 135C.25.

o. Provide technical assistance to agencies and organizations, to aid them in meeting standards which are established, or with which compliance is required, under statutes administered by the administrator, including but not limited to chapters 227 and 230A.

p. Recommend to the commission minimum accreditation standards for the maintenance and operation of community mental health centers, services, and programs under section 230A.16. The administrator's review and evaluation of the cen-

ters, services, and programs for compliance with the adopted standards shall be as provided in section 230A.17.

q. Recommend to the commission minimum standards for supported community living services. The administrator shall review and evaluate the services for compliance with the adopted standards.

r. In cooperation with the department of inspections and appeals, recommend minimum standards under section 227.4 for the care of and services to persons with mental illness and mental retardation residing in county care facilities.

s. In cooperation with the Iowa department of public health, recommend minimum standards for the maintenance and operation of public or private facilities offering disability services, which are not subject to licensure by the department or the department of inspections and appeals.

t. Provide technical assistance concerning disability services and funding to counties and mental health and developmental disabilities regional planning councils.

2. The administrator may:

a. Apply for, receive, and administer federal aids, grants, and gifts for purposes relating to disability services or programs.

b. Establish mental health and mental retardation services for all institutions under the control of the director of human services and establish an autism unit, following mutual planning with and consultation from the medical director of the state psychiatric hospital, at an institution or a facility administered by the administrator to provide psychiatric and related services and other specific programs to meet the needs of autistic persons, and to furnish appropriate diagnostic evaluation services.

c. Establish and supervise suitable standards of care, treatment, and supervision for persons with disabilities in all institutions under the control of the director of human services.

d. Appoint professional consultants to furnish advice on any matters pertaining to disability services. The consultants shall be paid as provided by an appropriation of the general assembly.

e. Administer a public housing unit within a bureau of the division to apply for, receive, and administer federal assistance, grants, and other public or private funds for purposes related to providing housing in accordance with section 225C.45.

99 Acts, ch 129, §9; 99 Acts, ch 160, §2, 3

Subsection 1, paragraphs n and p amended

Subsection 1, NEW paragraph q and former paragraphs q-s relettered as

r-t

b. Adopt necessary rules pursuant to chapter 17A which relate to disability programs and services, including but not limited to definitions of each disability included within the term “*disability services*” as necessary for purposes of state, county, and regional planning, programs, and services.

c. Adopt standards for community mental health centers, services, and programs as recommended under section 230A.16. The commission shall determine whether to grant, deny, or revoke the accreditation of the centers, services, and programs.

d. Adopt standards for the care of and services to persons with mental illness and mental retardation residing in county care facilities recommended under section 227.4.

e. If no other person sets standards for a service available to persons with disabilities, adopt standards for that service.

f. Assure that proper appeal procedures are available to persons aggrieved by decisions, actions, or circumstances relating to accreditation.

g. Adopt necessary rules for awarding grants from the state and federal government as well as other moneys that become available to the division for grant purposes.

h. Annually submit to the governor and the general assembly:

(1) A report concerning the activities of the commission.

(2) Recommendations formulated by the commission for changes in law.

i. By January 1 of each odd-numbered year, submit to the governor and the general assembly an evaluation of:

(1) The extent to which services to persons with disabilities are actually available to persons in each county in the state and the quality of those services.

(2) The effectiveness of the services being provided by disability service providers in this state and by each of the state mental health institutes established under chapter 226 and by each of the state hospital-schools established under chapter 222.

j. Advise the administrator, the council on human services, the governor, and the general assembly on budgets and appropriations concerning disability services.

k. Coordinate activities with the Iowa governor’s planning council for developmental disabilities.

l. Establish standards for the provision under medical assistance of individual case management services. The commission shall determine whether to grant, deny, or revoke the accreditation of the services.

m. Identify model eligibility guidelines for disability services.

225C.6 Duties of commission.

1. To the extent funding is available, the commission shall perform the following duties:

a. Advise the administrator on the administration of the overall state disability services system.

n. Identify basic disability services for planning purposes.

o. Prepare five-year plans based upon the county management plans developed pursuant to section 331.439.

p. Work with other state agencies on coordinating, collaborating, and communicating concerning activities involving persons with disabilities.

2. Notwithstanding section 217.3, subsection 6, the commission may adopt the rules authorized by subsection 1, pursuant to chapter 17A, without prior review and approval of those rules by the council on human services.

99 Acts, ch 160, §4, 5
Subsection 1, paragraphs c and l amended

225C.21 Supported community living services.

1. As used in this section, “supported community living services” means services provided in a non-institutional setting to adult persons with mental illness, mental retardation, or developmental disabilities to meet the persons’ daily living needs.

2. The commission shall adopt rules pursuant to chapter 17A establishing minimum standards for supported community living services. The commission shall determine whether to grant, deny, or revoke approval for any supported community living service.

3. Approved supported community living services may receive funding from the state, federal and state social services block grant funds, and other appropriate funding sources, consistent with state legislation and federal regulations. The fund-

ing may be provided on a per diem, per hour, or grant basis, as appropriate.

99 Acts, ch 160, §6
Subsection 2 amended

225C.23 Brain injury recognized as disability.

1. The department of human services, the Iowa department of public health, the department of education and its divisions of special education and vocational rehabilitation services, the department of human rights and its division for persons with disabilities, the department for the blind, and all other state agencies which serve persons with brain injuries, shall recognize brain injury as a distinct disability and shall identify those persons with brain injuries among the persons served by the state agency.

2. For the purposes of this section and section 135.22A,* “brain injury” means the occurrence of injury to the head not primarily related to a degenerative disease or aging process that is documented in a medical record with one or more of the following conditions attributed to the head injury:

- a. An observed or self-reported decreased level of consciousness.
- b. Amnesia.
- c. A skull fracture.
- d. An objective neurological or neuropsychological abnormality.
- e. A diagnosed intracranial lesion.

99 Acts, ch 141, §30
*Section 135.22A refers to “brain injury” definition in §135.22
Section amended

CHAPTER 227

COUNTY AND PRIVATE HOSPITALS SERVING PERSONS WITH MENTAL ILLNESS AND MENTAL RETARDATION

227.2 Inspection.

1. The director of inspections and appeals shall make, or cause to be made, at least one licensure inspection each year of every county care facility. Either the administrator of the division or the director of inspections and appeals, in cooperation with each other, upon receipt of a complaint or for good cause, may make, or cause to be made, a review of a county care facility or of any other private or county institution where persons with mental illness or mental retardation reside. A licensure inspection or a review shall be made by a competent and disinterested person who is acquainted with and interested in the care of persons with mental illness and persons with mental retardation. The objective of a licensure inspection or a review shall be an evaluation of the programming and treatment provided by the facility. After each licensure inspection of a county care facility, the person who made the in-

spection shall consult with the county authorities on plans and practices that will improve the care given patients and shall make recommendations to the administrator of the division and the director of public health for coordinating and improving the relationships between the administrators of county care facilities, the administrator of the division, the director of public health, the superintendents of state mental health institutes and hospital-schools, community mental health centers, and other cooperating agencies, to cause improved and more satisfactory care of patients. A written report of each licensure inspection of a county care facility under this section shall be filed with the administrator of the division and the director of public health and shall include:

- a. The capacity of the institution for the care of residents.

b. The number, sex, ages, and primary diagnoses of the residents.

c. The care of residents, their food, clothing, treatment plan, employment, and opportunity for recreational activities and for productive work intended primarily as therapeutic activity.

d. The number, job classification, sex, duties, and salaries of all employees.

e. The cost to the state or county of maintaining residents in a county care facility.

f. The recommendations given to and received from county authorities on methods and practices that will improve the conditions under which the county care facility is operated.

g. Any failure to comply with standards adopted under section 227.4 for care of persons with mental illness and persons with mental retardation in county care facilities, which is not covered in information submitted pursuant to paragraphs "a" to "f", and any other matters which the director of public health, in consultation with the administrator of the division, may require.

2. A copy of the written report prescribed by subsection 1 shall be furnished to the county board of supervisors, to the county mental health and mental retardation coordinating board or to its advisory board if the county board of supervisors constitutes ex officio the coordinating board, to the administrator of the county care facility inspected and to its resident advocate committee, and to the department of elder affairs.

3. The department of inspections and appeals shall inform the administrator of the division of an action by the department to suspend, revoke, or deny renewal of a license issued by the department of inspections and appeals to a county care facility, and the reasons for the action.

4. In addition to the licensure inspections required or authorized by this section, the administrator of the division shall cause to be made an evaluation of each person cared for in a county care facility at least once each year by one or more qualified mental health, mental retardation, or medical professionals, whichever is appropriate.

a. It is the responsibility of the state to secure the annual evaluation for each person who is on convalescent leave or who has not been discharged from a state mental health institute. It is the responsibility of the county to secure the annual evaluation for all other persons with mental illness in the county care facility.

b. It is the responsibility of the state to secure the annual evaluation for each person who is on leave and has not been discharged from a state hospital-school. It is the responsibility of the county to secure the annual evaluation for all other persons with mental retardation in the county care facility.

c. It is the responsibility of the county to secure an annual evaluation of each resident of a county care facility to whom neither paragraph "a" nor paragraph "b" is applicable.

5. The evaluations required by subsection 4 shall include an examination of each person which shall reveal the person's condition of mental and physical health and the likelihood of improvement or discharge and other recommendations concerning the care of those persons as the evaluator deems pertinent. One copy of the evaluation shall be filed with the administrator of the division and one copy shall be filed with the administrator of the county care facility.

99 Acts, ch 129, §10
Subsection 2 amended

227.4 Standards for care of persons with mental illness or mental retardation in county care facilities.

The administrator, in cooperation with the department of inspections and appeals, shall recommend, and the mental health and developmental disabilities commission created in section 225C.5 shall adopt standards for the care of and services to persons with mental illness or mental retardation residing in county care facilities. The standards shall be enforced by the department of inspections and appeals as a part of the licensure inspection conducted pursuant to chapter 135C. The objective of the standards is to ensure that persons with mental illness or mental retardation who are residents of county care facilities are not only adequately fed, clothed, and housed, but are also offered reasonable opportunities for productive work and recreational activities suited to their physical and mental abilities and offering both a constructive outlet for their energies and, if possible, therapeutic benefit. When recommending standards under this section, the administrator shall designate an advisory committee representing administrators of county care facilities, county mental health and developmental disabilities regional planning councils, and county care facility resident advocate committees to assist in the establishment of standards.

99 Acts, ch 129, §11
Section amended

CHAPTER 229

HOSPITALIZATION OF PERSONS WITH MENTAL ILLNESS

229.2 Application for voluntary admission — authority to receive voluntary patients.

1. An application for admission to a public or private hospital for observation, diagnosis, care, and treatment as a voluntary patient may be made by any person who is mentally ill or has symptoms of mental illness.

In the case of a minor, the parent, guardian, or custodian may make application for admission of the minor as a voluntary patient.

a. Upon receipt of an application for voluntary admission of a minor, the chief medical officer shall provide separate prescreening interviews and consultations with the parent, guardian or custodian and the minor to assess the family environment and the appropriateness of the application for admission.

b. During the interview and consultation the chief medical officer shall inform the minor orally and in writing that the minor has a right to object to the admission. If the chief medical officer of the hospital to which application is made determines that the admission is appropriate but the minor objects to the admission, the parent, guardian or custodian must petition the juvenile court for approval of the admission before the minor is actually admitted.

c. As soon as is practicable after the filing of a petition for juvenile court approval of the admission of the minor, the juvenile court shall determine whether the minor has an attorney to represent the minor in the hospitalization proceeding, and if not, the court shall assign to the minor an attorney. If the minor is financially unable to pay for an attorney, the attorney shall be compensated by the county at an hourly rate to be established by the county board of supervisors in substantially the same manner as provided in section 815.7.

d. The juvenile court shall determine whether the admission is in the best interest of the minor and is consistent with the minor's rights.

e. The juvenile court shall order hospitalization of a minor, over the minor's objections, only after a hearing in which it is shown by clear and convincing evidence that:

(1) The minor needs and will substantially benefit from treatment.

(2) No other setting which involves less restriction of the minor's liberties is feasible for the purposes of treatment.

f. Upon approval of the admission of a minor over the minor's objections, the juvenile court shall appoint an individual to act as an advocate representing the interests of the minor in the same manner as an advocate representing the interests of pa-

tients involuntarily hospitalized pursuant to section 229.19.

2. Upon receiving an application for admission as a voluntary patient, made pursuant to subsection 1:

a. The chief medical officer of a public hospital shall receive and may admit the person whose admission is sought, subject in cases other than medical emergencies to availability of suitable accommodations and to the provisions of sections 229.41 and 229.42.

b. The chief medical officer of a private hospital may receive and may admit the person whose admission is sought.

99 Acts, ch 135, §17
Subsection 1, paragraph c amended

229.8 Procedure after application is filed.

As soon as practicable after the filing of an application for involuntary hospitalization, the court shall:

1. Determine whether the respondent has an attorney who is able and willing to represent the respondent in the hospitalization proceeding, and if not, whether the respondent is financially able to employ an attorney and capable of meaningfully assisting in selecting one. In accordance with those determinations, the court shall if necessary allow the respondent to select, or shall assign to the respondent, an attorney. If the respondent is financially unable to pay an attorney, the attorney shall be compensated by the county at an hourly rate to be established by the county board of supervisors in substantially the same manner as provided in section 815.7.

2. Cause copies of the application and supporting documentation to be sent to the county attorney or the county attorney's attorney-designate for review.

3. Issue a written order which shall:

a. If not previously done, set a time and place for a hospitalization hearing, which shall be at the earliest practicable time not less than forty-eight hours after notice to the respondent, unless the respondent waives such minimum prior notice requirement; and

b. Order an examination of the respondent, prior to the hearing, by one or more licensed physicians who shall submit a written report on the examination to the court as required by section 229.10.

99 Acts, ch 135, §18
Subsection 1 amended

229.16 Discharge and termination of proceeding.

When the condition of a patient who is hospitalized under section 229.14, subsection 2, or is receiving treatment under section 229.14, subsection 3, or is in full-time care and custody under section 229.14, subsection 4, is such that in the opinion of the chief medical officer the patient no longer requires treatment or care for serious mental impairment, the chief medical officer shall tentatively discharge the patient and immediately report that fact to the court which ordered the patient's hospitalization or care and custody. The court shall thereupon issue an order confirming the patient's discharge from the hospital or from care and custody, as the case may be, and shall terminate the proceedings pursuant to which the order was issued. Copies of the order shall be sent by regular mail to the hospital, the patient, and the applicant if the applicant has filed a written waiver signed by the patient.

99 Acts, ch 144, §2
Section amended

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 persons with mental illness, 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 persons with mental illness, 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. If the patient or the person who is legally liable for the patient's support is not indigent, the board shall recover the costs of compensating the advocate from that person. If that 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 advocate's compensation shall be recovered in the manner prescribed by the county board of supervisors. If that 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 advocate's compensation shall be recovered in substantially the same manner prescribed by the county board of supervisors as provided in section 815.7.

99 Acts, ch 135, §19
Unnumbered paragraph 3 amended

229.21 Judicial hospitalization referee — appeals to district court.

1. The chief judge of each judicial district may appoint at least one judicial hospitalization referee for each county within the district. The judicial hospitalization referee shall be an attorney, licensed to practice law in this state, who shall be chosen with consideration to any training, experience, interest, or combination of those factors, which are pertinent to the duties of the office. The referee shall hold office at the pleasure of the chief judge of the judicial district and receive compensation at a rate fixed by the supreme court. If the referee expects to be absent for any significant length of time, the referee shall inform the chief judge who may appoint a temporary substitute judicial hospitalization referee having the qualifications set forth in this subsection.

2. When an application for involuntary hospitalization under this chapter or an application for involuntary commitment or treatment of chronic substance abusers under sections 125.75 to 125.94 is filed with the clerk of the district court in any county for which a judicial hospitalization referee has been appointed, and no district judge, district associate judge, or magistrate who is admitted to the practice of law in this state is accessible, the clerk shall immediately notify the referee in the manner required by section 229.7 or section 125.77. The referee shall discharge all of the duties imposed upon the court by sections 229.7 to 229.22 or sections 125.75 to 125.94 in the proceeding so initiated. Subject to the provisions of subsection 4, orders issued by a referee, in discharge of duties imposed under this section, shall have the same force and effect as if ordered by a district judge. However, any commitment to a facility regulated and operated under chapter 135C, shall be in accordance with section 135C.23.

3. *a.* Any respondent with respect to whom the magistrate or judicial hospitalization referee has found the contention that the respondent is seriously mentally impaired or a chronic substance abuser sustained by clear and convincing evidence presented at a hearing held under section 229.12 or

section 125.82, may appeal from the magistrate's or referee's finding to a judge of the district court by giving the clerk notice in writing, within ten days after the magistrate's or referee's finding is made, that an appeal is taken. The appeal may be signed by the respondent or by the respondent's next friend, guardian, or attorney.

b. An order of a magistrate or judicial hospitalization referee with a finding that the respondent is seriously mentally impaired or a chronic substance abuser shall include the following notice, located conspicuously on the face of the order:

“NOTE: The respondent may appeal from this order to a judge of the district court by giving written notice of the appeal to the clerk of the district court within ten days after the date of this order. The appeal may be signed by the respondent or by the respondent's next friend, guardian, or attorney. For a more complete description of the respondent's appeal rights, consult section 229.21 of the Code of Iowa or an attorney.”

c. When appealed, the matter shall stand for trial de novo. Upon appeal, the court shall schedule a hospitalization or commitment hearing before a district judge at the earliest practicable time.

4. If the appellant is in custody under the jurisdiction of the district court at the time of service of the notice of appeal, the appellant shall be discharged from custody unless an order that the appellant be taken into immediate custody has previously been issued under section 229.11 or section 125.81, in which case the appellant shall be detained as provided in that section until the hospitalization or commitment hearing before the district judge. If the appellant is in the custody of a hospital or facility at the time of service of the notice of appeal, the appellant shall be discharged from custody pending disposition of the appeal unless the chief medical officer, not later than the end of the next secular day on which the office of the clerk is open and which follows service of the notice of appeal, files with the clerk a certification that in the chief medical officer's opinion the appellant is seriously mentally ill or a substance abuser. In that case, the appellant shall remain in custody of the hospital or facility until the hospitalization or commitment hearing before the district court.

5. The hospitalization or commitment hearing before the district judge shall be held, and the judge's finding shall be made and an appropriate order entered, as prescribed by sections 229.12 and 229.13 or sections 125.82 and 125.83. If the judge orders the appellant hospitalized or committed for a complete psychiatric or substance abuse evaluation, jurisdiction of the matter shall revert to the judicial hospitalization referee.

99 Acts, ch 144, §3, 4
Subsection 3, paragraph a amended
Subsection 3, paragraph b, unnumbered paragraph 1 amended

229.23 Rights and privileges of hospitalized persons.

Every person who is hospitalized or detained under this chapter shall have the right to:

1. Prompt evaluation, necessary psychiatric services, and additional care and treatment as indicated by the patient's condition. A comprehensive, individualized treatment plan shall be timely developed following issuance of the court order requiring involuntary hospitalization. The plan shall be consistent with current standards appropriate to the facility to which the person has been committed and with currently accepted standards for psychiatric treatment of the patient's condition, including chemotherapy, psychotherapy, counseling and other modalities as may be appropriate.

2. The right to refuse treatment by shock therapy or chemotherapy, unless the use of these treatment modalities is specifically consented to by the patient's next of kin or guardian. The patient's right to refuse treatment by chemotherapy shall not apply during any period of custody authorized by section 229.4, subsection 3, section 229.11 or section 229.22, but this exception shall extend only to chemotherapy treatment which is, in the chief medical officer's judgment, necessary to preserve the patient's life or to appropriately control behavior by the person which is likely to result in physical injury to that person or others if allowed to continue. The patient's right to refuse treatment by chemotherapy shall also not apply during any peri-

od of custody authorized by the court pursuant to section 229.13 or 229.14. In any other situation in which, in the chief medical officer's judgment, chemotherapy is appropriate for the patient but the patient refuses to consent thereto and there is no next of kin or guardian to give consent, the chief medical officer may request an order authorizing treatment of the patient by chemotherapy from the district court which ordered the patient's hospitalization.

3. In addition to protection of the person's constitutional rights, enjoyment of other legal, medical, religious, social, political, personal and working rights and privileges which the person would enjoy if the person were not so hospitalized or detained, so far as is possible consistent with effective treatment of that person and of the other patients of the hospital. If the patient's rights are restricted, the physician's direction to that effect shall be noted on the patient's record. The department of human services shall, in accordance with chapter 17A establish rules setting forth the specific rights and privileges to which persons so hospitalized or detained are entitled under this section, and the exceptions provided by section 17A.2, subsection 11, paragraphs "a" and "k", shall not be applicable to the rules so established. The patient or the patient's next of kin or friend shall be advised of these rules and be provided a written copy upon the patient's admission to or arrival at the hospital.

Section not amended; internal reference change applied

CHAPTER 229A

COMMITMENT OF SEXUALLY VIOLENT PREDATORS

229A.2 Definitions.

As used in this chapter:

1. "*Agency with jurisdiction*" means an agency which has custody of or releases a person serving a sentence or term of confinement or is otherwise in confinement based upon a lawful order or authority, and includes but is not limited to the department of corrections, the department of human services, a judicial district department of correctional services, and the Iowa board of parole.

2. "*Appropriate secure facility*" means a state facility that is designed to confine but not necessarily to treat a sexually violent predator.

3. "*Likely to engage in predatory acts of sexual violence*" means that the person more likely than not will engage in acts of a sexually violent nature. If a person is not confined at the time that a petition is filed, a person is "*likely to engage in predatory acts of sexual violence*" only if the person commits a recent overt act.

4. "*Mental abnormality*" means a congenital or acquired condition affecting the emotional or volitional capacity of a person and predisposing that person to commit sexually violent offenses to a de-

gree which would constitute a menace to the health and safety of others.

5. "*Predatory*" means acts directed toward a person with whom a relationship has been established or promoted for the primary purpose of victimization.

6. "*Recent overt act*" means any act that has either caused harm of a sexually violent nature or creates a reasonable apprehension of such harm.

7. "*Sexually motivated*" means that one of the purposes for commission of a crime is the purpose of sexual gratification of the perpetrator of the crime.

8. "*Sexually violent offense*" means:

- a. A violation of any provision of chapter 709.
- b. A violation of any of the following if the offense involves sexual abuse, attempted sexual abuse, or intent to commit sexual abuse:
 - (1) Murder as defined in section 707.1.
 - (2) Kidnapping as defined in section 710.1.
 - (3) Burglary as defined in section 713.1.
 - (4) Child endangerment under section 726.6, subsection 1, paragraph "e".

c. Sexual exploitation of a minor in violation of section 728.12, subsection 1.

d. Pandering involving a minor in violation of section 725.3, subsection 2.

e. An offense involving an attempt or conspiracy to commit any offense referred to in this subsection.

f. An offense under prior law of this state or an offense committed in another jurisdiction which would constitute an equivalent offense under paragraphs "a" through "e".

g. Any act which, either at the time of sentencing for the offense or subsequently during civil commitment proceedings pursuant to this chapter, has been determined beyond a reasonable doubt to have been sexually motivated.

9. "*Sexually violent predator*" means a person who has been convicted of or charged with a sexually violent offense and who suffers from a mental abnormality which makes the person likely to engage in predatory acts constituting sexually violent offenses, if not confined in a secure facility.

99 Acts, ch 61, §1, 14
NEW subsection 2 and former subsections 2-8 renumbered as 3-9

229A.4 Petition, time, contents.

1. If it appears that a person presently confined may be a sexually violent predator and the prosecutor's review committee has determined that the person meets the definition of a sexually violent predator, the attorney general may file a petition alleging that the person is a sexually violent predator and stating sufficient facts to support such an allegation.

2. A prosecuting attorney of the county in which the person was convicted or charged, or the attorney general if requested by the prosecuting attorney, may file a petition alleging that a person is a sexually violent predator and stating sufficient facts to support such an allegation, if it appears that a person who has committed a recent overt act meets any of the following criteria:

a. The person was convicted of a sexually violent offense and has been discharged after the completion of the sentence imposed for the offense.

b. The person was charged with, but was acquitted of, a sexually violent offense by reason of insanity and has been released from confinement or any supervision.

c. The person was charged with, but was found to be incompetent to stand trial for, a sexually violent offense and has been released from confinement or any supervision.

99 Acts, ch 61, §2, 14
Subsection 1 amended

229A.5 Person taken into custody, determination of probable cause, hearing, evaluation.

1. Upon filing of a petition under section 229A.4, the court shall make a preliminary determination as to whether probable cause exists to believe that the person named in the petition is a

sexually violent predator. Upon a preliminary finding of probable cause, the court shall direct that the person named in the petition be taken into custody and that the person be served with a copy of the petition and any supporting documentation and notice of the procedures required by this chapter. If the person is in custody at the time of the filing of the petition, the court shall determine whether a transfer of the person to an appropriate secure facility is appropriate pending the outcome of the proceedings or whether the custody order should be delayed until the date of release of the person.

2. Within seventy-two hours after being taken into custody or being transferred to an appropriate secure facility, a hearing shall be held to determine whether probable cause exists to believe the detained person is a sexually violent predator. The hearing may be waived by the respondent. The hearing may be continued upon the request of either party and a showing of good cause, or by the court on its own motion in the due administration of justice, and if the respondent is not substantially prejudiced. At the probable cause hearing, the detained person shall have the following rights:

a. To be provided with prior notice of date, time, and location of the probable cause hearing.

b. To respond to the preliminary finding of probable cause.

c. To appear in person at the hearing.

d. To be represented by counsel.

e. To present evidence on the respondent's own behalf.

f. To cross-examine witnesses who testify against the respondent.

g. To view and copy all petitions and reports in the possession of the court.

3. At the hearing, the state may rely upon the petition filed under subsection 1 but may also supplement the petition with additional documentary evidence or live testimony.

4. At the conclusion of the hearing, the court shall enter an order which does both of the following:

a. Verifies the respondent's identity.

b. Determines whether probable cause exists to believe that the respondent is a sexually violent predator.

5. If the court determines that probable cause does exist, the court shall direct that the respondent be transferred to an appropriate secure facility for an evaluation as to whether the respondent is a sexually violent predator. The evaluation shall be conducted by a person deemed to be professionally qualified to conduct such an examination.

99 Acts, ch 61, §3, 4, 14
Subsection 2, unnumbered paragraph 1 amended
Subsection 5 amended

229A.5A Powers of investigative personnel before a petition is filed.

1. The prosecuting attorney or attorney general is authorized upon the occurrence of a recent

overt act, or upon receiving written notice pursuant to section 229A.3, or before the filing of a petition under this chapter, to subpoena and compel the attendance of witnesses, examine the witnesses under oath, and require the production of documentary evidence for inspection, reproduction, or copying. Except as otherwise provided by this section, the prosecuting attorney or attorney general shall have the same powers and limitations, subject to judicial oversight and enforcement, as provided by this chapter and by the Iowa rules of civil procedure. Any person compelled to appear under a demand for oral testimony under this section may be accompanied, represented, and advised by counsel at their own expense.

2. The examination of all witnesses under this section shall be conducted by the prosecuting attorney or attorney general before an officer authorized to administer oaths under section 63A.1. The testimony shall be taken by a certified shorthand reporter or by a sound recording device and shall be transcribed or otherwise preserved in the same manner as provided for the preservation of depositions under the Iowa rules of civil procedure. The prosecuting attorney or attorney general may exclude from the examination all persons except the witness, witness's counsel, the officer before whom the testimony is to be taken, law enforcement officials, and a certified shorthand reporter. Prior to oral examination, the person shall be advised by the prosecuting attorney or attorney general of the person's right to refuse to answer any questions on the basis of the privilege against self-incrimination. The examination shall be conducted in a manner consistent with the rules dealing with the taking of depositions.

99 Acts, ch 61, §5, 14
NEW section

229A.7 Trial, determination, commitment procedure, chapter 28E agreements, mistrials.

1. If the person charged with a sexually violent offense has been found incompetent to stand trial and the person is about to be released pursuant to section 812.5, or the person has been found not guilty of a sexually violent offense by reason of insanity, if a petition has been filed seeking the person's commitment under this chapter, the court shall first hear evidence and determine whether the person did commit the act or acts charged. At the hearing on this issue, the rules of evidence applicable in criminal cases shall apply, and all constitutional rights available to defendants at criminal trials, other than the right not to be tried while incompetent, shall apply. After hearing evidence on this issue, the court shall make specific findings on whether the person did commit the act or acts charged, the extent to which the person's incompetence or insanity affected the outcome of the hearing, including its effect on the person's ability to consult with and assist counsel and to testify on the

person's own behalf, the extent to which the evidence could be reconstructed without the assistance of the person, and the strength of the prosecution's case. If after the conclusion of the hearing on this issue, the court finds, beyond a reasonable doubt, that the person did commit the act or acts charged, the court shall enter a final order, appealable by the person, on that issue, and may proceed to consider whether the person should be committed pursuant to this chapter.

2. Within ninety days after either the entry of the order waiving the probable cause hearing or completion of the probable cause hearing held under section 229A.5, the court shall conduct a trial to determine whether the respondent is a sexually violent predator. The trial may be continued upon the request of either party and a showing of good cause, or by the court on its own motion in the due administration of justice, and when the respondent will not be substantially prejudiced. The respondent, the attorney general, or the judge shall have the right to demand that the trial be before a jury. Such demand for the trial to be before a jury shall be filed, in writing, at least ten days prior to trial. The number and selection of jurors shall be determined as provided in chapter 607A. If no demand is made, the trial shall be before the court.

3. At trial, the court or jury shall determine whether, beyond a reasonable doubt, the respondent is a sexually violent predator. If the determination that the respondent is a sexually violent predator is made by a jury, the determination shall be by unanimous verdict of such jury.

If the court or jury determines that the respondent is a sexually violent predator, the respondent shall be committed to the custody of the director of the department of human services for control, care, and treatment until such time as the person's mental abnormality has so changed that the person is safe to be at large. The determination may be appealed.

4. The control, care, and treatment of a person determined to be a sexually violent predator shall be provided at a facility operated by the department of human services. At all times, persons committed for control, care, and treatment by the department of human services pursuant to this chapter shall be kept in a secure facility and those patients shall be segregated at all times from any other patient under the supervision of the department of human services. A person committed pursuant to this chapter to the custody of the department of human services may be kept in a facility or building separate from any other patient under the supervision of the department of human services. The department of human services may enter into a chapter 28E agreement with the department of corrections or other appropriate agency in this state or another state for the confinement of patients who have been determined to be sexually violent predators. Patients who are in the confine-

ment of the director of the department of corrections pursuant to a chapter 28E agreement shall be housed and managed separately from criminal offenders in the custody of the director of the department of corrections, and except for occasional instances of supervised incidental contact, shall be segregated from those offenders.

5. If the court or jury is not satisfied beyond a reasonable doubt that the respondent is a sexually violent predator, the court shall direct the respondent's release. Upon a mistrial, the court shall direct that the respondent be held at an appropriate secure facility until another trial is conducted. Any subsequent trial following a mistrial shall be held within ninety days of the previous trial, unless such subsequent trial is continued as provided in subsection 1.

99 Acts, ch 61, §6, 7, 14
Subsections 2 and 5 amended

229A.10 Petition for discharge — procedure.

1. If the director of human services determines that the person's mental abnormality has so changed that the person is not likely to commit predatory acts or sexually violent offenses if discharged, the director shall authorize the person to petition the court for discharge. The petition shall be served upon the court and the attorney general. The court, upon receipt of the petition for discharge, shall order a hearing within thirty days. The attorney general shall represent the state, and shall have the right to have the petitioner examined by an expert or professional person of the attorney general's choice. The hearing shall be before a jury if demanded by either the petitioner or the attorney general. The burden of proof shall be upon the attorney general to show beyond a reasonable doubt that the petitioner's mental abnormality or personality disorder remains such that the petitioner is not safe to be at large and that if

discharged is likely to commit predatory acts or sexually violent offenses.

2. Upon a finding that the state has failed to meet its burden of proof under this section, or a stipulation by the state, the court shall authorize the release of the committed person. Release may be ordered with or without supervision. If supervised release is ordered, the department of human services shall prepare a plan addressing the person's needs for counseling, medication, community support services, residential services, vocational services, alcohol and other drug abuse treatment, and any other treatment or supervision necessary. If the court orders the release of the committed person with supervision, the court shall order supervision by an agency with jurisdiction that is familiar with the placement of criminal offenders in the community.

99 Acts, ch 61, §8, 14
Section amended

229A.12 Director of human services — responsibility for costs — reimbursement.

The director of human services shall be responsible for all costs relating to the evaluation, treatment, and services provided to persons committed to the director's custody after the court or jury determines that the respondent is a sexually violent predator and pursuant to commitment under any provision of this chapter. If supervision is ordered pursuant to section 229A.10, the director shall also be responsible for all costs related to the supervision of any person. Reimbursement may be obtained by the director from the patient and any person legally liable or bound by contract for the support of the patient for the cost of care and treatment provided. As used in this section, "*any person legally liable*" does not include a political subdivision.

99 Acts, ch 61, §9, 14
Section amended

CHAPTER 230

SUPPORT OF PERSONS WITH MENTAL ILLNESS

230.1 Liability of county and state.

1. The necessary and legal costs and expenses attending the taking into custody, care, investigation, admission, commitment, and support of a person with mental illness admitted or committed to a state hospital shall be paid by a county or by the state as follows:

a. By the county in which such person has a legal settlement, if the person is eighteen years of age or older.

b. By the state when such person has no legal settlement in this state, when the person's legal settlement is unknown, or if the person is under eighteen years of age.

2. The legal settlement of any person found mentally ill who is a patient of any state institution shall be that existing at the time of admission thereto.

3. A county of legal settlement is not liable for costs and expenses associated with a person with

mental illness unless the costs and expenses are for services and other support authorized for the person through the single entry point process. For the purposes of this chapter, “single entry point pro-

cess” means the same as defined in section 331.440.

98 Acts, ch 1181, §6, 7, 10

Unnumbered paragraph 1 amended and redesignated as subsection 1
Subsections 1 and 2 amended and redesignated as paragraphs a and b
Unnumbered paragraphs 2 and 3 redesignated as subsections 2 and 3

CHAPTER 230A

COMMUNITY MENTAL HEALTH CENTERS

230A.3 Forms of organization.

Each community mental health center established or continued in operation as authorized by section 230A.1 shall be organized and administered in accordance with one of the following alternative forms:

1. Direct establishment of the center by the county or counties supporting it and administration of the center by an elected board of trustees, pursuant to sections 230A.4 to 230A.11.
2. Establishment of the center by a nonprofit corporation providing services to the county or

counties on the basis of an agreement with the board or boards of supervisors, pursuant to sections 230A.12 and 230A.13.

3. Continued operation of a center originally established prior to July 1, 1998, under subsection 2 without an agreement with the board or boards of supervisors which originally established the center, provided the center is in compliance with the applicable standards adopted by the mental health and developmental disabilities commission.

99 Acts, ch 96, §25

Subsection 3 is repealed July 1, 2001; 98 Acts, ch 1181, §5
Subsection 3 amended

CHAPTER 231

DEPARTMENT OF ELDER AFFAIRS — ELDER IOWANS

231.33 Area agencies on aging duties.

Each area agency on aging shall:

1. Develop and administer an area plan on aging.
2. Assess the types and levels of services needed by older persons in the planning and service area, and the effectiveness of other public or private programs serving those needs.
3. Enter into subgrants or contracts to provide all services under the plan.
4. Provide technical assistance as needed, prepare written monitoring reports at least quarterly, and provide a written report of an annual on-site assessment of all service providers funded by the area agency.
5. Coordinate the administration of its plan with federal programs and with other federal, state, and local resources in order to develop a comprehensive and coordinated service system.
6. Establish an advisory council.
7. Give preference in the delivery of services under the area plan to elders with the greatest economic or social need.
8. Assure that elders in the planning and service area have reasonably convenient access to information and referral services.
9. Provide adequate and effective opportunities for elders to express their views to the area agency on policy development and program implementation under the area plan.

10. Designate community focal points.

11. Contact outreach efforts, with special emphasis on the rural elderly, to identify elders with greatest economic or social needs and inform them of the availability of services under the area plan.

12. Develop and publish the methods that the agency uses to establish preferences and priorities for services.

13. Attempt to involve the area lawyers in legal assistance activities.

14. Submit all fiscal and performance reports in accordance with the policies of the commission.

15. Monitor, evaluate, and comment on policies, programs, hearings, levies, and community actions which significantly affect the lives of elders.

16. Conduct public hearings on the needs of elders.

17. Represent the interests of elders to public officials, public and private agencies, or organizations.

18. Coordinate activities in support of the statewide long-term care resident’s advocate program.

19. Coordinate planning with other agencies and organizations to promote new or expanded benefits and opportunities for elders.

20. Coordinate planning with other agencies for assuring the safety of elders in a natural disaster or other safety threatening situation.

21. Submit a report to the department of elder affairs every six months, of the name of each health care facility in its area for which the resident advocate committee has failed to submit the report required by rules adopted pursuant to section 231.44.

99 Acts, ch 129, §12
Subsection 21 amended

231.42 Long-term care resident's advocate — duties.

The Iowa commission of elder affairs, in accordance with section 3027(a)(12) of the federal Act, shall establish the office of long-term care resident's advocate within the commission. The long-term care resident's advocate shall:

1. Investigate and resolve complaints about administrative actions that may adversely affect the health, safety, welfare, or rights of elderly in long-term care facilities.

2. Monitor the development and implementation of federal, state, and local laws, regulations, and policies that relate to long-term care facilities in Iowa.

3. Provide information to other agencies and to the public about the problems of elderly in long-term care facilities.

4. Train volunteers and assist in the development of citizens' organizations to participate in the long-term care resident's advocate program.

5. Carry out other activities consistent with the resident's advocate provisions of the federal Act.

6. Administer the resident advocate committee program.

7. Report annually to the general assembly on the activities of the resident's advocate office.

The resident's advocate shall have access to long-term care facilities, private access to residents, access to residents' personal and medical records, and access to other records maintained by the facil-

ities or governmental agencies pertaining only to the person on whose behalf a complaint is being investigated.

99 Acts, ch 129, §13
Subsection 6 amended

231.44 Resident advocate committee — duties — disclosure — liability.

1. The resident advocate committee program is administered by the long-term care resident's advocate program.

2. The responsibilities of the resident advocate committee are in accordance with the rules adopted by the commission pursuant to chapter 17A. When adopting the rules, the commission shall consider the needs of residents of each category of licensed health care facility as defined in section 135C.1, subsection 6, and the services each facility may render. The commission shall coordinate the development of rules with the mental health and developmental disabilities commission created in section 225C.5 to the extent the rules would apply to a facility primarily serving persons with mental illness, mental retardation, or a developmental disability. The commission shall coordinate the development of appropriate rules with other state agencies.

3. A health care facility shall disclose the names, addresses, and phone numbers of a resident's family members, if requested, to a resident advocate committee member, unless permission for this disclosure is refused in writing by a family member.

4. Neither the state nor any resident advocate committee member is liable for an action undertaken by a resident advocate committee member in the performance of duty, if the action is undertaken and carried out in good faith.

99 Acts, ch 129, §14
Section amended

CHAPTER 231A

ELDER FAMILY HOMES

231A.2 Registration of elder family homes.

1. The department shall establish a registration program for elder family homes. In order to meet the zoning requirements for classification as an elder family home under section 335.31 or 414.29, all of the following conditions must be met:

a. The responsible party shall register the home as an elder family home with the department.

b. The responsible party shall comply with visitation and assessment requirements as determined by the department.

c. The responsible party shall attend annual training as prescribed by the commission of elder affairs.

2. If, following a visitation, the resident advocate committee finds that the needs of all of the residents of an elder family home are not being adequately met, the resident advocate committee shall notify the appropriate area agency on aging. The area agency on aging shall cause to be performed a complete assessment of any of the residents whose needs are not being met. If, following the full assessment, the resident advocate committee determines that any of the residents require additional

services to meet the needs of the resident, the resident advocate committee shall inform the responsible party that unless the resident relocates to a facility which is able to provide necessary services, the elder family home will no longer be designated as an elder family home and will no longer be in compliance with zoning requirements. The department shall notify the city council or the county board of supervisors if an elder family home is found to no longer be in compliance.

3. If the responsible party does not comply with the recommendations of the resident advocate committee pursuant to subsection 2, the elder family home shall lose its designation for the purposes of zoning.

4. If the resident advocate committee has probable cause to believe that any elder family home is in fact acting as a health care facility as defined under chapter 135C, upon producing identification that an individual is an inspector, an inspector of the department of inspections and appeals may enter the elder family home to determine if the home is in fact operating as an unlicensed health care facility. If the inspector is denied entrance, the inspector may, with the assistance of the county attorney in the county in which the elder family home is located, apply to the district court for an order requiring the responsible party to permit entry and

inspection.

5. The department of elder affairs shall maintain a registry of elder family homes and shall act as a resource and referral agency for elder family homes.

6. Upon application for registration by a person seeking approval for an elder family home, the department shall notify the city council or county board of supervisors of the city or county in which the proposed elder family home is to be located. The city council or county board of supervisors shall respond to the application within thirty days of notification.

7. The department may delegate any duties under this section to local area agencies on aging.

8. The commission shall adopt by rule procedures for appointing members of a resident advocate committee for each elder family home. To the maximum extent possible, the resident advocate committee appointed for an elder family home shall include a person involved in a local retired senior volunteer program. The rules shall incorporate the provisions, if applicable, for resident advocate committees pursuant to sections 135C.25, 135C.38, and 231.44.

9. The commission of elder affairs shall adopt rules as necessary, to implement this section.

99 Acts, ch 129, §15
Subsections 2-4 and 8 amended

CHAPTER 231B

ELDER GROUP HOMES

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 resident advocate committees for elder group homes.

h. Notwithstanding any other requirements relating to performance of visitations or meetings of a resident advocate committee, a resident advocate committee appointed for an elder group home shall perform no more than four visitations, annually, to fulfill the duties of the resident advocate 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.

99 Acts, ch 129, §16
 Subsection 2, paragraphs g and h amended

CHAPTER 231C

ASSISTED LIVING PROGRAMS

231C.3 Certification or voluntary accreditation of assisted living programs.

1. The department shall establish, by rule in accordance with chapter 17A, a program for certification and monitoring of assisted living programs. An assisted living program which is voluntarily accredited is not required to also be certified by the department and the department shall accept voluntary accreditation in lieu of certification by the department. An assisted living program certified or voluntarily accredited under this section is exempt from the requirements of section 135.63 relating to certificate of need requirements.

2. Each assisted living program operating in the state shall be certified with the department or shall be voluntarily accredited. The owner or manager of a certified assisted living program shall comply with the rules adopted by the department for an assisted living program. A person shall not represent an assisted living program to the public as a certified or voluntarily accredited program unless the program is certified or voluntarily accredited pursuant to this chapter.

ited pursuant to this chapter.

3. Services provided by a certified or voluntarily accredited assisted living program may be provided directly by staff of the assisted living program, by individuals contracting with the assisted living program to provide services, or by individuals employed by the tenant or with whom the tenant contracts if the tenant agrees to assume the responsibility and risk of the employment or the contractual relationship.

4. The department may enter into contracts to provide certification and monitoring of assisted living programs. The department shall have full access to a program during certification and monitoring of programs seeking certification or currently certified. Upon the request of the department the entity providing accreditation of a program shall provide copies to the department of all materials related to the accreditation process.

Exception to allow for compliance by applicants for assisted living certification with chapter 104A relative to buildings in existence on July 1, 1998; modification of accessibility requirements; 99 Acts, ch 201, §3
 Section not amended; footnote added

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. § 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 be developed by the department or agency involved and the child’s parent, guardian, or custodian. 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, biological 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.

g. The actions expected of the parent, guardian, or custodian in order for the department or agency to recommend that the court terminate a dispositional order for the child's out-of-home placement and for the department or agency to end its involvement with the child and the child's family.

h. If reasonable efforts to place a child for adoption or with a guardian are made concurrently with reasonable efforts as defined in section 232.102, the concurrent goals and timelines may be identified. Concurrent case permanency plan goals for reunification, and for adoption or for other permanent out-of-home placement of a child shall not be considered inconsistent in that the goals reflect divergent possible outcomes for a child in an out-of-home placement.

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 ill-

ness 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. The presence of the drug shall be determined in accordance with a medically relevant test as defined in section 232.73.

6A. "Chronic runaway" means a child who is reported to law enforcement as a runaway more than once in any thirty-day period or three or more times in any year.

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 branch 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 or juvenile 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.
- c. The violation of section 123.47 which is committed by a child.

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 have a permanent self-sustaining relationship with the child and 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.

f. To make other decisions involving protection, education, and care and control of the child.

22. a. "*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 or petitions pursuant to section 232.54, subsections 1 and 4, section 232.103, subsection 2, paragraph "c", and section 232.111.

b. Unless otherwise enlarged or circumscribed by a court or juvenile court having jurisdiction over the child or by operation of law, the duties of a guardian ad litem with respect to a child shall include the following:

- (1) Conducting in-person interviews with the child, if the child's age is appropriate for the interview, and interviewing each parent, guardian, or

other person having custody of the child, if authorized by counsel.

(2) Conducting interviews with the child, if the child's age is appropriate for the interview, prior to any court-ordered hearing.

(3) Visiting the home, residence, or both home and residence of the child and any prospective home or residence of the child, including each time placement is changed.

(4) Interviewing any person providing medical, mental health, social, educational, or other services to the child, before any hearing referred to in subparagraph (2).

(5) Obtaining firsthand knowledge, if possible, of the facts, circumstances, and parties involved in the matter in which the person is appointed guardian ad litem.

(6) Attending any hearings in the matter in which the person is appointed as the guardian ad litem.

c. The order appointing the guardian ad litem shall grant authorization to the guardian ad litem to interview any relevant person and inspect and copy any records relevant to the proceedings, if not prohibited by federal law. The order shall specify that the guardian ad litem may interview any person providing medical, mental health, social, educational, or other services to the child, may attend any departmental staff meeting, case conference, or meeting with medical or mental health providers, service providers, organizations, or educational institutions regarding the child, if deemed necessary by the guardian ad litem, and may inspect and copy any records relevant to the proceedings.

23. "*Health practitioner*" means a licensed physician or surgeon, osteopath, osteopathic physician or surgeon, dentist, optometrist, podiatric physician, 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 biological 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.

42A. "*Preadoptive care*" means the provision of parental nurturing on a full-time basis to a child in foster care by a person who has signed a preadoptive placement agreement with the department for the purposes of proceeding with a legal adoption of the child. Parental nurturing includes but is not limited to furnishing of food, lodging, training, education, treatment, and other care.

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.

99 Acts, ch 164, §1; 99 Acts, ch 208, §33, 34
Subsection 22 amended

232.3 Concurrent court proceedings.

1. During the pendency of an action under this chapter, a party to the action is estopped from litigating concurrently the custody, guardianship, or placement of a child who is the subject of the action, in a court other than the juvenile court. A district judge, district associate judge, magistrate, or judicial hospitalization referee, upon notice of the pendency of an action under this chapter, shall not issue an order, finding, or decision relating to the custody, guardianship, or placement of the child who is the subject of the action, under any law, including but not limited to chapter 598, 598B, or 633.

2. The juvenile court with jurisdiction of the pending action under this chapter, however, may, upon the request of a party to the action or on its own motion, authorize the party to litigate concurrently in another court a specific issue relating to the custody, guardianship, or placement of the child who is the subject of the action. Before authorizing a party to litigate a specific issue in another court, the juvenile court shall give all parties to the action an opportunity to be heard on the proposed authorization. The juvenile court may request but

shall not require another court to exercise jurisdiction and adjudicate a specific issue relating to the custody, guardianship, or placement of the child.

99 Acts, ch 103, §42
Subsection 1 amended

232.52 Disposition of child found to have committed a delinquent act.

1. Pursuant to a hearing as provided in section 232.50, the court shall enter the least restrictive dispositional order appropriate in view of the seriousness of the delinquent act, the child's culpability as indicated by the circumstances of the particular case, the age of the child, the child's prior record, or the fact that the child has received a youthful offender deferred sentence under section 907.3A. The order shall specify the duration and the nature of the disposition, including the type of residence or confinement ordered and the individual, agency, department or facility in whom custody is vested. In the case of a child who has received a youthful offender deferred sentence, the initial duration of the dispositional order shall be until the child reaches the age of eighteen.

2. The dispositional orders which the court may enter subject to its continuing jurisdiction are as follows:

a. An order prescribing one or more of the following:

(1) A work assignment of value to the state or to the public.

(2) Restitution consisting of monetary payment or a work assignment of value to the victim.

(3) If the child is fourteen years of age or older, restitution consisting of monetary payment or a work assignment of value to the county or to the public for fees of attorneys appointed to represent the child at public expense pursuant to section 232.11.

(4) The suspension or revocation of the driver's license or operating privilege of the child, for a period of one year, for the commission of delinquent acts which are a violation of any of the following:

(a) Section 123.46.

(b) Section 123.47 regarding the purchase or attempt to purchase of alcoholic beverages.

(c) Chapter 124.

(d) Section 126.3.

(e) Chapter 453B.

(f) Two or more violations of section 123.47 regarding the possession of alcoholic beverages.

(g) Section 708.1, if the assault is committed upon an employee of the school at which the child is enrolled, and the child intended to inflict serious injury upon the school employee or caused bodily injury or mental illness.

(h) Section 724.4, if the child carried the dangerous weapon on school grounds.

(i) Section 724.4B.

The child may be issued a temporary restricted license or school license if the child is otherwise eligible.

(5) The suspension of the driver's license or operating privilege of the child for a period not to exceed one year. The order shall state whether a work permit may or shall not be issued to the child.

An order under paragraph "a" may be the sole disposition or may be included as an element in other dispositional orders.

b. An order placing the child on probation and releasing the child to the child's parent, guardian or custodian.

c. An order providing special care and treatment required for the physical, emotional or mental health of the child, and

(1) Placing the child on probation or other supervision; and

(2) If the court deems appropriate, ordering the parent, guardian, or custodian to reimburse the county for any costs incurred as provided in section 232.141, subsection 1, or to otherwise pay or provide for such care and treatment.

A parent or guardian may be required by the juvenile court to participate in educational or treatment programs as part of a probation plan if the court determines it to be in the best interest of the child. A parent or guardian who does not participate in the probation plan when required to do so by the court may be held in contempt.

d. An order transferring the legal custody of the child, subject to the continuing jurisdiction of the court for purposes of section 232.54, to one of the following:

(1) An adult relative or other suitable adult and placing the child on probation.

(2) A child placing agency or other suitable private agency or facility which is licensed or otherwise authorized by law to receive and provide care for children and placing the child on probation or other supervision.

(3) The department of human services for purposes of foster care and prescribing the type of placement which will serve the best interests of the child and the means by which the placement shall be monitored by the court. The court shall consider ordering placement in family foster care as an alternative to group foster care.

(4) The chief juvenile court officer or the officer's designee for placement in a program under section 232.191, subsection 4. The chief juvenile court officer or the officer's designee may place a child in group foster care for failure to comply with the terms and conditions of the supervised community treatment program for up to seventy-two hours without notice to the court or for more than seventy-two hours if the court is notified of the placement within seventy-two hours of placement, subject to a hearing before the court on the placement within ten days.

e. An order transferring the guardianship of the child, subject to the continuing jurisdiction and custody of the court for the purposes of section 232.54, to the director of the department of human

services for purposes of placement in the state training school or other facility, provided that the child is at least twelve years of age and the court finds the placement to be in the best interests of the child or necessary for the protection of the public, and that the child has been found to have committed an act which is a forcible felony, as defined in section 702.11, or a felony violation of section 124.401 or chapter 707, or the court finds any three of the following conditions exist:

(1) The child is at least fifteen years of age and the court finds the placement to be in the best interests of the child or necessary to the protection of the public.

(2) The child has committed an act which is a crime against a person and which would be an aggravated misdemeanor or a felony if the act were committed by an adult.

(3) The child has previously been found to have committed a delinquent act.

(4) The child has previously been placed in a treatment facility outside the child's home or in a supervised community treatment program established pursuant to section 232.191, subsection 4, as a result of a prior delinquency adjudication.

f. An order committing the child to a mental health institute or other appropriate facility for the purpose of treatment of a mental or emotional condition after making findings pursuant to the standards set out for involuntary commitment in chapter 229.

g. An order placing a child, other than a child who has committed a violation of section 123.47, in secure custody for not more than two days in a facility under section 232.22, subsection 2, paragraph "a" or "b".

h. In the case of a child adjudicated delinquent for an act which would be a violation of chapter 236 or section 708.2A if committed by an adult, an order requiring the child to attend a batterers' treatment program under section 708.2B.

2A. Notwithstanding subsection 2, 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.

3. When the court enters an order placing a child on probation pursuant to this section, the court may in cases of change of residency transfer jurisdiction of the child to the juvenile court of the county where the child's residence is established. The court to which the jurisdiction of the child is transferred shall have the same powers with respect to the child as if the petition had originally been filed in that court.

4. When the court enters an order transferring the legal and physical custody of a child to an agency, facility, department or institution, the court shall transmit its order, its finding, and a

summary of its information concerning the child to such agency, facility, department or institution.

5. If the court orders the transfer of custody of the child to the department of human services or other agency for placement, the department or agency responsible for the placement of the child shall submit a case permanency plan to the court and shall make every effort to return the child to the child's home as quickly as possible.

6. When the court orders the transfer of legal custody of a child pursuant to subsection 2, paragraphs "d", "e", or "f", the order shall state that reasonable efforts have been made to prevent or eliminate the need for removal of the child from the child's home.

When the court orders the transfer of legal custody of a child pursuant to subsection 2, paragraph "d", and the child is sixteen years of age or older, the order shall specify the services needed to assist the child in preparing for the transition from foster care to independent living. 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.

7. If the court orders the transfer of the custody of the child to the department of human services or to another agency for placement in foster group care, the department or agency shall make every reasonable effort to place the child within the state, in the least restrictive, most family-like, and most appropriate setting available and in close proximity to the parents' home, consistent with the child's best interests and special needs, and shall consider the placement's proximity to the school in which the child is enrolled at the time of placement.

8. If a child has previously been adjudicated as a child in need of assistance, and a social worker or other caseworker from the department of human services has been assigned to work on the child's case, the court may order the department of human services to assign the same social worker or caseworker to work on any matters related to the child arising under this division.

9. *a.* Upon receipt of an application from the director of the department of human services, the court shall enter an order to temporarily transfer a child who has been placed in the state training school pursuant to subsection 2, paragraph "e", to a facility which has been designated to be an alternative placement site for the state training school, provided the court finds that all of the following conditions exist:

(1) There is insufficient time to file a motion and hold a hearing for a substitute dispositional order under section 232.54.

(2) Immediate removal of the child from the state training school is necessary to safeguard the child's physical or emotional health.

(3) That reasonable attempts to notify the parents, guardian ad litem, and attorney for the child have been made.

b. If the court finds the conditions in paragraph "a" exist and there is insufficient time to provide notice as required under rule of juvenile procedure 4.6, the court may enter an ex parte order temporarily transferring the child to the alternative placement site.

c. Within three days of the child's transfer, the director shall file a motion for a substitute dispositional order under section 232.54 and the court shall hold a hearing concerning the motion within fourteen days of the child's transfer.

99 Acts, ch 208, §35

Highly structured programs; appropriation; criteria for extending eligibility to youth beyond age eighteen; 94 Acts, ch 1172, §69; 95 Acts, ch 205, §10; 96 Acts, ch 1213, §10; 97 Acts, ch 208, §12; 98 Acts, ch 1218, §15; 99 Acts, ch 203, §15

Subsection 2, paragraph a, subparagraph (4), NEW subparagraph subdivisions g-i

232.69 Mandatory and permissive reporters — training required.

1. The classes of persons enumerated in this subsection shall make a report within twenty-four hours and as provided in section 232.70, of cases of child abuse. In addition, the classes of persons enumerated in this subsection shall make a report of abuse of a child who is under twelve years of age and may make a report of abuse of a child who is twelve years of age or older, which would be defined as child abuse under section 232.68, subsection 2, paragraph "c" or "e", except that the abuse resulted from the acts or omissions of a person other than a person responsible for the care of the child.

a. Every health practitioner who in the scope of professional practice, examines, attends, or treats a child and who reasonably believes the child has been abused. Notwithstanding section 140.3, this provision applies to a health practitioner who receives information confirming that a child is infected with a sexually transmitted disease.

b. Any of the following persons who, in the scope of professional practice or in their employment responsibilities, examines, attends, counsels, or treats a child and reasonably believes a child has suffered abuse:

- (1) A self-employed social worker.
- (2) A social worker under the jurisdiction of the department of human services.
- (3) A social worker employed by a public or private agency or institution.
- (4) An employee or operator of a public or private health care facility as defined in section 135C.1.
- (5) A certified psychologist.
- (6) A licensed school employee.
- (7) An employee or operator of a licensed child care center or registered child care home.
- (8) An employee or operator of a substance abuse program or facility licensed under chapter 125.

(9) An employee of a department of human services institution listed in section 218.1.

(10) An employee or operator of a juvenile detention or juvenile shelter care facility approved under section 232.142.

(11) An employee or operator of a foster care facility licensed or approved under chapter 237.

(12) An employee or operator of a mental health center.

(13) A peace officer.

(14) A dental hygienist.

(15) A counselor, or mental health professional.

2. Any other person who believes that a child has been abused may make a report as provided in section 232.70.

3. A person required to make a report under subsection 1, other than a physician whose professional practice does not regularly involve providing primary health care to children, shall complete two hours of training relating to the identification and reporting of child abuse within six months of initial employment or self-employment involving the examination, attending, counseling, or treatment of children 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 child abuse identification and reporting training every five years. If the person is an employee of a hospital or similar institution, or of a public or private institution, agency, or facility, the employer shall be responsible for providing the child abuse identification and reporting training. If the person is self-employed, the person shall be responsible for obtaining the child abuse identification and reporting training. The person may complete the initial or additional training as part of a continuing education program required under chapter 272C or may complete the training as part of a training program offered by the department of human services, the department of education, an area education agency, a school district, the Iowa law enforcement academy, or a similar public agency.

99 Acts, ch 192, §27, 33

See Code editor's note to §10A.202

Subsection 1, paragraph b, subparagraph (7) amended

232.71D Founded child abuse — central registry.

1. The requirements of this section shall apply to child abuse information relating to a report of child abuse and to an assessment performed in accordance with section 232.71B.

2. If the alleged child abuse meets the definition of child abuse under section 232.68, subsection 2, paragraph "a" or "d", and the department determines the injury or risk of harm to the child was minor and isolated and is unlikely to reoccur, the names of the child and the alleged perpetrator of the child abuse and any other child abuse informa-

tion shall not be placed in the central registry as a case of founded child abuse.

3. Except as otherwise provided in section 232.68, subsection 2, paragraph "d", regarding parents legitimately practicing religious beliefs, the names of the child and the alleged perpetrator and the report data and disposition data shall be placed in the central registry as a case of founded child abuse under any of the following circumstances:

a. The case was referred for juvenile or criminal court action as a result of the acts or omissions of the alleged perpetrator or a criminal or juvenile court action was initiated by the county attorney or juvenile court within twelve months of the date of the department's report concerning the case, in which the alleged perpetrator was convicted of a crime involving the child or there was a delinquency or child in need of assistance adjudication.

b. The department determines the acts or omissions of the alleged perpetrator meet the definition of child abuse under section 232.68, subsection 2, paragraph "a", involving nonaccidental physical injury suffered by the child and the injury was not minor or was not isolated or is likely to reoccur.

c. The department determines the acts or omissions of the alleged perpetrator meet the definition of child abuse and the department has previously determined within the eighteen-month period preceding the issuance of the department's report that the acts or omissions of the alleged perpetrator in a prior case met the definition of child abuse.

d. The department determines the acts or omissions of the alleged perpetrator meet the definition of child abuse under section 232.68, subsection 2, paragraph "b", involving mental injury.

e. The department determines the acts or omissions meet the definition of child abuse under section 232.68, subsection 2, paragraph "c", and the alleged perpetrator of the acts or omissions is age fourteen or older. However, the juvenile court may order the removal from the central registry of the name of an alleged perpetrator placed in the registry pursuant to this paragraph who is age fourteen through seventeen upon a finding of good cause. The name of an alleged perpetrator who is less than age fourteen shall not be placed in the central registry pursuant to this paragraph.

f. The department determines the acts or omissions of the alleged perpetrator meet the definition of child abuse under section 232.68, subsection 2, paragraph "d", involving failure to provide care necessary for the child's health and welfare, and any injury to the child or risk to the child's health and welfare was not minor or was not isolated or is likely to reoccur, in any of the following ways:

- (1) Failure to provide adequate food and nutrition.
- (2) Failure to provide adequate shelter.
- (3) Failure to provide adequate health care.

(4) Failure to provide adequate mental health care.

(5) Gross failure to meet emotional needs.

(6) Failure to respond to an infant's life-threatening condition.

g. The department determines the acts or omissions of the alleged perpetrator meet the definition of child abuse under section 232.68, subsection 2, paragraph "e", involving prostitution.

h. The department determines the acts or omissions of the alleged perpetrator meet the definition of child abuse under section 232.68, subsection 2, paragraph "f", involving the presence of an illegal drug.

i. The alleged abuse took place in any of the following licensed, registered, unregistered, or regulated facilities or services:

(1) Substance abuse program licensed under chapter 125.

(2) Hospital licensed under chapter 135B.

(3) Health care facility or residential care facility licensed under chapter 135C.

(4) Psychiatric medical institution licensed under chapter 135H.

(5) Medical assistance home and community-based waiver for persons with mental retardation residential program regulated by the department of human services and the department of inspections and appeals.

(6) An institution controlled by the department and enumerated in section 218.1.

(7) Mental health center, juvenile shelter care facility, or juvenile detention facility.

(8) Child foster care licensee under chapter 237.

(9) Child care provider under chapter 237A.

(10) Public or private school which provides overnight care.

(11) The Iowa braille and sight saving school and the Iowa school for the deaf controlled by the state board of regents.

j. The department determines the alleged perpetrator of the child abuse will continue to pose a danger to the child who is the subject of the report of child abuse or to another child with whom the alleged perpetrator may come into contact.

4. If report data and disposition data are placed in the central registry in accordance with this section, the department shall make periodic follow-up reports in a manner prescribed by the registry so that the registry is kept up-to-date and fully informed concerning the case.

5. a. The confidentiality of all of the following shall be maintained in accordance with section 217.30:

(1) Assessment data.

(2) Information pertaining to an allegation of child abuse for which there was no assessment performed.

(3) Information pertaining to an allegation of child abuse which was determined to not meet the

definition of child abuse. Individuals identified in section 235A.15, subsection 4, are authorized to have access to such information under section 217.30.

(4) Report data and disposition data pertaining to an allegation of child abuse determined to meet the definition of child abuse which is not subject to placement in the central registry. Individuals identified in section 235A.15, subsection 3, are authorized to have access to such data under section 217.30.

b. The confidentiality of report data and disposition data pertaining to an allegation of child abuse determined to meet the definition of child abuse which is subject to placement in the central registry, shall be maintained as provided in chapter 235A.

99 Acts, ch 192, §33
Terminology change applied

232.78 Temporary custody of a child pursuant to ex parte court order.

1. The juvenile court may enter an ex parte order directing a peace officer or a juvenile court officer to take custody of a child before or after the filing of a petition under this chapter provided all of the following apply:

a. The person responsible for the care of the child is absent, or though present, was asked and refused to consent to the removal of the child and was informed of an intent to apply for an order under this section, or there is reasonable cause to believe that a request for consent would further endanger the child, or there is reasonable cause to believe that a request for consent will cause the parent, guardian, or legal custodian to take flight with the child.

b. It appears that the child's immediate removal is necessary to avoid imminent danger to the child's life or health.

c. There is not enough time to file a petition and hold a hearing under section 232.95.

d. The application for the order includes a statement of the facts to support the findings specified in paragraphs "a", "b", and "c".

2. The person making the application for an order shall assert facts showing there is reasonable cause to believe that the child cannot either be returned to the place where the child was residing or placed with the parent who does not have physical care of the child.

3. The order shall specify the facility to which the child is to be brought. Except for good cause shown or unless the child is sooner returned to the place where the child was residing or permitted to return to the child care facility, a petition shall be filed under this chapter within three days of the issuance of the order.

4. The juvenile court may enter an order authorizing a physician or hospital to provide emergency medical or surgical procedures before the filing of a petition under this chapter provided:

a. Such procedures are necessary to safeguard the life and health of the child; and

b. There is not enough time to file a petition under this chapter and hold a hearing as provided in section 232.95.

5. The juvenile court, before or after the filing of a petition under this chapter, may enter an ex parte order authorizing a physician or hospital to conduct an outpatient physical examination or authorizing a physician, a psychologist certified under section 154B.7, or a community mental health center accredited pursuant to chapter 230A to conduct an outpatient mental examination of a child if necessary to identify the nature, extent, and cause of injuries to the child as required by section 232.71B, provided all of the following apply:

a. The parent, guardian, or legal custodian is absent, or though present, was asked and refused to provide written consent to the examination.

b. The juvenile court has entered an ex parte order directing the removal of the child from the child's home or a child care facility under this section.

c. There is not enough time to file a petition and to hold a hearing as provided in section 232.98.

6. Any person who may file a petition under this chapter may apply for, or the court on its own motion may issue, an order for temporary removal under this section. An appropriate person designated by the court shall confer with a person seeking the removal order, shall make every reasonable effort to inform the parent or other person legally responsible for the child's care of the application, and shall make such inquiries as will aid the court in disposing of such application. The person designated by the court shall file with the court a complete written report providing all details of the designee's conference with the person seeking the removal order, the designee's efforts to inform the parents or other person legally responsible for the child's care of the application, any inquiries made by the designee to aid the court in disposing of the application, and all information the designee communicated to the court. The report shall be filed within five days of the date of the removal order. If the court does not designate an appropriate person who performs the required duties, notwithstanding section 234.39 or any other provision of law, the child's parent shall not be responsible for paying the cost of care and services for the duration of the removal order. Any order entered under this section authorizing temporary removal of a child shall include a statement informing the child's parent that the consequences of a permanent removal may include termination of the parent's rights with respect to the child.

99 Acts, ch 192, §33
Terminology change applied

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. 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 which are incurred in connection with the appointment of an attorney by the court to serve as counsel to any party or to serve as a guardian ad litem for any child.

b. Reasonable compensation for an attorney appointed by the court to serve as counsel to any party or as guardian ad litem for any child. However, the amount of compensation paid shall be paid in accordance with section 815.7.

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 paid by the state. However, before any costs are paid, a claim must be submitted to and approved by the state public defender who shall pre-

scribe 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 assessment 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.

99 Acts, ch 135, §20, 21
 Subsection 2 amended
 Subsection 3, paragraph c amended

232.142 Maintenance and cost of juvenile homes.

1. County boards of supervisors which singly or in conjunction with one or more other counties provide and maintain juvenile detention and juvenile shelter care homes are subject to this section.

2. For the purpose of providing and maintaining a county or multicounty home, the board of supervisors of any county may issue general county purpose bonds in accordance with sections 331.441 to 331.449. Expenses for providing and maintaining a multicounty home shall be paid by the counties participating in a manner to be determined by the boards of supervisors.

3. A county or multicounty juvenile detention home approved pursuant to this section shall receive financial aid from the state in a manner approved by the director. Aid paid by the state shall be at least ten percent and not more than fifty percent of the total cost of the establishment, improvements, operation, and maintenance of the home.

4. The director shall adopt minimal rules and standards for the establishment, maintenance, and operation of such homes as shall be necessary to effect the purposes of this chapter. The rules shall apply the requirements of section 237.8, concerning employment and evaluation of persons with direct responsibility for a child or with access to a child when the child is alone and persons residing in a child foster care facility, to persons employed by or residing in a home approved under this section.

The director shall, upon request, give guidance and consultation in the establishment and administration of the homes and programs for the homes.

5. The director shall approve annually all such homes established and maintained under the provisions of this chapter. A home shall not be approved unless it complies with minimal rules and standards adopted by the director and has been inspected by the department of inspections and appeals.

Financial aid for juvenile detention homes limited for fiscal years beginning July 1, 1998, and July 1, 1999; 99 Acts, ch 203, §35, 36, 53
 Section not amended; footnote added

232.143 Regional group foster care budget targets.

1. A statewide expenditure target for children in group foster care placements in a fiscal year, which placements are a charge upon or are paid for by the state, shall be established annually in an appropriation bill by the general assembly. The department and the judicial branch shall jointly develop a formula for allocating a portion of the statewide expenditure 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 usage of group foster care in the previous five completed fiscal years and other indicators of need. The expenditure amount determined in accordance with the formula shall be the group foster care budget target for that region. A region may exceed its budget target for group foster care by not more than five percent in a fiscal year, provided the overall funding allocated by the department for all child welfare services in the region is not exceeded.

2. For each of the department's regions, representatives appointed by the department and the juvenile court shall establish a plan for containing the expenditures for children placed in group foster care ordered by the court within the budget 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 child welfare services within the amount appropriated by the general assembly for that purpose. Each regional plan shall be established within sixty days of the date by which the group foster care budget target for the region is determined. 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.

99 Acts, ch 111, §9
Provisions of this section applicable to juvenile court and juvenile court representatives shall instead apply to juvenile court services and juvenile court services representatives for fiscal year beginning July 1, 1999; 99 Acts, ch 203, §15, 53
Subsection 2 amended

232.148 Fingerprints — photographs.

1. Except as provided in this section, a child shall not be fingerprinted or photographed by a criminal or juvenile justice agency after the child is taken into custody.

2. Fingerprints of a child who has been taken into custody shall be taken and filed by a criminal or juvenile justice agency investigating the commission of a public offense other than a simple misdemeanor. In addition, photographs of a child who has been taken into custody may be taken and filed by a criminal or juvenile justice agency investigating the commission of a public offense other than a simple misdemeanor. The criminal or juvenile justice agency shall forward the fingerprints to the department of public safety for inclusion in the automated fingerprint identification system and may also retain a copy of the fingerprint card for comparison with latent fingerprints and the identification of repeat offenders.

3. If a peace officer has reasonable grounds to believe that latent fingerprints found during the investigation of the commission of a public offense are those of a particular child, fingerprints of the child may be taken for immediate comparison with the latent fingerprints regardless of the nature of the offense. If the comparison is negative the fingerprint card and other copies of the fingerprints taken shall be immediately destroyed. If the comparison is positive, the fingerprint card and other copies of the fingerprints taken shall be delivered to the division of criminal investigation of the department of public safety in the manner and on the forms prescribed by the commissioner of public safety within two working days after the fingerprints are taken. After notification by the child or the child's representative that the child has not had a delinquency petition filed against the child or has not entered into an informal adjustment agreement, the fingerprint card and copies of the fingerprints shall be immediately destroyed.

4. Fingerprint and photograph files of children may be inspected by peace officers when necessary for the discharge of their official duties. The juvenile court may authorize other inspections of such files in individual cases upon a showing that inspection is necessary in the public interest.

5. Fingerprints and photographs of a child shall be removed from the file and destroyed upon notification by the child's guardian ad litem or legal counsel to the department of public safety that either of the following situations apply:

a. A petition alleging the child to be delinquent is not filed and the child has not entered into an in-

formal adjustment, admitting involvement in a delinquent act alleged in the complaint.

b. After a petition is filed, the petition is dismissed or the proceedings are suspended and the child has not entered into a consent decree and has not been adjudicated delinquent on the basis of a delinquent act other than one alleged in the petition in question, or the child has not been placed on youthful offender status.

99 Acts, ch 37, §1
See also §690.2
Subsection 2 amended

232.175 Placement oversight.

Placement oversight shall be provided pursuant to this division when the parent, guardian, or custodian of a child with mental retardation or other developmental disability requests placement of the child for a period of more than thirty days. The oversight shall be provided through review of the placement every six months by the department's foster care review committees or by a local citizen foster care review board. Court oversight shall be provided prior to the initial placement and at periodic intervals which shall not exceed twelve months. It is the purpose and policy of this division to assure the existence of oversight safeguards as required by the federal Child Welfare Act of 1980, Pub. L. No. 96-272, as codified in 42 U.S.C. § 671(a)(16), 627(a)(2)(B), and 675(1),(5), while maintaining parental decision-making authority.

For future amendments to this section, effective upon the date of federal approval of a waiver request submitted pursuant to 98 Acts, ch 1218, §7, subsection 10, see 99 Acts, ch 111, §1, 7

232.178 Petition.

1. For a placement initiated on or after July 1, 1992, the department shall file a petition to initiate a voluntary placement proceeding prior to the child's placement in accordance with criteria established pursuant to the federal Child Welfare Act of 1980, Pub. L. No. 96-272, as codified in 42 U.S.C. § 627(a). For a placement initiated before July 1, 1992, the department shall file a petition to approve placement on or before September 1, 1992.

2. The petition and subsequent court documents shall be entitled "In the interests of , a child".

3. The petition shall state the names and residence of the child and the child's living parents, guardian, custodian, and guardian ad litem, if any, and the age of the child.

4. The petition shall describe the child's emotional, physical, or intellectual disability which requires care and treatment; the reasonable efforts to maintain the child in the child's home; the department's request to the family of a child with mental retardation, other developmental disability, or organic mental illness to determine if any services or support provided to the family will enable the family to continue to care for the child in the child's home; and the reason the child's parent, guardian, or custodian has requested a foster care placement.

The petition shall also describe the commitment of the parent, guardian, or custodian in fulfilling the responsibilities defined in the case permanency plan and how the placement will serve the child's best interests.

For future amendment to subsection 4, effective upon the date of federal approval of a waiver request submitted pursuant to 98 Acts, ch 1218, §7, subsection 10, see 99 Acts, ch 111, §2, 7

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 10, 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.

For future amendments to subsections 5 and 7, effective upon the date of federal approval of a waiver request submitted pursuant to 98 Acts, ch 1218, §7, subsection 10, see 99 Acts, ch 111, §3, 4, 7

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 twelve 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 twelve 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 the local citizen foster care review board review procedure, and all parties agree. This provision does not eliminate the initial judicial determination required under section 232.182.

Dispositional review of orders for group foster care placement; effective dates; see 99 Acts, ch 111, §6, 7

Section not amended; footnote added

232.188 Decategorization of child welfare funding.

1. Decategorization of child welfare funding is intended to establish a system of delivering human services based upon client needs to replace a system based upon a multitude of categorical programs and funding sources, each with different service definitions and eligibility requirements. The purposes of decategorization include but are not limited to redirecting child welfare funding to services which are more preventive, family-centered, and community-based in order to reduce use of restrictive approaches which rely upon institutional, out-of-home, and out-of-community services.

2. In partnership with an interested county or group of counties which has demonstrated the commitment and involvement of the affected county department of human services, juvenile court system, and board of supervisors, the department shall develop agreements providing for the decategorization of specific state and state-federal funding categories into a child welfare funding pool for that county or group of counties. A decategorization agreement shall require the decategorization program to be implemented by a decategorization governance board. The decategorization governance board shall develop specific, quantifiable short-term and long-term plans for enhancing the county's or group of counties' family-centered and community-based services and reducing reliance upon out-of-community care. The affected service systems shall include child welfare and juvenile justice systems. A decategorization agreement may vary depending upon the approaches selected by the county or group of counties which shall be detailed in an annual child welfare services plan developed by the decategorization governance board. A decategorization governance board shall involve community representatives and county organizations in the development of the plan.

3. The child welfare funding pool shall be used by the county or group of counties to provide more

flexible, individualized, family-centered, preventive, community-based, comprehensive, and coordinated service systems for children and families served in that area. The decategorization of the funding shall not limit the legal rights of those children and families to services, but shall provide more flexibility to the partnership county or counties in responding to individual and family needs.

4. In a decategorization agreement, the department and the county's or group of counties' decategorization governance board shall agree on all of the following items: the governance relationship between the department and the decategorization governance board; the respective areas of autonomy of the department and the board; the budgeting structure for the decategorization; and a method for resolving disputes between the department and the board. The decategorization agreement shall require the department and the decategorization governance board to agree upon a budget within sixty days of the date by which the regional group foster care budget targets are determined under section 232.143 for the fiscal year to which the budget applies. The budget may later be modified to reflect new or changed circumstances.

5. The state shall provide incentives for a county or counties to participate in a decategorization agreement while maintaining an expectation that the service outcomes for children and families can be improved by the funding flexibility, and the redeployment of funding currently available for services within the system. Moneys in the child welfare funding pool established for a county or group of counties participating in a decategorization agreement which remain unobligated or unexpended at the end of a fiscal year shall remain available to the county or group of counties during the succeeding fiscal year to finance other child welfare service enhancements.

6. Initially the department shall work with the five counties previously authorized under law to enter into decategorization agreements with the state. At a minimum, any of those counties may elect to use funding for foster care, family-centered services, subsidized adoption, child care, local purchase of service, state juvenile institution care, juvenile detention, department direct services, and court-ordered services for juveniles in the child welfare fund established for that county.

7. The annual child welfare services plan developed by a decategorization governance board pursuant to subsection 2 shall be submitted to the department and the Iowa empowerment board. In addition, the decategorization governance board shall submit an annual progress report to the department and the Iowa empowerment board which summarizes the progress made toward attaining the objectives contained in the plan. The progress report shall serve as an opportunity for information sharing and feedback.

8. A decategorization governance board shall coordinate the board's planning and budgeting activities with the community empowerment area board for the community empowerment area with-

in which the decategorization county is located.

99 Acts, ch 111, §10; 99 Acts, ch 190, §16; 99 Acts, ch 192, §33
 Terminology change applied
 Subsection 4 amended
 NEW subsection 8

CHAPTER 233B

JUVENILE HOME

233B.1 Definitions — objects.

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

1. "Administrator" or "director" means the director of the department of human services.
2. "Home" means the Iowa juvenile home.
3. "Superintendent" means the superintendent of the Iowa juvenile home.

The Iowa juvenile home shall be maintained for the purpose of providing care, custody and education of such children as are committed to the home.

Such children shall be wards of the state. Their education shall embrace instruction in the common school branches and in such other higher branches as may be practical and will enable the children to gain useful and self-sustaining employment. The administrator and the superintendent of the home shall assist all discharged children in securing suitable homes and proper employment.

Legislative intent that the Iowa juvenile home serve only females commencing July 1, 2000; service options for placement of males; 99 Acts, ch 203, §14, 53

Section not amended; footnote added

CHAPTER 234

CHILD AND FAMILY SERVICES

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. Cooperate 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 239B 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. Child care for children or day care for 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 10, 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 on 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.

99 Acts, ch 192, §28

For future amendments to subsection 6, paragraph f, effective upon the date of federal approval of a waiver request submitted pursuant to 98 Acts, ch 1218, §7, subsection 10, see 99 Acts, ch 111, §5, 7

Subsection 6, paragraph a amended

234.12A Electronic benefits transfer program.

1. The department of human services may establish an electronic benefits transfer program utilizing electronic funds transfer systems. The pro-

gram, if established, shall at a minimum provide for all of the following:

a. A retailer shall not be required to make cash disbursements or to provide, purchase, or upgrade electronic funds transfer system equipment as a condition of participation in the program.

b. A retailer providing electronic funds transfer system equipment for transactions pursuant to the program shall be reimbursed fifteen cents for each approved transaction pursuant to the program utilizing the retailer's equipment.

c. A retailer that provides electronic funds transfer system equipment for transactions pursuant to the program and who makes cash disbursements pursuant to the program utilizing the retailer's equipment shall be paid a fee of fifteen cents by the department for each cash disbursement transaction by the retailer.

2. A point-of-sale terminal which is used only for purchases from a retailer by electronic benefits transfer utilizing electronic funds transfer systems is not a satellite terminal as defined in section 527.2.

3. For the purposes of this section, "retailer" means a business authorized by the United States department of agriculture to accept food stamp benefits.

Reports to general assembly regarding implementation plan, projected costs of fee payments, and projected savings to department; extension of time for implementation; 98 Acts, ch 1218, §5; 99 Acts, ch 203, §5, 53

Section not amended; footnote revised

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 care 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. 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.

State funding for shelter care paid pursuant to subsection 1, paragraph h limited for fiscal year beginning July 1, 1999; 99 Acts, ch 203, §15
Section not amended; footnote added

234.38 Foster care reimbursement rates.

The department of human services shall make reimbursement payments directly to foster parents for services provided to children pursuant to section 234.6, subsection 6, paragraph "b", or section 234.35. In any fiscal year, the reimbursement rate shall be based upon sixty-five percent of the United States department of agriculture estimate of the cost to raise a child in the calendar year immediately preceding the fiscal year. The department may pay an additional stipend for a child with special needs.

Rates for fiscal year beginning July 1, 1999; 99 Acts, ch 203, §33
Section not amended; footnote revised

234.39 Responsibility for cost of services.

It is the intent of this chapter that an individual receiving foster care services and the individual's parents or guardians shall have primary responsibility for paying the cost of the care and services. The support obligation established and adopted under this section shall be consistent with the limitations on legal liability established under sections 222.78 and 230.15, and by any other statute limiting legal responsibility for support which may be imposed on a person for the cost of care and ser-

vices provided by the department. The department shall notify an individual's parents or guardians, at the time of the placement of an individual in foster care, of the responsibility for paying the cost of care and services. Support obligations shall be established as follows:

1. For an individual to whom section 234.35, subsection 1, is applicable, a dispositional order of the juvenile court requiring the provision of foster care, or an administrative order entered pursuant to chapter 252C, or any order establishing paternity and support for a child in foster care, shall establish, after notice and a reasonable opportunity to be heard is provided to a parent or guardian, the amount of the parent's or guardian's support obligation for the cost of foster care provided by the department. The amount of the parent's or guardian's support obligation and the amount of support debt accrued and accruing shall be established in accordance with the child support guidelines prescribed under section 598.21, subsection 4. However, the court, or the department of human services in establishing support by administrative order, may deviate from the prescribed obligation after considering a recommendation by the department for expenses related to goals and objectives of a case permanency plan as defined under section 237.15, and upon written findings of fact which specify the reason for deviation and the prescribed guidelines amount. Any order for support shall direct the payment of the support obligation to the collection services center for the use of the department's foster care recovery unit. The order shall be filed with the clerk of the district court in which the responsible parent or guardian resides and has the same force and effect as a judgment when entered in the judgment docket and lien index. The collection services center shall disburse the payments pursuant to the order and record the disbursements. If payments are not made as ordered, the child support recovery unit may certify a default to the court and the court may, on its own motion, proceed under section 598.22 or 598.23 or the child support recovery unit may enforce the judgment as allowed by law. An order entered under this subsection may be modified only in accordance with the guidelines prescribed under section 598.21, subsection 8, or under chapter 252H.

2. For an individual who is served by the department of human services under section 234.35, and is not subject to a dispositional order of the juvenile court requiring the provision of foster care, the department shall determine the obligation of the individual's parent or guardian pursuant to chapter 252C and in accordance with the child support guidelines prescribed under section 598.21, subsection 4. However, the department may adjust the prescribed obligation for expenses related to goals and objectives of a case permanency plan as defined under section 237.15. An obligation determined under this subsection may be modified only

in accordance with conditions under section 598.21, subsection 8, or under chapter 252H.

3. A person entitled to periodic support payments pursuant to an order or judgment entered in any action for support, who also is or has a child receiving foster care services, is deemed to have assigned to the department current and accruing support payments attributable to the child effective as of the date the child enters foster care placement, to the extent of expenditure of foster care funds. The department shall notify the clerk of the district court when a child entitled to support payments is receiving foster care services pursuant to chapter 234. Upon notification by the department that a child entitled to periodic support payments is receiving foster care services, the clerk of the district court shall make a notation of the automatic assignment in the judgment docket and lien index. The notation constitutes constructive notice of assignment. The clerk of court shall furnish the department with copies of all orders and decrees awarding support when the child is receiving foster care services. At the time the child ceases to receive foster care services, the assignment of support shall be automatically terminated. Unpaid support accrued under the assignment of support rights during the time that the child was in foster care remains due to the department up to the amount of unreimbursed foster care funds expended. The department shall notify the clerk of court of the automatic termination of the assignment. Unless otherwise specified in the support order, an equal and proportionate share of any child support awarded shall be presumed to be payable on behalf of each

child subject to the order or judgment for purposes of an assignment under this section.

4. The support debt for the costs of services, for which a support obligation is established pursuant to this section, which accrues prior to the establishment of the support debt, shall be collected, at a maximum, in the amount which is the amount of accrued support debt for the three months preceding the earlier of the following:

a. The provision by the child support recovery unit of the initial notice to the parent or guardian of the amount of the support obligation.

b. The date that the written request for a court hearing is received by the child support recovery unit as provided in section 252C.3 or 252F.3.

5. If the department makes a subsidized guardianship payment for a child, the payment shall be considered a foster care payment for purposes of child support recovery. All provisions of this and other sections, and of rules and orders adopted or entered pursuant to those sections, including for the establishment of a paternity or support order, for the amount of a support obligation, for the modification or adjustment of a support obligation, for the assignment of support, and for enforcement shall apply as if the child were receiving foster care services, or were in foster care placement, or as if foster care funds were being expended for the child. This subsection shall apply regardless of the date of placement in foster care or subsidized guardianship or the date of entry of an order, and foster care and subsidized guardianship shall be considered the same for purposes of child support recovery.

99 Acts, ch 127, §1
NEW subsection 5

CHAPTER 235A

CHILD ABUSE

235A.13 Definitions.

As used in chapter 232, division III, part 2, and sections 235A.13 to 235A.23, unless the context otherwise requires:

1. *“Assessment data”* means any of the following information pertaining to the department’s evaluation of a family:

a. Identification of the strengths and needs of the child, and of the child’s parent, home, and family.

b. Identification of services available from the department and informal and formal services and other support available in the community to meet identified strengths and needs.

2. *“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. Assessment data.

c. Disposition data.

3. *“Confidentiality”* means the withholding of information from any manner of communication, public or private.

4. *“Department”* means the department of human services.

5. *“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 assessment personnel.

b. Any opinion or decision reached in the course of judicial proceedings.

c. The present status of any case.

6. *“Expungement”* means the process of destroying child abuse information.

7. “*Individually identified*” means any report, assessment, or disposition data which names the person or persons responsible or believed responsible for the child abuse.

8. “*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.

9. “*Report data*” means any of the following information pertaining to an assessment of an allegation of child abuse in which the department has determined the alleged child abuse meets the definition of child abuse:

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. Additional information as to the nature, extent, and cause of the injury, and the identity of the person or persons alleged to be responsible for the injury.

e. The names and conditions of other children in the child’s home.

f. Any other information believed to be helpful in establishing the information in paragraph “d”.

10. “*Sealing*” means the process of removing child abuse information from authorized access as provided by this chapter.

99 Acts, ch 96, §26
Subsections 1–7 amended

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 report data and disposition data subject to placement in the central registry pursuant to section 232.71D 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 to 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 assessment 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 assessment of a child abuse report.

(3) To a law enforcement officer responsible for assisting in an assessment 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 diagnosis, assessment, and disposition of a child abuse case.

(5) In an individual case, to the mandatory reporter who reported the child abuse.

(6) To the county attorney.

(7) To the juvenile court.

(8) 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 alleged child abuse under section 232.71B.

(9) To a 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 department deems access to report data and disposition data by the person or agency to be necessary.

c. Individuals, agencies, or facilities providing care to a child, but only with respect to disposition data and, if authorized in law to the extent necessary for purposes of an employment evaluation, report data, for cases of founded child abuse placed in the central registry in accordance with section 232.71D as follows:

(1) To an administrator of a psychiatric medical institution for children licensed under chapter 135H.

(2) To an administrator of a child foster care facility licensed under chapter 237 if the data concerns a person employed or being considered for employment by the facility.

(3) To an administrator of a child care facility registered or licensed under chapter 237A if the data concerns a person employed or being considered for employment by or living in the facility.

(4) To the superintendent of the Iowa braille and sight saving school if the data concerns a person employed or being considered for employment or living in the school.

(5) To the superintendent of the school for the deaf if the data concerns a person employed or be-

ing considered for employment or living in the school.

(6) To an administrator of a community mental health center accredited under chapter 230A if the data concerns a person employed or being considered for employment by the center.

(7) To an administrator of a facility or program operated by the state, a city, or a county which provides services or care directly to children, if the data concerns a person employed by or being considered for employment by the facility or program.

(8) To an administrator of an agency certified by the department of human services to provide services under a medical assistance home and community-based services waiver, if the data concerns a person employed by or being considered by the agency for employment.

(9) To the administrator of an agency providing mental health, mental retardation, or developmental disability services under a county management plan developed pursuant to section 331.439, if the data concerns a person employed by or being considered by the agency for employment.

(10) To an administrator of a child care resource and referral agency which has entered into an agreement authorized by the department to provide child care resource and referral services. Access is authorized if the data concerns a person providing child care services or a person employed by a provider of such services and the agency includes the provider as a referral or the provider has requested to be included as a referral.

d. Report data and disposition data, and assessment data to the extent necessary for resolution of the proceeding, 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 data 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 report data and disposition data as provided in section 235A.19.

(4) To an expert witness at any stage of an appeal necessary for correction of report data and disposition data as provided in section 235A.19.

(5) To a probation or parole officer, juvenile court officer, court appointed special advocate as defined in section 232.2, 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.

(6) To the department of justice for purposes of review by the prosecutor's review committee or the commitment of sexually violent predators as provided in chapter 229A.

(7) Each board of examiners specified under chapter 147 and the Iowa department of public health for the purpose of licensure, certification or

registration, disciplinary investigation, or the renewal of licensure, certification or registration, or disciplinary proceedings of health care professionals.

e. Others as follows, but only with respect to report data and disposition data for cases of founded child abuse subject to placement in the registry pursuant to section 232.71D:

(1) To a person conducting bona fide research on child abuse, but without data identifying individuals named in a child abuse report, unless having that data 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 data.

(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 department.

(3) To the department of justice for the sole purpose of the filing of a claim for restitution or compensation pursuant to sections 915.21 and 915.84. Data provided pursuant to this subparagraph is subject to the provisions of section 915.90.

(4) To a legally constituted child protection agency of another state which is investigating or assessing or treating a child named in a report as having been abused or which is investigating or assessing or treating a person named as having abused a child.

(5) To a public or licensed child placing agency of another state responsible for an adoptive or foster care preplacement or placement evaluation.

(6) To the attorney for the department of human services who is responsible for representing the department.

(7) To the state and local citizen foster care review boards created pursuant to sections 237.16 and 237.19.

(8) To an employee or agent of the department of human services regarding a person who is providing child care if the person is not registered or licensed to operate a child care facility.

(9) To the board of educational examiners created under chapter 272 for purposes of determining whether a practitioner's license should be denied or revoked.

(10) 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 or has applied to provide care to a child in the other state.

(11) 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 diag-

nosed as having a developmental disability or a mental illness.

(12) To the department of human services for a record check relating to employment or residence pursuant to section 218.13.

(13) To the Iowa board for the treatment of sexual abusers for purposes of certifying sex offender treatment providers.

(14) To an employee or agent of the department 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.

(15) To an employee of the department responsible for an adoptive placement, a certified adoption investigator, or licensed child placing agency responsible for an adoptive placement.

f. The following, but only with respect to disposition data for cases of founded child abuse subject to placement in the central registry pursuant to section 232.71D:

(1) To a person who submits written authorization from an individual allowing the person access to data pursuant to this subsection on behalf of the individual in order to verify whether the individual is named in a founded child abuse report as having abused a child.

(2) To an individual who is requesting information on a specific case of child abuse which resulted in a child fatality or near fatality.

3. Access to report data and disposition data for a case of child abuse determined to meet the definition of child abuse, which data is not subject to placement in the central registry pursuant to section 232.71D, is authorized only to the following persons:

a. Subjects of a report identified in subsection 2, paragraph "a".

b. Persons involved in an assessment of child abuse identified in subsection 2, paragraph "b", subparagraphs (2), (3), (4), (6), (7), and (9).

c. Others identified in subsection 2, paragraph "e", subparagraphs (2), (3), and (6).

d. The department of justice for purposes of review by the prosecutor's review committee or the commitment of sexually violent predators as provided in chapter 229A.

4. Access to report data for a case of child abuse determined to not meet the definition of child abuse, which data is not subject to placement in the central registry pursuant to section 232.71D, is authorized only to the following:

a. Subjects of a report identified in subsection 2, paragraph "a".

b. Persons involved in an assessment of child abuse identified in subsection 2, paragraph "b", subparagraphs (2), (6), and (7).

c. Others identified in subsection 2, paragraph "e", subparagraph (2).

d. The department of justice for purposes of review by the prosecutor's review committee or the

commitment of sexually violent predators as provided in chapter 229A.

5. Access to disposition data subject to placement in the central registry pursuant to section 232.71D is authorized to the department of personnel or to the personnel office of a public employer, as defined in section 20.3, as necessary for presentation in grievance or arbitration procedures provided for in sections 19A.14 and 20.18. Disposition data introduced into a grievance or arbitration proceeding shall not be considered a part of the public record of a case.

6. a. 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 assessment of the report. If the child's state of residency refuses to conduct an assessment, the department shall commence an appropriate assessment.

b. 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 assessment 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 assessment of the report, the department shall commence an appropriate assessment. The department shall seek to develop protocols with states contiguous to this state for coordination in the assessment of a report of child abuse when a person involved with the report is a resident of another state.

99 Acts, ch 61, §10–12, 14; 99 Acts, ch 111, §8; 99 Acts, ch 141, §31; 99 Acts, ch 192, §33

Terminology changes applied
Subsection 2, paragraph d, NEW subparagraphs (6) and (7)
Subsection 2, paragraph f, former unnumbered paragraph 2 designated as subparagraph (1) and NEW subparagraph (2)
Subsection 3, NEW paragraph d
Subsection 4, NEW paragraph d

235A.18 Sealing and expungement of founded child abuse information.

1. Report data and disposition data relating to a particular case of alleged abuse which has been determined to be founded child abuse and placed in the central registry in accordance with section 232.71D shall be maintained in the registry as follows:

a. Report and disposition data relating to a particular case of alleged child abuse shall be sealed ten years after the initial placement of the data in the registry unless good cause be shown why the data should remain open to authorized access. If a subsequent report of an alleged case of child abuse involving the child named in the initial data placed in the registry as the victim of abuse or a person named in the data as having abused a child is received by the department within this ten-

year period, the data shall be sealed ten years after receipt of the subsequent report unless good cause be shown why the data should remain open to authorized access. However, such report and disposition data shall be made available to the department of justice if the department requests access to the alleged child abuse records for purposes of review by the prosecutor's review committee or commitment of sexually violent predators under chapter 229A.

b. Data sealed in accordance with this section shall be expunged eight years after the date the data was sealed. However, if the report data and the disposition data involve child abuse as defined in section 232.68, subsection 2, paragraphs "c" and "e", the data shall not be expunged for a period of thirty years. Sealed data shall be made available to the department of justice upon request if the prosecutor's review committee is reviewing records or if a prosecuting attorney has filed a petition to commit a sexually violent predator under chapter 229A.

2. The juvenile or district court and county attorney shall expunge child abuse information upon notice from the registry. The supreme court shall prescribe rules establishing the period of time child abuse information is retained by the juvenile and district courts. A county attorney shall not retain child abuse information in excess of the time period the information would be retained under the rules prescribed by the supreme court.

3. If required by this subsection, for child abuse information in the central registry as of July 1,

1997, the central registry shall perform a review of the information utilizing the requirements for referral of child abuse information to the central registry as founded child abuse under section 232.71D. If the review indicates the information would not be placed in the registry as founded child abuse under section 232.71D, the information shall be expunged from the central registry. Child abuse information which is expunged from the central registry under this subsection shall not be retained by the department any longer than the time period in the rule for retaining information which is not placed in the central registry, allowing credit for the amount of time the information was held in the central registry. If the review indicates the child abuse information would be placed in the central registry under section 232.71D, the information shall be subject to the provisions of subsection 1, as to the time period the information is to be retained in the registry. A review shall be performed under any of the following conditions:

a. The department is considering the information while performing a record check evaluation under law or administrative rule.

b. A review is indicated under a procedure for performing reviews adopted by the department.

4. The department of human services shall adopt rules establishing the period of time child abuse information which is not maintained in the central registry is retained by the department.

99 Acts, ch 61, §13, 14

**Paragraphs 'c' or 'e' probably intended; corrective legislation is pending

Subsection 1, paragraphs a and b amended

CHAPTER 235B

ADULT ABUSE

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 supported community living service, sheltered workshop, or work activity center.

f. A person who performs inspections of elder group homes for the department of elder affairs and a resident advocate 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 by the end of the next business day.

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 assessment shall include interviews with the dependent adult, and, if appropriate, with the alleged perpetrator of the dependent adult abuse and with any person believed to have knowledge of the circumstances of the case. 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. If the department's assessment reveals that dependent adult abuse exists which might constitute a criminal offense, a report shall be made to the appropriate law enforcement agency. 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, or shall pursue other remedies provided by law. 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.

99 Acts, ch 129, §17
Subsection 2, paragraph f amended

235B.6 Authorized access.

1. Notwithstanding chapter 22, the confidentiality of all dependent adult abuse information shall be maintained, except as specifically provided by subsections 2 and 3.

2. Access to dependent adult abuse information other than unfounded dependent adult abuse information is authorized only to the following persons:

a. A subject of a report including all of the following:

(1) To an adult named in a report as a victim of abuse or to the adult's attorney or guardian ad litem.

(2) To a guardian or legal custodian, or that person's attorney, of an adult named in a report as a victim of abuse.

(3) To the person or the attorney for the person named in a report as having abused an adult.

b. A person involved in an investigation of dependent adult abuse including all of the following:

(1) A health practitioner or mental health professional who is examining, attending, or treating an adult whom such practitioner or professional believes or has reason to believe has been the victim of abuse or to a health practitioner or mental health professional whose consultation with respect to an adult believed to have been the victim of abuse is requested by the department.

(2) An employee or agent of the department responsible for the investigation of a dependent adult abuse report.

(3) A representative of the department involved in the certification or accreditation of an agency or program providing care or services to a dependent adult believed to have been a victim of abuse.

(4) A law enforcement officer responsible for assisting in an investigation of a dependent adult abuse allegation.

(5) A multidisciplinary team, if the department of human services approves the composition of the multidisciplinary team and determines that access to the team is necessary to assist the department in the investigation, diagnosis, assessment, and disposition of a case of dependent adult abuse.

(6) The mandatory reporter who reported the dependent adult abuse in an individual case.

(7) Each board of examiners specified under chapter 147 and the Iowa department of public health for the purpose of licensure, certification or registration, disciplinary investigation, or the renewal of licensure, certification or registration, or disciplinary proceedings of health care professionals.

c. A person providing care to an adult including all of the following:

(1) A licensing authority for a facility providing care to an adult named in a report.

(2) A person authorized as responsible for the care or supervision of an adult named in a report as a victim of abuse or a person named in a report as having abused an adult if the court or registry deems access to dependent adult abuse information by such person to be necessary.

(3) An employee or agent of the department responsible for registering or licensing or approving the registration or licensing of a person, or to an individual providing care to an adult and regulated by the department.

(4) The legally authorized protection and advocacy agency recognized pursuant to section 135C.2 if a person identified in the information as a victim or a perpetrator of abuse resided in or receives services from a facility or agency because the person is diagnosed as having a developmental disability or a mental illness.

(5) To an administrator of an agency certified by the department of human services to provide services under a medical assistance home and community-based services waiver, if the information concerns a person employed by or being considered by the agency for employment.

(6) To the administrator of an agency providing mental health, mental retardation, or developmental disability services under a county management plan developed pursuant to section 331.439, if the information concerns a person employed by or being considered by the agency for employment.

d. Relating to judicial and administrative proceedings, persons including all of the following:

(1) A court upon a finding that information is necessary for the resolution of an issue arising in any phase of a case involving dependent adult abuse.

(2) A court or administrative agency hearing an appeal for correction of dependent adult abuse information as provided in section 235B.10.

(3) An expert witness at any stage of an appeal necessary for correction of dependent adult abuse information as provided in section 235B.10.

e. Other persons including all of the following:

(1) A person conducting bona fide research on dependent adult abuse, but without information identifying individuals named in a dependent adult abuse report, unless having that information open to review is essential to the research or evaluation and the authorized registry officials give prior written approval and the adult, the adult's guardian or guardian ad litem, and the person named in a report as having abused an adult give permission to release the information.

(2) Registry or department personnel when necessary to the performance of their official duties or a person or agency under contract with the department to carry out official duties and functions of the registry.

(3) The department of justice for the sole purpose of the filing of a claim for reparation pursuant

to sections 915.21 and 915.84.

(4) A legally constituted adult protection agency of another state which is investigating or treating an adult named in a report as having been abused.

(5) The attorney for the department who is responsible for representing the department.

(6) A health care facility administrator or the administrator's designee, following the appeals process, for the purpose of hiring staff or continued employment of staff.

(7) The department of public safety for purposes of performing records checks required under section 135C.33.

3. Access to unfounded dependent adult abuse information is authorized only to those persons identified in subsection 2, paragraph "a", paragraph "b", subparagraphs (2) and (6), and paragraph "e", subparagraph (2).

99 Acts, ch 141, §32
Subsection 2, paragraph b, NEW subparagraph (7)

CHAPTER 235C

COUNCIL ON CHEMICALLY EXPOSED INFANTS AND CHILDREN

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 human services or the director's designee.

3. The director of the department of human rights or the director's designee.

4. The director of the department of education or the director's designee.

5. The director of the department of corrections or the director's designee.

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 or the administrator's designee selected by the board of the association of Iowa hospitals and health systems.

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.

18. Two consumer representatives selected by the governor, one of whom shall be a parent and one of whom shall be a nonparent family member.

The council shall be staffed by the Iowa department of public health. The council shall elect its own chairperson.

99 Acts, ch 141, §33, 34
Subsections 2-5 and 8 amended
NEW subsection 18

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 and the university of osteopathic medicine and health sciences, 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. This education campaign shall offer information to health professionals on assessment, laboratory testing, 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 accuracy of 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 child 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.

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. *Meetings.* 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.

99 Acts, ch 141, §35, 36; 99 Acts, ch 192, §33
Terminology change applied
Subsection 2, paragraph b amended
Subsection 5, unnumbered paragraph 2 stricken

CHAPTER 236

DOMESTIC ABUSE

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, ei-

ther from a private source approved by the court or from a source appointed by the court. Costs of counseling shall be paid in full or in part by the parties and taxed as court costs. If the court determines that the parties are unable to pay the costs, they may be paid in full or in part from the county treasury.

2. The court may grant a protection order or approve a consent agreement which may contain but is not limited to any of the following provisions:

a. That the defendant cease domestic abuse of the plaintiff.

b. That the defendant grant possession of the residence to the plaintiff to the exclusion of the defendant or that the defendant provide suitable alternate housing for the plaintiff.

c. That the defendant stay away from the plaintiff's residence, school, or place of employment.

d. The awarding of temporary custody of or establishing temporary visitation rights with regard to children under eighteen. In awarding temporary custody or temporary visitation rights, the court shall give primary consideration to the safety of the victim and the children. If the court finds that the safety of the victim or the children will be jeopardized by unsupervised or unrestricted visitation, the court shall condition or restrict visitation as to time, place, duration, or supervision, or deny visitation entirely, as needed to guard the safety of the victim and the children. The court shall also investigate whether any other existing orders awarding custody or visitation rights should be modified.

e. Unless prohibited pursuant to 28 U.S.C. § 1738B, 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 or extend its order or a consent agreement at any time upon a petition filed by either party and after notice and hearing. The court may extend the order if the court, after hearing at which the defendant has the opportunity to be heard, finds that the defendant continues to pose a threat to the safety of the victim, persons residing with the victim, or members of the victim's immediate family. At the time of the extension, the parties need not meet the requirement in section 236.2, subsection 2, paragraph "d", that the parties lived together during the last year if the parties met the requirements of section 236.2, subsection 2, paragraph "d", at the time of the original order. The number of extensions that can be granted by the court is not limited.

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. The court may order that the defendant pay the plaintiff's attorneys fees and court costs.

4. An order or consent agreement under this section shall not affect title to real property.

5. A copy of any order or approved consent agreement shall be issued to the plaintiff, the defendant, 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.

99 Acts, ch 57, §1

Subsection 2, paragraph e, unnumbered paragraph 2 amended

236.19 Foreign protective orders — registration — enforcement.

1. As used in this section, "*foreign protective order*" means a protective order entered in a state other than Iowa which would be 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 an 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 it had been entered in Iowa.

2. A copy of a permanent foreign protective order authenticated in accordance with the statutes of this state may be filed with the clerk of the district court in any county in which the person in whose favor the order was entered may be present. The clerk shall provide copies of the order as required by section 236.5.

3. A foreign protective order so filed has the same effect and shall be enforced in the same manner as a protective order issued in this state.

99 Acts, ch 57, §2

Subsection 2 amended

CHAPTER 236A

CONFIDENTIAL COMMUNICATIONS — COUNSELORS AND VICTIMS

Repealed by 99 Acts, ch 114, §54; see §915.20A

CHAPTER 237

CHILD FOSTER CARE FACILITIES

237.1 Definitions.

As used in this chapter:

1. *Administrator* means the administrator of that division of the department designated by the director of human services to administer this chapter or the administrator's designee.

2. *Agency* means a person, as defined in section 4.1, subsection 20, which provides child foster care and which does not meet the definition of an individual in subsection 7.

3. *Child* means child as defined in section 234.1, subsection 2.

4. *Child foster care* means the provision of parental nurturing, including but not limited to the furnishing of food, lodging, training, education, supervision, treatment or other care, to a child on a full-time basis by a person other than a relative or guardian of the child, but does not include:

a. Care furnished by an individual person who receives the child of a personal friend as an occasional and personal guest in the individual person's home, free of charge and not as a business.

b. Care furnished by an individual person with whom a child has been placed for lawful adoption, unless that adoption is not completed within two years after placement.

c. Care furnished by a private boarding school subject to approval by the state board of education pursuant to section 256.11.

d. Child care furnished by a child care center or a child care home as defined in section 237A.1.

e. Care furnished in a hospital licensed under chapter 135B or care furnished in a nursing facility licensed under chapter 135C.

5. *Department* means the department of human services.

6. *Facility* means the personnel, program, physical plant, and equipment of a licensee.

7. *Individual* means an individual person or a married couple who provides child foster care in a single-family home environment and which does not meet the definition of an agency in subsection 2.

8. *Licensee* means an individual or an agency licensed by the administrator under this chapter.

99 Acts, ch 192, §29

Subsection 4, paragraph d amended

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 compensate licensed foster homes for property damage, at replacement cost, or for 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. 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 one hundred dollars for all claims arising out of one or more occurrences during a fiscal year related to a single foster home. The fund is not liable for damages in excess of three hundred thousand dollars for all claims arising out of one or more occurrences during a fiscal year related to a single home.

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.

99 Acts, ch 55, §1-5

1999 amendment to subsection 6 applies to fiscal years beginning on or after July 1, 1999; limit on foster home liability in subsection 6, Code 1999, applies for period beginning January 1, 1999, and ending June 30, 1999; 99 Acts, ch 55, §5

Subsection 3 amended

Subsection 4, paragraphs g and h stricken and former paragraph i relettered as g

Subsection 6 amended

237.20 Local board duties.

A local board shall:

1. Review at least every six months the case of each child receiving foster care assigned to the local board by the state board to determine whether satisfactory progress is being made toward the goals of the case permanency plan pursuant to section 237.22. As much as is possible, review shall be conducted immediately prior to court reviews of the case.

During each review, the agency responsible for the placement of or services provided to the child shall attend the review and the local board shall review all of the following:

a. The past, current, and future status of the child and placement as shown through the case permanency plan and case progress reports submitted by the agency responsible for the placement of the child and other information the board may require.

b. The efforts of the agency responsible for the placement of the child to locate and provide services to the biological or adoptive parents of the child.

c. The efforts of the agency responsible for the placement of the child to facilitate the return of the child to the home or to find an alternative permanent placement other than foster care if reunion with the parent or previous custodian is not feasible. The agency shall report to the board all factors which either favor or mitigate against a decision or alternative with regard to these matters.

d. Any problems, solutions, or alternatives which may be capable of investigation, or other matters with regard to the child which the agency responsible for the placement of the child or the board feels should be investigated with regard to the best interests of the state or of the child.

e. The compliance of the interested parties with the decision-making rights and responsibilities contained in the family foster care or preadoptive care agreement applicable to a child.

The review shall include issues pertaining to the case permanency plan and shall not include issues that do not pertain to the case permanency plan. A person notified pursuant to subsection 4 shall either attend the review or submit testimony as requested by the local board or in accordance with a written protocol jointly developed by the state board and the department. Oral testimony may, upon the request of the testifier or upon motion of

the local board, be given in a private setting when to do so would facilitate the presentation of evidence. Local board questions shall pertain to the permanency plan and shall not include issues that do not pertain to the permanency plan.

A person who gives oral testimony has the right to representation by counsel at the review.

An agency or individual providing services to the child shall submit testimony as requested by the board. The testimony may be written or oral, or may be a tape recorded telephone call. Written testimony from other interested parties may also be considered by the board in its review.

2. *a.* Submit to the appropriate court within fifteen days after the review under subsection 1, the findings and recommendations of the review. The local board shall ensure that the most recent report is available for a court hearing. The report to the court shall include information regarding the case permanency plan and the progress in attaining the permanency goals. The report shall not include issues that do not pertain to the case permanency plan. The findings and recommendations shall include the proposed date of the next review by the local board. The local board shall notify the persons specified in subsection 4 of the findings and recommendations.

b. If the person or agency responsible for services provided to the child disagrees with the review findings or recommendations, the person or agency shall respond during the review or submit a statement to the local board and the court within ten working days of receiving the local board's re-

port. The response shall explain the reasons the person or agency disagrees with the board's findings or does not plan to implement the board's recommendations.

3. Encourage placement of the child in the most appropriate setting reflecting the provisions of chapter 232.

4. Notify the following persons at least ten days before the review of a case of a child receiving foster care:

a. The person, court, or agency responsible for the child.

b. The parent or parents of the child unless termination of parental rights has occurred pursuant to section 232.117.

c. The foster care provider of the child.

d. The child receiving foster care if the child is fourteen years of age or older. The child shall be informed of the review's purpose and procedure, and of the right to have a guardian ad litem present.

e. The guardian ad litem of the foster child. An attorney appointed as guardian ad litem shall be eligible for compensation under section 232.141, subsection 2.

f. The department.

g. The county attorney.

h. The person providing services to the child or the child's family.

The notice shall include a statement that the person notified has the right to representation by counsel at the review.

99 Acts, ch 135, §22

Subsection 4, paragraph e amended

CHAPTER 237A

CHILD CARE FACILITIES

237A.1 Definitions.

As used in this chapter unless the context otherwise requires:

1. "*Administrator*" means the administrator of the division of the department designated by the director to administer this chapter.

2. "*Child*" means a person under eighteen years of age.

3. "*Child care*" means the care, supervision, and guidance of a child by a person other than the child's parent, guardian, or custodian for periods of less than twenty-four hours per day per child on a regular basis, but does not include care, supervision, and guidance of a child by any of the following:

a. An instructional program for children who are attending prekindergarten as defined by the state board of education under section 256.11 or a higher grade level and are at least four years of age administered by any of the following:

(1) A public or nonpublic school system accredited by the department of education or the state board of regents.

(2) A nonpublic school system which is not accredited by the department of education or the state board of regents.

b. A program provided under section 279.49 or 280.3A.

c. Any of the following church-related programs:

(1) An instructional program.

(2) A youth program other than a preschool, before or after school child care program, or other child care program.

(3) A program providing care to children on church premises while the children's parents are attending church-related or church-sponsored activities on the church premises.

d. Short-term classes of less than two weeks' duration held between school terms or during a break within a school term.

e. 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.

f. A program operated not more than one day per week by volunteers which meets all of the following conditions:

(1) Not more than eleven children are served per volunteer.

(2) The program operates for less than four hours during any twenty-four-hour period.

(3) The program is provided at no cost to the children's parent, guardian, or custodian.

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 after school program continuously offered throughout the school year calendar to children who are at least five years of age and are enrolled in school, and attend the program intermittently. The program must be provided through a nominal membership fee or at no cost.

i. A special activity program which meets less than four hours per day for the sole purpose of the special activity. Special activity programs include but are not limited to music or dance classes, organized athletic or sports programs, recreational classes, scouting programs, and hobby or craft clubs or classes.

j. A nationally accredited camp.

k. A structured program for the purpose of providing therapeutic, rehabilitative, or supervisory services to children under any of the following:

(1) A purchase of service or managed care contract with the department.

(2) A contract approved by a local decategorization governance board created under section 232.188.

(3) An arrangement approved by a juvenile court order.

l. Care provided on-site to children of parents residing in an emergency, homeless, or domestic violence shelter.

4. "Child care center" or "center" means a facility providing child care or preschool services for seven or more children, except when the facility is registered as a child care home.

5. "Child care facility" or "facility" means a child care center, preschool, or a registered child care home.

6. "Child care home" means a person or program providing child care as a family child care home or a group child care home as authorized under section 237A.3.

7. "Children receiving care on a part-time basis" means children who are present in a child care home for ninety hours per month or less.

8. "Department" means the department of human services.

9. "Director" means the director of human services.

10. a. "Family child care home" means a person or program which provides child 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 child care home" means a facility providing child care for more than six but less than twelve children as authorized in accordance with section 237A.3, subsection 2, or for less than sixteen children at any one time as authorized in accordance with section 237A.3, subsection 3.

11. "Infant" means a child who is less than twenty-four months of age.

12. "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.

13. "Preschool" means a child 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.

14. "School" means kindergarten or a higher grade level.

15. "State child care advisory council" means the state child care advisory council established pursuant to sections 237A.21 and 237A.22.

99 Acts, ch 192, §1
Section amended

237A.2 Licensing of child care centers.

1. A person shall not establish or operate a child care center without obtaining a license under the provisions of this chapter. A center may operate for a specified period of time, to be established by rule of the department, if application for a license has been made. If the department denies an application for an initial license, notwithstanding section 17A.8, the applicant center shall not continue to provide child care pending the outcome of an evidentiary hearing. The department shall issue a license if it determines that all of the following conditions have been met:

a. An application for a license or a renewal has been filed with the administrator on forms provided by the department.

b. The center is maintained to comply with state health and fire laws.

c. The center is maintained to comply with rules adopted under section 237A.12.

2. A person denied a license under the provisions of this section shall receive written notice of the denial stating the reasons for denial and shall be provided with an opportunity for an evidentiary hearing. Licenses granted under this chapter shall

be valid for one year from the date of issuance unless revoked or suspended in accordance with the provisions of section 237A.8 or reduced to a provisional license under subsection 3. A record of the license shall be kept by the department. The license shall be posted in a conspicuous place in the center and shall state the particular premises in which child care may be offered and the number of individuals who may be received for care at any one time. A greater number of children than is authorized by the license shall not be kept in the center at any one time.

3. The administrator may reduce a previously issued license to a provisional license or issue a provisional license for a period of time not to exceed one year if the center does not meet standards required under this section. A provisional license shall not be renewable in regard to the same standards for more than two consecutive years. A provisional license shall be posted in a conspicuous place in the center as provided in this section. If written plans to bring the center up to standards, giving specific dates for completion of work, are submitted to and approved by the department, the provisional license shall be renewable as provided in this subsection.

4. A program which is not a child care center by reason of the exceptions to the definition of child care in section 237A.1, subsection 3, but which provides care, supervision, and guidance to a child may be issued a license if the program complies with all the provisions of this chapter.

5. If the department has denied or revoked a license because the applicant or person has continually or repeatedly failed to operate a licensed center in compliance with this chapter and rules adopted pursuant to this chapter, the person shall not own or operate a child care center for a period of six months from the date the license is denied or revoked. The department shall not act on an application for a license submitted by the applicant or person during the six-month period.

99 Acts, ch 192, §2
Section amended

237A.3 Registration of child care homes.

1. *a.* A person who operates or establishes a family child 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 child 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 child 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 authorized by the registration certificate shall be kept in the family child care home at any one time. Howev-

er, a registered or unregistered family child 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 in kindergarten or a higher grade level.

c. A family child 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 child 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 child care home, if the person who operates or establishes the home is a child's parent, guardian, or custodian and the child is not attending school in kindergarten or a higher grade level or is not receiving child care full-time on a regular basis from another person, the child shall be considered to be receiving child 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 care home provider or program which is not a family child care home by reason of the definition of child care in section 237A.1, but which provides care, supervision, or guidance to a child may be issued a certificate of registration under this chapter.

2. *a.* A person shall not operate or establish a group child care home unless the person obtains a certificate of registration under this chapter. Two persons who comply with the individual requirements for registration as a group child care provider may request that the certificate be issued to the two persons jointly and the department shall issue the joint certificate provided the group child care home requirements for registration are met. All other requirements of this chapter for registered family child care homes and the rules adopted under this chapter for registered family child care homes apply to group child care homes. In addition, the department shall adopt rules relating to the provision in group child 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.

b. Except as provided in subsection 3, a group child care home shall not provide child care to more than eleven children at any one time. If there are more than six children present for a period of two hours or more, the group child care home must have at least one responsible individual who is at least fourteen years of age present to assist the group child care provider in accordance with either of the following conditions:

(1) If the responsible individual is a joint holder of the certificate of registration, not more than four of the children present shall be less than twenty-four months of age and not more than ten of the children present shall be twenty-four months of age or older but not attending school in kindergarten or a higher grade level.

(2) If the responsible individual is not a joint holder of the certificate of registration, but is at least fourteen years of age, not more than four of the children shall be less than twenty-four months of age and each child in excess of six children shall be attending school in kindergarten or a higher grade level.

3. A registered group child 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 child 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 child care home, the child would be unattended.

c. The group child care home provides care to a sibling of the child.

4. A person who operates or establishes a child 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 care by the child care home, the children receiving child foster care shall be considered the children of the person operating the child 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 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.

99 Acts, ch 192, §3
Section amended

237A.3A Registration of child care homes — pilot project.

1. *Pilot project.* The department shall implement a pilot project applying the provisions of this section to registered family or group child care homes located in one county of this state. The provisions of this section shall not apply to unregistered family child care homes located in the pilot project county. The county selected for the pilot project shall be a rural county where there is interest among child care providers and consumers in implementing the pilot project. During the fiscal year beginning July 1, 1999, the department shall implement the pilot project in one county in each of the department's regions where there is interest in implementing the pilot project. In addition, the department may implement the pilot project in one other county in each of the department's regions where there is interest in implementing the pilot project. If a definition in section 237A.1, a provision in section 237A.3, or an administrative rule adopted under this chapter is in conflict with this section, this section and the rules adopted to implement this section shall apply to the pilot project.

2. *Definition.* For the purposes of this section, unless the context otherwise requires, "child care home" means a person registered under this section to provide child care in a pilot project county.

3. *Registration.*

a. The registration process for a child care home under this section shall be repeated on an annual basis as provided by rule.

b. A person who is a child foster care licensee under chapter 237 must register as a child care home provider in order to operate or establish a child care home in a pilot project county.

c. A person or program in a pilot project county which provides care, supervision, and guidance to a child which is not defined as child care under section 237A.1 may be issued a certificate of registration under this section.

d. (1) Four levels of registration requirements are applicable to registered child care homes in accordance with subsections 10 through 13 and rules adopted to implement this section. The rules shall apply requirements to each level for the amount of space available per child, provider qualifications and training, and other minimum standards.

(2) The rules shall allow a child care home to be registered at level II, III, or IV for which the provid-

er is qualified even though the amount of space required to be available for the maximum number of children authorized for that level exceeds the actual amount of space available in that child care home. However, the total number of children authorized for the child care home at that level of registration shall be limited by the amount of space available per child.

4. *Number of children.* In determining the number of children cared for at any one time in a child care home, each child present in the child care home shall be considered to be receiving care unless the child is described by one of the following exceptions:

a. The child's parent, guardian, or custodian operates or established the child care home and the child is attending school or the child receives child care full-time on a regular basis from another person.

b. The child has been present in the child care home for more than seventy-two consecutive hours and meets the requirements of paragraph "a" as though the person who operates or established the child care home is the child's parent, guardian, or custodian.

5. *Registration certificate.* The department shall issue a certificate of registration upon receipt of a statement from the child care home or an inspection verifying that the child care home complies with rules adopted by the department. The certificate of registration shall be posted in a conspicuous place in the child care home and shall state the name of the registrant, the registration level of the child care home, the number of children who may be present for care at any one time, and the address of the child care home. In addition, the certificate shall include a check list of registration compliances.

6. *Revocation or denial of registration.* If the department has denied or revoked a certificate of registration because a person has continually or repeatedly failed to operate a registered or licensed child care facility in compliance with this chapter and rules adopted pursuant to this chapter, the person shall not operate or establish a registered child care home for a period of six months from the date the registration or license is denied or revoked. The department shall not act on an application for registration submitted by the person during the six-month period.

7. *Inclement weather exception.* If school classes have been cancelled due to inclement weather, a registered child care home may have additional children present in accordance with the authorization for the registration level of the child care home and subject to all of the following conditions:

a. The child care home has prior written approval from the parent or guardian of each child present in the child care home concerning the presence of additional children in the child care home.

b. The child care home has a responsible individual, age fourteen or older, on duty to assist the care provider as required for the registration level of the child care home pursuant to subsections 10 through 13.

c. One or more of the following conditions is applicable to each of the additional children present in the child care home:

(1) The child care 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 child care home, the child would be unattended.

(3) The child care home regularly provides care to a sibling of the child.

8. *Fire safety.* 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 in a registered child care home.

9. *Sick children.* The department shall adopt rules relating to the provision of a separate area for sick children in those child care homes which are registered at levels III and IV.

10. *Level I registration.* All of the following requirements shall apply to a level I registered child care home:

a. Except as otherwise provided in this subsection, not more than six children shall be present at any one time.

b. Not more than three children who are infants shall be present at any one time.

c. In addition to the number of children authorized in paragraph "a", not more than two children who attend school may be present for a period of less than two hours at any one time.

d. Not more than eight children shall be present at any one time when an inclement weather exception is in effect.

11. *Level II registration.* All of the following requirements shall apply to a level II registered child care home:

a. Except as otherwise provided in this subsection, not more than six children shall be present at any one time.

b. Not more than three children who are infants shall be present at any one time.

c. In addition to the number of children authorized in paragraph "a", not more than four children who attend school may be present for a period of more than two hours at any one time.

d. In addition to the number of children authorized in paragraph "a", not more than two children who are receiving care on a part-time basis may be present.

e. Not more than twelve children shall be present at any one time when an inclement weather exception is in effect. However, if more than eight children are present during an inclement weather exception, the provider shall be assisted by a re-

sponsible individual who is at least fourteen years of age.

12. *Level III registration.* All of the following requirements shall apply to a level III registered child care home:

a. Except as otherwise provided in this subsection, not more than six children shall be present at any one time.

b. Not more than three children who are infants shall be present at any one time.

c. In addition to the number of children authorized in paragraph "a", not more than four children who attend school may be present.

d. In addition to the number of children authorized in paragraph "a", not more than two children who are receiving care on a part-time basis may be present.

e. Not more than twelve children shall be present at any one time when an inclement weather exception is in effect.

f. If more than eight children are present at any one time for a period of more than two hours, the provider shall be assisted by a responsible individual who is at least fourteen years of age.

13. *Level IV registration.* All of the following requirements shall apply to a level IV registered child care home:

a. Except as otherwise provided in this subsection, not more than twelve children shall be present at any one time. If more than eight children are present, a second person must be present who meets the individual qualifications for child care home registration established by rule of the department.

b. Not more than four children who are infants shall be present at any one time.

c. In addition to the number of children authorized in paragraph "a", not more than two children who attend school may be present for a period of less than two hours at any one time.

d. In addition to the number of children authorized in paragraph "a", not more than two children who are receiving care on a part-time basis may be present.

e. Not more than sixteen children shall be present at any one time when an inclement weather exception is in effect. If more than eight children are present at any one time during an inclement weather exception, the provider shall be assisted by a responsible individual who is at least eighteen years of age.

99 Acts, ch 192, §4–11, 37

Exceptions to child care home requirements during transition period; 99 Acts, ch 192, §37

Reports regarding implementation of expansion of pilot project; proposal for administrative civil penalties; 99 Acts, ch 192, §37

Subsection 1 amended

Subsection 2 stricken and rewritten

Subsection 3, paragraph c amended

Subsection 3, paragraph d, subparagraph (2) amended

Subsection 4, paragraph a amended

Subsection 6 amended

Subsection 11, paragraph c amended

Subsection 12, paragraph f amended

237A.4 Inspection and evaluation.

The department shall make periodic inspections of licensed centers to ensure compliance with licensing requirements provided in this chapter, and the local boards of health may make periodic inspections of licensed centers to ensure compliance with health-related licensing requirements provided in this chapter. The administrator may inspect records maintained by a licensed center and may inquire into matters concerning these centers and the persons in charge. The administrator shall require that the center be inspected by the state fire marshal or a designee for compliance with rules relating to fire safety before a license is granted or renewed. The administrator or a designee may periodically visit registered child care homes for the purpose of evaluation of an inquiry into matters concerning compliance with rules adopted under section 237A.12. Evaluation of child care homes under this section may include consultative services provided pursuant to section 237A.6.

99 Acts, ch 192, §12
Section amended

237A.5 Personnel.

1. All personnel in licensed or registered facilities shall have good health as evidenced by a report following a preemployment physical examination taken within six months prior to beginning employment. The examination shall include communicable disease tests by a licensed physician as defined in section 135C.1 and shall be repeated every three years after initial employment. Controlled medical conditions which would not affect the performance of the employee in the capacity employed shall not prohibit employment.

2. a. If a person is being considered for licensure or registration under this chapter, or for employment involving direct responsibility for a child or with access to a child when the child is alone, by a child care facility subject to licensure or registration under this chapter, or if a person will reside in a facility, and if the person has been convicted of a crime or has a record of founded child abuse, the department shall perform an evaluation to determine whether the crime or founded child abuse warrants prohibition of licensure, registration, employment, or residence in the facility. The department shall conduct criminal and child abuse record checks in this state and may conduct these checks in other states. The evaluation shall be performed in accordance with procedures adopted for this purpose by the department.

b. If the department determines that a person has committed a crime or has a record of founded child abuse and is licensed, employed by a licensee or registrant or registered under this chapter, or resides in a licensed or registered facility the department shall notify the licensee or registrant

that an evaluation will be conducted to determine whether prohibition of the person's licensure, registration, employment, or residence is warranted.

c. In an evaluation, the department shall consider the nature and seriousness of the crime or founded child abuse in relation to the position sought or held, the time elapsed since the commission of the crime or founded child abuse, the circumstances under which the crime or founded child abuse was committed, the degree of rehabilitation, the likelihood that the person will commit the crime or founded child abuse again, and the number of crimes or founded child abuses committed by the person involved. The department may permit a person who is evaluated to be licensed, registered, employed, or to reside, or to continue to be licensed, registered, employed, or to reside in a licensed facility, if the person complies with the department's conditions relating to the person's licensure, registration, employment, or residence, which may include completion of additional training. The department has final authority in determining whether prohibition of the person's licensure, registration, employment, or residence is warranted and in developing any conditional requirements under this paragraph.

d. If the department determines that the person has committed a crime or has a record of founded child abuse which warrants prohibition of licensure, registration, employment, or residence, the person shall not be licensed or registered under this chapter to operate a child care facility and shall not be employed by a licensee or registrant or reside in a facility licensed or registered under this chapter.

e. If it has been determined that a child receiving child care from a child care facility is the victim of founded child abuse committed by an employee, license or registration holder, or resident of the child care facility for which a report is placed in the central registry pursuant to section 232.71D, the administrator shall provide notification at the time of the determination to the parents, guardians, and custodians of children receiving care from the facility. A notification made under this paragraph shall identify the type of abuse but shall not identify the victim or perpetrator or circumstances of the founded abuse.

3. In addition to the record checks required under subsection 2, the department of human services may conduct dependent adult abuse record checks in this state and may conduct these checks in other states, on a random basis. The provisions of subsection 2, relative to an evaluation following a determination that a person has been convicted of a crime or has a record of founded child abuse, shall also apply to a random dependent adult abuse record check conducted under this subsection.

4. On or after July 1, 1994, a licensee or registrant shall inform all new applicants for employment of the possibility of the performance of a rec-

ord check and shall obtain, from the applicant, a signed acknowledgment of the receipt of the information.

5. On or after July 1, 1994, a licensee or registrant shall include the following inquiry in an application for employment: "Do you have a record of founded child or dependent adult abuse or have you ever been convicted of a crime, in this state or any other state?"

6. A person who receives public funds for providing child care and who is not registered or licensed under this chapter and individuals who reside with the person shall be subject to the provisions of subsection 2 as though the person either is being considered for registration or is registered to provide child care under this chapter. If the person or individual residing with the person would be prohibited from licensure, registration, employment, or residence under subsection 2, the person shall not provide child care and is not eligible to receive public funds to do so. A person who continues to provide child care in violation of this subsection is subject to penalty under section 237A.19 and injunction under section 237A.20.

7. A person who serves as an unpaid volunteer in a child care facility shall not be required to complete training as a mandatory reporter of child abuse under section 232.69 or under any other requirement.

99 Acts, ch 192, §13
Subsections 2, 6, and 7 amended

237A.7 Confidential information.

Anyone who acquires through the administration of this chapter information relative to an individual in a child care facility or to a relative of the individual shall not, directly or indirectly, disclose the information except upon inquiry before a court of law or with the written consent of the individual or, in the case of a child, the written consent of the parent or guardian or as otherwise specifically required or allowed by law.

This section shall not prohibit the disclosure of information relative to the structure and operation of a facility nor shall it prohibit the statistical analysis by duly authorized persons of data collected by virtue of this chapter, or the publication of the results of the analysis in a manner which does not disclose information identifying individual persons.

99 Acts, ch 192, §14
Unnumbered paragraph 1 amended

237A.8 Violations — actions against license or registration.

The administrator, after notice and opportunity for an evidentiary hearing before the department of inspections and appeals, may suspend or revoke a license or certificate of registration issued under this chapter or may reduce a license to a provisional license if the person to whom a license or certificate is issued violates a provision of this chapter or

if the person makes false reports regarding the operation of the child care facility to the administrator or a designee of the administrator. The administrator shall notify the parent, guardian, or legal custodian of each child for whom the person provides child care at the time of action to suspend or revoke a license or certificate of registration.

99 Acts, ch 192, §15
Section amended

237A.12 Rules.

1. Subject to the provisions of chapter 17A, the administrator shall adopt rules setting minimum standards to provide quality child care in the operation and maintenance of child care centers and registered child care homes, relating to all of the following:

a. The number and qualifications of personnel necessary to assure the health, safety, and welfare of children in the facilities. Rules for facilities which are preschools shall be drawn so that any staff-to-children ratios which relate to the age of the children enrolled shall be based on the age of the majority of the children served by a particular class rather than on the age of the youngest child served.

b. Physical facilities.

c. The adequacy of activity programs and food services available to the children. The administrator shall not restrict the use of or apply nutritional standards to a lunch or other meal which is brought to the center or child care home by a school-age child for the child's consumption.

d. Policies established by the center for parental participation.

e. Programs for education and in-service training of staff.

f. Records kept by the facilities.

g. Administration.

h. Health, safety, and medical policies for children.

2. Rules adopted by the state fire marshal for buildings, other than school buildings, used as child care centers as an adjunct to the primary purpose of the building shall take into consideration that children are received for temporary care only and shall not differ from rules adopted for these buildings when they are used by groups of persons congregating from time to time in the primary use and occupancy of the buildings. However, the rules may require a fire-rated separation from the remaining portion of the building if the fire marshal determines that the separation is necessary for the protection of children from a specific flammable hazard.

3. Rules relating to fire safety shall be adopted under this chapter by the state fire marshal in consultation with the department. Rules adopted by the state fire marshal for a building which is owned or leased by a school district or accredited nonpublic school and used as a child care facility shall not

differ from standards adopted by the state fire marshal for school buildings under chapter 100. Rules relating to sanitation shall be adopted by the department in consultation with the director of public health. All rules shall be developed in consultation with the state child care advisory council. The state fire marshal shall inspect the facilities.

4. If a building is owned or leased by a school district or accredited nonpublic school and complies with standards adopted by the state fire marshal for school buildings under chapter 100, the building is considered appropriate for use by a child care facility. The rules adopted by the administrator under this section shall not require the facility to comply with building requirements which differ from requirements for use of the building as a school.

5. Standards and requirements set by a city or county for a building which is owned or leased by a school district or accredited nonpublic school and used as a child care facility shall take into consideration that children are received for temporary care only and shall not differ from standards and requirements set for use of the building as a school.

99 Acts, ch 192, §16
Section amended

237A.19 Penalty.

A person who establishes, conducts, manages, or operates a center without a license shall be guilty of a serious misdemeanor. Each day of continuing violation after conviction, or notice from the department by certified mail of the violation, shall be considered a separate offense.

If registration is required under section 237A.3, a person who establishes, conducts, manages, or operates a child care home without registering or a person who operates a child care home contrary to section 237A.5, is guilty of a simple misdemeanor. Each day of continuing violation after conviction, or notice from the department by certified mail of the violation, is a separate offense. A single charge alleging continuing violation may be made in lieu of filing charges for each day of violation.

99 Acts, ch 192, §17
Unnumbered paragraph 2 amended

237A.20 Injunction.

A person who establishes, conducts, manages, or operates a center without a license or a child care home without a certificate of registration, if registration is required under section 237A.3, may be restrained by temporary or permanent injunction. A person who has been convicted of a crime against a person or a person with a record of founded child abuse may be restrained by temporary or permanent injunction from providing unregistered, registered, or licensed child care. The action may be instituted by the state, the county attorney, a political subdivision of the state, or an interested person.

99 Acts, ch 192, §18
Section amended

237A.21 State child care advisory council.

1. A state child care advisory council is established consisting of not more than thirty-five members from urban and rural areas across the state. The membership shall include, but is not limited to, all of the following persons or representatives with an interest in child care: a licensed center, a registered child care home from a county with a population of less than twenty-two thousand, an unregistered child care home, a parent of a child in child care, appropriate governmental agencies, and other members as deemed necessary by the director. The members are eligible for reimbursement of their actual and necessary expenses while engaged in performance of their official duties.

2. Members shall be appointed by the director from a list of names submitted by a nominating committee to consist of one member of the state council established pursuant to this section, one member of the department's child care staff, three consumers of child care, and one member of a professional child care organization. Two names shall be submitted for each appointment. Members shall be appointed for terms of three years but no member shall be appointed to more than two consecutive terms. The state council shall develop its own operational policies which are subject to departmental approval.

3. The membership of the council shall be appointed in a manner so as to provide equitable representation of persons with an interest in child care and shall include all of the following:

- a. Two parents of a child served by a registered child care home.
- b. Two parents of a child served by a licensed center.
- c. Two not-for-profit child care providers.
- d. Two for-profit child care providers.
- e. Two family child care home providers.
- f. Two group child care home providers.
- g. One child care resource and referral service grantee.
- h. One nongovernmental child advocacy group representative.
- i. One designee of the department of human services.
- j. One designee of the Iowa department of public health.
- k. One designee of the department of education.
- l. One head start program provider.
- m. Two legislators appointed in a manner so that both major political parties are represented.

99 Acts, ch 192, §19
Section amended

237A.22 Duties of state child care advisory council.

The state child care advisory council shall do all of the following:

1. Consult with and make recommendations to the department concerning policy issues relating to child care.

2. Advise the department concerning services relating to child care, including but not limited to any of the following:

- a. Resource and referral services.
- b. Provider training.
- c. Quality improvement.
- d. Public-private partnerships.
- e. Standards review and development.

3. Assist the department in developing an implementation plan to provide seamless service to recipients of public assistance which includes child care services. For the purposes of this subsection, "seamless service" means coordination, where possible, of the federal and state requirements which apply to child care.

4. Advise and provide technical services to the director of the department of education or the director's designee, upon request, relating to prekindergarten, kindergarten, and before and after school programming and facilities.

99 Acts, ch 192, §20
Section amended

237A.23 Child care training and development system.

1. The departments of education, health, and human services shall jointly establish a leadership council for child care training and development in this state. In addition to representatives of the three departments, the leadership council shall include but is not limited to representatives of community colleges, institutions of higher learning under the state board of regents and private institutions of higher education, the Iowa cooperative extension service in agriculture and home economics, and child care resource and referral service agencies.

2. The charge of the council is to develop a proposal for a statewide child care training and development system and to monitor implementation of the proposal. The purpose of the system is to improve support for persons providing or administering child care services. The system shall be developed in a manner so as to incorporate and enhance existing efforts to provide this support.

3. The proposal for the child care training and development system shall include all of the following elements:

- a. Identification of core competencies for providers and administrators that may be incorporated into professional standards.
- b. Establishing levels for professional development.
- c. Implementing a professional experience registry to track the training, educational attainment, and experience of providers and administrators.
- d. Implementing a unified training and technical assistance approach for identifying needs, en-

sure equal access, and establishing minimum requirements for training and trainers.

e. Establishing an articulation process to permit recognition of training provided by entities that do not grant academic credit by entities that do grant academic credit.

f. Implementing a financing structure to support the training registry.

g. Identifying other means for enhancing the training and development of persons who provide and administer child care.

4. The proposal shall include an implementation plan and budget provisions and may provide for implementation through a contract with a private nonprofit agency.

99 Acts, ch 192, §21, 38

Submission of initial proposal for statewide child care training and development system by December 31, 1999, for implementation in fiscal year beginning July 1, 2001; 99 Acts, ch 192, §38

NEW section

237A.24 and 237A.25 Reserved.

237A.26 Statewide resource and referral services — grants.

1. The department shall administer a statewide grant program for child care resource and referral services. Grants shall only be awarded to community-based nonprofit incorporated agencies and public agencies. Grants shall be awarded to facilitate the establishment of regional resource and referral agencies throughout the state, based upon the distribution of the child population in the state.

2. The department shall provide oversight of and annually evaluate an agency which is awarded a grant to provide resource and referral services to a region.

3. An agency which receives a grant to provide resource and referral services shall perform both of the following functions:

a. Organize assistance to child care homes utilizing training levels based upon the homes' degrees of experience and interest.

b. Operate in partnership with both public and private interests and coordinate resource and referral services with existing community services.

4. An agency, to be eligible to receive a grant to provide resource and referral services, must match the grant with financial resources equal to at least twenty-five percent of the amount of the grant. The financial resources may include a private donation, an in-kind contribution, or a public funding source other than a separate state grant for child care service improvement.

5. An agency, to be eligible to receive a grant to provide resource and referral services, must have a board of directors if the agency is an incorporated nonprofit agency or must have an advisory board if the agency is a public agency, to oversee the provision of resource and referral services. The board shall include providers, consumers, and other persons interested in the provision or delivery of child care services.

6. An agency which receives a child care resource and referral grant shall provide all of the following services:

a. Assist families in selecting quality child care. The agency must provide referrals to registered and licensed child care facilities, and to persons providing care, supervision, and guidance of a child which is not defined as child care under section 237A.1 and may provide referrals to unregistered providers.

b. Assist child care providers in adopting appropriate program and business practices to provide quality child care services.

c. Provide information to the public regarding the availability of child care services in the communities within the agency's region.

d. Actively encourage the development of new and expansion of existing child care facilities in response to identified community needs.

e. Provide specialized services to employers, including the provision of resource and referral services to employee groups identified by the employer and the provision of technical assistance to develop employer-supported child care programs.

f. Refer eligible child care facilities to the federal child care food programs.

g. Loan toys, other equipment, and resource materials to child care facilities.

h. Administer funding designated within the grant to provide a substitute caregiver program for registered child care homes to provide substitute care in a home when the home provider is ill, on vacation, receiving training, or is otherwise unable to provide the care.

7. The department may contract with an agency receiving a child care resource and referral grant to perform any of the following functions relating to publicly funded services providing care, supervision, and guidance of a child:

a. Determine an individual's eligibility for the services in accordance with income requirements.

b. Administer a voucher, certificate, or other system for reimbursing an eligible provider of the services.

99 Acts, ch 192, §22
Section amended

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 care in this chapter relating to the provision of child 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.

99 Acts, ch 192, §23
Section amended

237A.28 Child care credit fund.

A child 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 care services as annually appropriated by the general assembly.

99 Acts, ch 192, §24
Section amended

237A.29 State and federal funding of child 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, and guidance of a child for periods of less than twenty-four hours per day on a regular basis unless the care, supervision, and guidance is defined as child care as used in this chapter.

99 Acts, ch 192, §25
Section amended

237A.30 High quality child care providers.

1. The department shall accept nationally recognized accreditations in identifying and listing high quality child care providers. Any registered family or group home or licensed child care provider in this state that is accredited in good standing by the national association for the education of young children or the national association for family child care shall be included in the listing.

2. Providers included in the listing which remain in good standing with the accrediting body and with state regulation shall be designated as a gold seal quality child care provider. Any provider included in the listing may publicly utilize the designation as a gold seal quality child care provider. Child care resource and referral services shall be encouraged to make use of the providers holding this designation as a resource in quality improvement efforts and to identify these providers in making referrals to the public.

3. Holders of the gold seal quality designation shall be recognized annually in April during the week of national recognition of young children. A recognition event shall be hosted during that week by a committee which may include but is not limited to the governor, legislative leaders, department staff and other child care experts, and the chairpersons and ranking members of the legislative committees involved with regulation or funding of child care.

4. Subject to the availability of funding, an eligible holder of the gold seal quality designation receiving an initial or renewal national accreditation may receive a one-time cash award in the year of initial or renewal accreditation on or after July 1, 1999. Holders of the designation who received funding assistance to obtain the initial or renewal national accreditation under a grant administered by the child development coordinating council or as part of being a federal head start program are not eligible for the cash award. Eligible holders of the designation may receive a cash award of two hundred fifty dollars for registered family and group care home providers and five hundred dollars for licensed centers.

99 Acts, ch 192, §33; 99 Acts, ch 203, §49
See Code editor's note
Terminology change applied
NEW section

CHAPTER 237B

CHILDREN'S CENTERS — FACILITY STANDARDS

237B.1 Children's centers.

1. For the purposes of this section, unless the context requires otherwise, "children's center" means a privately funded facility designed to serve seven or more children at any one time who are not under the custody or authority of the department of human services, juvenile court, or another governmental agency, and that offers one or more of the following services:

- a. Child care.
- b. Child care for children with a chronic illness.
- c. Respite care.
- d. Family support services.
- e. Medical equipment.
- f. Therapeutic day programming.

g. Educational enrichment.

h. Housing.

2. The department of human services shall consult with the department of inspections and appeals, department of education, Iowa department of public health, state fire marshal, and community-based providers of services to children in establishing certification or licensing standards for children's centers.

3. In establishing the initial and subsequent standards, the department of human services shall review other certification and licensing standards applicable to the centers. The standards established by the department shall be broad facility standards for the protection of children's safety.

The department of human services shall not establish program standards or other requirements under this section involving program development or oversight of the programs provided to the children

served by children's centers.

99 Acts, ch 189, §1; 99 Acts, ch 192, §33
Terminology change applied
NEW section

CHAPTER 239B

FAMILY INVESTMENT PROGRAM

239B.2 Conditions of eligibility.

Within available funding, the department shall make assistance available to eligible families under the family investment program. At a minimum, a family shall meet all of the following conditions of eligibility:

1. *Application.* An application for the program is made to the department. The application shall be in writing or reduced to writing in the manner and upon the form prescribed by the department. The application shall be made by the specified relative with whom the child resides or will reside, and shall contain the information required on the application form. One application may be made for several children of the same family if the children reside or will reside with the same specified relative.

2. *Income and resources.* The family meets income and resource guidelines established by the department to attain or retain financial eligibility. In determining a family's income and resources, the department shall consider the income and resources of the child, the child's parent, the child's stepparent living with the child, or any other specified relative with whom the child resides or will reside available to the family unless specifically exempted as provided in section 239B.7 or by rule or unless otherwise provided by federal law. A family's failure to meet the income or resource guidelines shall result in denial of the family's eligibility for the program.

3. *Unemployment.* A determination of eligibility for a family with an unemployed parent shall not include consideration of either parent's number of hours of employment except to establish the date assistance would begin in accordance with rules. However, both parents must enter into and participate in a family investment agreement and participate in JOBS program activities unless good cause not to participate is established in accordance with rules. For the purposes of this chapter, an applicant family with a parent who is partially or totally unemployed under any of the following circumstances shall not be considered to be unemployed:

a. The period of unemployment is less than thirty days prior to commencing participation under this chapter.

b. The parent 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 commencing participation under this chapter, the parent 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. Any of the following reasons for refusing employment or training are not good cause:

(1) 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.

(2) The amount of wages or compensation, unless the wages for employment are below the amount customary for the same work in the community.

d. The parent has not registered for work with the state employment service established pursuant to section 96.12, or after registration has failed to report at an employment office in accordance with regulations prescribed pursuant to section 96.4, subsection 1.

e. The parent is eligible but refuses to apply for or to draw upon unemployment benefits.

f. The parent or family fails to meet other requirements adopted by the department applicable to the applicant parent or family. The other requirements shall be limited to those necessary to meet federal requirements and may be in addition to or in lieu of the requirements of this subsection, for eligibility under this chapter to children whose parents are partially or totally unemployed.

4. *Written statement — family investment agreement.*

a. The department may require an applicant family to commit to the initial actions the applicant family will take to achieve self-sufficiency as contained in a signed, written statement. An applicant family which fails to commit to the actions as contained in the written statement shall be denied eligibility for the family investment program. If the applicant family becomes a participant family, the family's written statement may be replaced by, incorporated within, or become the family investment agreement for that family.

b. Unless exempt as provided in section 239B.8, a participant family which is eligible for the program shall continue to comply with the provisions of a written statement which contains ac-

tions committed to by the family under paragraph “a” or shall enter into a family investment agreement with the department. A participant family must comply with the provisions of the written statement or the conditions in the agreement in order to retain eligibility. A participant family which does not comply shall be deemed to have chosen a limited benefit plan.

5. *Provision of information.* The family provides requested information to the department. The department shall adopt rules specifying the conditions under which an applicant or participant family is denied eligibility for family investment program assistance for failure to provide requested information.

6. *Cooperation with child support requirements.* The department shall provide for prompt notification of the department’s child support recovery unit if assistance is provided to a child whose parent is absent from the home. An applicant or participant shall cooperate with the child support recovery unit and the department as provided in 42 U.S.C. § 608(a)(2) unless the applicant or participant qualifies for good cause or other exception as determined by the department in accordance with the best interest of the child, parent, or specified relative, and with standards prescribed by rule. The authorized good cause or other exceptions shall include participation in a family investment agreement safety plan option to address or prevent family or domestic violence and other consideration given to the presence of family or domestic violence. If a specified relative with whom a child is residing fails to comply with these cooperation requirements, a sanction shall be imposed as defined by rule in accordance with state and federal law.

7. *Periodic reviews.* As a condition of eligibility, the department may require periodic reports from a participant concerning the participant’s income, resources, family composition, and other circumstances. If the participant’s circumstances change, the participant’s assistance may be continued, renewed, suspended, changed in amount, or entirely withdrawn, as determined in accordance with rule.

8. *Out-of-state assistance.* Assistance shall be paid to a participant residing temporarily out-of-state if the participant retains residency in this state and remains otherwise eligible for assistance. The department shall periodically redetermine the eligibility of a participant who is temporarily residing out-of-state.

99 Acts, ch 100, §1
Subsection 4 amended

239B.3 Cash assistance.

1. a. Within available funding, the department shall provide an ongoing cash assistance grant under the family investment program to a family eligible under section 239B.2.

b. For an eligibility decision involving an applicant family with a specified relative, within thirty days of the date of an application, the department shall authorize issuance of notice of the department’s decision to the specified relative.

2. For an applicant or participant family, the department shall calculate and pay the cash assistance grant on a monthly basis, taking into consideration all of the following:

a. The income and resources of the family.
b. Whether the family has entered into a limited benefit plan.

c. The size of the family.

d. Available funding.

3. The department may pay cash assistance and other cash benefits paid under this chapter by warrant, through a direct deposit to a financial institution of a participant, or through an electronic benefits transfer.

4. The department may pay, from funds appropriated for this purpose, a maximum of four hundred dollars toward funeral expenses on the death of a child who is a participant or has been authorized to participate in the family investment program, provided both of the following conditions apply:

a. The decedent does not leave an estate which may be probated with sufficient proceeds to allow for payment of the funeral expenses.

b. Payments which are due the decedent’s estate or beneficiary by reason of the liability of a life insurance, death or funeral benefit company, association, or society, or in the form of United States social security, railroad retirement, or veterans’ benefits upon the death of the decedent, are deducted from the department’s payment under this section.

99 Acts, ch 100, §2
Subsection 1, paragraph b amended

239B.7 Income and resource exemptions, deductions, and disregards.

In determining a family’s income and resources for purposes of the family’s initial and continuing eligibility for assistance and for determining grant amounts, the provisions of this section shall apply to the family and individual family members.

1. *Work expense deduction.* If an individual’s earned income is considered by the department, the individual shall be allowed a work expense deduction equal to twenty percent of the earned income. The work expense deduction is intended to include all work-related expenses other than child care. These expenses shall include but are not limited to all of the following: taxes, transportation, meals, uniforms, and other work-related expenses. However, the work expense deduction shall not be allowed for an individual who is subject to a sanction for failure to comply with family investment program requirements.

2. *Work-and-earn incentive.* If an individual's earned income is considered by the department, the individual shall be allowed a work-and-earn incentive. The incentive shall be equal to fifty percent of the amount of earned income remaining after all other deductions are applied. The department shall disregard the incentive amount when considering the earned income available to the individual. The incentive shall not have a time limit. The work-and-earn incentive shall not be withdrawn as a penalty for failure to comply with family investment program requirements.

3. Reserved.

4. Reserved.

5. *Income consideration.* If an individual has timely reported an absence of income to the department, consideration of the individual's income shall cease beginning in the first month the income is absent. However, this provision shall not apply to an individual who has quit employment without good cause as defined in rules.

6. *Interest income.* Interest income shall be disregarded.

7. *Individual development account deposits.* The department shall disregard as income any moneys an individual deposits in an individual development account established pursuant to chapter 541A.

8. *Motor vehicle disregard.* The department shall disregard the first three thousand eight hundred eighty-nine dollars in equity value of a motor vehicle. Beginning July 1, 1997, and continuing in succeeding fiscal years, the motor vehicle equity value disregarded by the department shall be increased by the latest increase in the consumer price index for used vehicles during the previous state fiscal year. This disregard shall be applicable to each adult and to each working individual in a family who is nineteen years of age or younger. The amount of a motor vehicle's equity in excess of the amount of the motor vehicle disregard shall apply to the resource limitation established in subsection 9.

9. *Resource limitation.*

a. The resource limitation for an applicant family for the family investment program shall be two thousand dollars.

b. The resource limitation for a participant family shall be five thousand dollars.

c. The department shall disregard not more than ten thousand dollars of a self-employed individual's tools of the trade or capital assets in considering the individual's resources.

10. *Individual development account earnings and balance.* The department shall disregard any earnings and the balance of an individual development account established pursuant to chapter 541A in considering an individual's resources.

99 Acts, ch 192, §33, 34
Terminology change applied
Subsection 3 stricken

239B.8 Family investment agreements.

The department shall establish a policy regarding the implementation of family investment agreements which limits the period of eligibility for the family investment program based upon the requirements of a family's plan for self-sufficiency. The policy shall require a family's plan to be specified in a family investment agreement between the family and the department. The department shall adopt rules to administer the policy. The components of the policy shall include but are not limited to all of the following:

1. *Participation — exemptions.* A parent living in a home with a child for whom an application for family investment program assistance has been made or for whom the assistance is provided, and all other individual members of the family whose needs are included in the assistance shall be subject to a family investment agreement unless any of the following conditions exists:

a. The individual is completely unable to participate in any agreement option due to disability.

b. The individual is less than sixteen years of age and is not a parent.

c. The individual is sixteen through eighteen years of age, is not a parent, and is attending elementary or secondary school, or the equivalent level of vocational or technical school, on a full-time basis.

2. *Agreement options.* A family investment agreement shall require an individual to participate in one or more of the options enumerated in this subsection. An individual's level of participation in one or more of the options shall be equivalent to the level of commitment required for full-time employment or shall be significant so as to move the individual's level of participation toward that level. The department shall adopt rules for each option defining requirements and establishing assistance provisions for child care, transportation, and other support services. The options shall include but are not limited to all of the following:

a. Full-time or part-time employment.

b. Active job search.

c. Participation in the JOBS program.

d. Participation in other education or training programming.

e. Participation in a family development and self-sufficiency grant program under section 217.12 or other family development program.

f. Work experience placement.

g. Unpaid community service. Community service shall be authorized in any nonprofit association which has been determined under section 501(c)(3) of the Internal Revenue Code to be exempt from taxation or in any government agency. Upon request, the department shall provide a listing of potential community service placements to an individual. However, an individual shall locate the individual's own placement and perform the

number of hours required by the agreement. The individual shall file a monthly report with the department which is signed by the director of the community service placement verifying the community service hours performed by the individual during that month. The department shall develop a form for this purpose.

h. Any other arrangement which would strengthen the individual's ability to be a better parent, including but not limited to participation in a parenting education program. Parental leave from employment shall be authorized for a parent of a child who is less than three months of age. An opportunity to participate in a parental education program shall also be authorized for such a parent. An individual who is not a parent who is nineteen years of age or younger or a parent of a child who is less than three months of age shall simultaneously participate in at least one other option enumerated in this subsection.

i. Participation in a safety plan to address or prevent family or domestic violence. The safety plan may include a temporary waiver period from required participation in the JOBS program or other employment-related activities, as appropriate for the situation of the applicant or participant. All applicants and participants shall be informed regarding the existence of this option. Participation in this option shall be subject to review in accordance with administrative rule.

3. *Limited benefit plan.* If a participant fails to comply with the provisions of the participant's family investment agreement during the period of the agreement, the limited benefit plan provisions of section 239B.9 shall apply.

4. *Completion of agreement.*

a. Upon the completion of the terms of the agreement, family investment program assistance to a participant family covered by the agreement shall cease or be reduced in accordance with rules.

b. However, if the period in which a participant family is without cash assistance is one month or less and the participant family has not become exempt from JOBS program participation at the time the participant family reapplies for cash assistance, the participant family's family investment agreement shall be reinstated at the time the participant family reapplies. The reinstated agreement may be revised to accommodate changed circumstances present at the time of reapplication.

c. The department shall adopt rules to administer this subsection and to determine when a family is eligible to reenter the family investment program.

5. *Contracts.* The department may contract with the department of workforce development, department of economic development, or any other entity to provide services relating to a family investment agreement.

6. *Confidential information disclosure.* The department may disclose confidential information

described in section 217.30, subsection 1, to other state agencies or to any other entity which is not subject to the provisions of chapter 17A and is providing services to a participant family who is subject to a family investment agreement, if necessary in order for the participant family to receive the services. The department shall adopt rules establishing standards for disclosure of confidential information if disclosure is necessary in order for a participant to receive services.

99 Acts, ch 192, §33

Maximum allowable time period for supported postsecondary education for family investment agreements entered into on or after July 1, 1996; 99 Acts, ch 203, §5

Terminology change applied

239B.9 Limited benefit plan.

1. General provisions.

a. If a participant responsible for signing and fulfilling the terms of a family investment agreement, as defined by the director of human services in accordance with section 239B.8, chooses not to sign or fulfill the terms of the agreement, the participant's family, or the individual participant shall enter into a limited benefit plan. Initial actions in a written statement under section 239B.2, subsection 4, which were committed to by a participant during the application period and which commitment remains in effect, shall be considered to be a term of the participant's family investment agreement. A limited benefit plan shall apply for the period of time specified in this section. The first month of the limited benefit plan is the first month after the month in which timely and adequate notice of the limited benefit plan is given to the participant as defined by the director of human services. A participant who is exempt from the JOBS program but who volunteers for the program is not subject to imposition of a limited benefit plan. The elements of a limited benefit plan shall be specified in the department's rules.

b. For purposes of this lettered paragraph, "significant contact with or action in regard to the JOBS program" means the individual participant communicates to the JOBS program worker the desire to engage in JOBS program activities, signs a new or updated family investment agreement, and takes any other action required by the department in accordance with rules adopted for this purpose. A limited benefit plan applied in error shall not be considered to have been applied. A limited benefit plan is applicable to the individual participant choosing the limited benefit plan and to the individual participant's family members to which the plan is applicable under subsection 2. A limited benefit plan shall either be a first limited benefit plan or a subsequent limited benefit plan. A limited benefit plan shall be applied as follows:

(1) A first limited benefit plan shall provide for continuing ineligibility for assistance until the individual participant completes significant contact with or action in regard to the JOBS program.

(2) A limited benefit plan subsequent to a first limited benefit plan chosen by the same individual participant shall provide for a six-month period of ineligibility beginning with the effective date of the limited benefit plan and continuing indefinitely following the six-month period until the individual participant completes significant contact with or action in regard to the JOBS program.

(3) For a two-parent family in which both parents are responsible for a family investment agreement, a first or subsequent limited benefit plan shall remain applicable until both parents complete significant contact with or action in regard to the JOBS program. A limited benefit plan applied to the same two-parent family shall be a subsequent limited benefit plan.

2. *Plan applied.* The department shall apply the limited benefit plan to the participants responsible for the family investment agreement and other members of the participant's family as follows:

a. *Parent.* If the participant responsible for the family investment agreement is a parent or a specified relative, the limited benefit plan is applicable to the entire participant family. If the family reapplies for assistance after an ineligibility period, eligibility shall be established in the same manner as for any other new applicant.

b. *Needy relative payee.* If the participant choosing a limited benefit plan is a needy relative who acts as payee when the parent is in the home but is unable to act as payee, or is a dependent child's stepparent whose needs are included in the assistance because of incapacity or caregiving, the limited benefit plan shall apply only to the individual participant choosing the plan.

c. *Minor parent living with adult parent or specified relative.* If the participant family includes a minor parent living with the minor parent's adult parent or specified relative who receives family investment program assistance and both individuals are responsible for developing a family investment agreement, each individual is responsible for a separate family investment agreement, and the limited benefit plan shall be applied as follows:

(1) If the adult parent or specified relative chooses the limited benefit plan, the requirements of the limited benefit plan shall apply to the entire participant family, even though the minor parent has not chosen the limited benefit plan. However, the minor parent may reapply for assistance as a minor parent living with self-supporting parents or living independently and continue in the family investment agreement process.

(2) If the minor parent chooses the limited benefit plan, the requirements of the limited benefit plan shall apply to the minor parent and any child of the minor parent.

d. *Minor parent — only child.* If the minor parent is the only child in the adult parent's or specified relative's home and the minor parent chooses the limited benefit plan, assistance shall not be

paid to the adult parent or specified relative in this instance.

e. *Children who are mandatory JOBS program participants.* If the participant family includes children who are mandatory JOBS program participants, the children shall not have a separate family investment agreement but shall be asked to sign the family investment agreement applicable to the family and to carry out the responsibilities of that family investment agreement. A limited benefit plan shall be applied as follows:

(1) If the parent or specified relative responsible for a family investment agreement meets the responsibilities of the family investment agreement but a child who is a mandatory JOBS program participant chooses an individual limited benefit plan, the family is eligible for reduced assistance during the child's limited benefit plan.

(2) If the child who chooses a limited benefit plan under subparagraph (1) is the only child in the participant family, assistance shall not be paid to the adult parent, parents, or specified relative in this instance.

f. *Exempt parent.* If a participant family includes a parent, parents, or specified relative who are exempt from JOBS program participation and children who are mandatory JOBS program participants, the children are responsible for completing a family investment agreement. If a child who is a mandatory JOBS program participant chooses the limited benefit plan, the limited benefit plan shall be applied in the manner provided in paragraph "e".

g. *Two parents.* If the participant family includes two parents, a limited benefit plan shall be applied as follows:

(1) If only one parent of a child in the family is responsible for a family investment agreement and that parent chooses the limited benefit plan, the limited benefit plan cannot be ended by the voluntary participation in a family investment agreement by the exempt parent. If the parent responsible for the family investment agreement chooses a limited benefit plan, the limited benefit plan applies to the entire family.

(2) If both parents of a child in the family are responsible for a family investment agreement, both parents shall sign the agreement. If either parent chooses the limited benefit plan, the limited benefit plan cannot be ended by the participation of the other parent in a family investment agreement.

(3) If the parents from a two-parent family in a limited benefit plan separate, the limited benefit plan shall follow only the parent who chose the limited benefit plan and any children in the home of that parent.

3. *Plan chosen.* A participant shall be considered to have chosen a limited benefit plan under any of the following circumstances:

a. A participant who does not establish an orientation appointment with the JOBS program or

who fails to keep or reschedule an orientation appointment shall receive a reminder letter which informs the participant that those who do not attend orientation have elected to choose a limited benefit plan. A participant who chooses not to respond to the reminder letter within ten calendar days from the mailing date shall receive notice establishing the effective date of the limited benefit plan. If a participant is deemed to have chosen a limited benefit plan, timely and adequate notice provisions, as determined by the director of human services, shall apply.

b. A participant who chooses not to sign the family investment agreement after attending a JOBS program orientation shall enter into a limited benefit plan as described in paragraph "a".

c. A participant who has signed a family investment agreement but then chooses a limited benefit plan under circumstances defined by the director of human services.

4. *Reconsideration.* A participant who chooses a limited benefit plan may reconsider that choice as follows:

a. A participant who chooses a first limited benefit plan may reconsider at any time following the effective date of the limited benefit plan. The participant may contact the department or the appropriate JOBS program office any time to begin the reconsideration process.

b. A participant who chooses a subsequent limited benefit plan may reconsider that choice at any time following the required period of ineligibility.

5. *Well-being visit.* If a participant has chosen a subsequent limited benefit plan, a qualified professional shall attempt to visit with the participant family with a focus upon the children's well-being. The visit shall be performed during or within four weeks of the second month of the start of the subsequent limited benefit plan. The visit shall serve as an extension of the family investment program and the family investment agreement philosophy of supporting families as they move toward self-sufficiency. The department may contract for the visit.

6. *Appeal.* A participant has the right to appeal the establishment of the limited benefit plan only once, at the time the department issues the timely and adequate notice that establishes the limited benefit plan. However, if the reason for the appeal is based on an incorrect grant computation, an error in determining the composition of the family, or another worker error, a hearing shall be granted, regardless of the person's limited benefit plan status.

99 Acts, ch 100, §3
Subsection 1, paragraph a amended

239B.10 Minor and young parents — other requirements.

1. *Living arrangement.* Unless any of the following conditions apply, a minor parent shall be re-

quired to live with the minor's parent or legal guardian:

a. The parent or guardian of the minor parent is deceased, missing, or living in another state.

b. The minor parent's health or safety would be jeopardized if the minor parent is required to live with the parent or guardian.

c. The minor parent is in foster care.

d. The minor parent is participating in the job corps solo parent program or independent living program.

e. Other good cause exists, which is identified in rules adopted by the department for this purpose, for the minor parent to participate in the family investment program while living apart from the minor parent's parent or guardian.

2. *Family development.* A minor parent who is a participant and is not required to live with the minor parent's parent or guardian pursuant to subsection 1 shall be required to participate in a family development program identified in rules adopted by the department.

3. *Parenting classes.* Participant parents who are nineteen years of age or younger shall be required to attend parenting classes.

4. *Education.* The department shall require, subject to the availability of child care for a minor parent's children, that a minor parent must either have graduated from high school or have received a high school equivalency diploma, or be engaged full-time in completing high school graduation or equivalency requirements.

5. *Earnings disregard.* In determining family investment program eligibility and calculating the amount of assistance, the department shall disregard earnings of an applicant or a participant who is nineteen years of age or younger who is engaged full-time in completing high school graduation or equivalency requirements.

6. *Family planning.* The department shall do all of the following with newly eligible and existing participant parents:

a. Discuss orally and in writing the financial implications of newly born children on the participant's family.

b. Discuss orally and in writing the available family planning resources.

c. Include family planning counseling as an optional component of the JOBS program.

d. Include the participant's family planning objectives in the family investment agreement.

99 Acts, ch 192, §33
Terminology change applied

239B.11 Family investment program account.

1. An account is established in the state treasury to be known as the family investment program account under control of the department to which shall be credited all funds appropriated by the state for the payment of assistance and JOBS program

expenditures. All other moneys received at any time for these purposes, including child support revenues, shall be deposited into the account as provided by law. All assistance and JOBS program expenditures under this chapter shall be paid from the account.

2. A diversion program subaccount is created within the family investment program account. The subaccount may be used to provide incentives to divert applicants' participation in the family investment program if the applicants meet income eligibility requirements for assistance. Incentives may be provided in the form of payment or services with a focus on helping applicants to obtain or retain employment. The diversion program subaccount may also be used for payments to participants as necessary to cover the expenses of removing barriers to employment.

Use of recovered moneys generated through fraud and recoupment activities for additional fraud and recoupment activities; 99 Acts, ch 203, §39
Section not amended; footnote added

239B.24 State child care assistance eligibility.

1. The following persons are deemed to be eligi-

ble for benefits under the state child care assistance program administered by the department, notwithstanding the program's eligibility requirements or any waiting list:

a. A participant who is employed.

b. Any other person whose earned income is considered in determining eligibility and benefits for a participant.

c. A person who is participating in activities approved under the JOBS program.

2. A person who is deemed to be eligible for state child care assistance program benefits under this section is subject to all other state child care assistance requirements, including but not limited to provider requirements under chapter 237A, provider reimbursement methodology and rates, and any other requirements established by the department in rule.

99 Acts, ch 192, §35
NEW section

CHAPTER 249A

MEDICAL ASSISTANCE

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 supplemental security income or who would be eligible for federal supplemental security income if living in their own home.

b. Is an individual who is eligible for the family investment program 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 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 cash assistance under the family investment program, 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, 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.

g. (1) Is a child who is one through five years of age as prescribed by the federal Omnibus Budget Reconciliation Act of 1989, Pub. L. No. 101-239, § 6401, whose income is not more than one hundred thirty-three 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.

(2) Is a child who has attained six years of age but has not attained nineteen years of age, whose income is not more than one hundred thirty-three 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, section 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 until the last day of the month following the month of the presumptive eligibility determination. If the department receives the woman's medical assistance application by the last day of the month following the month of the presumptive eligibility determination, the woman is eligible for ambulatory prenatal care assistance until the department actually determines the woman's eligibility or ineligibility for medical assistance. 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 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 an individual with a disability, 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.

r. Is an individual who is no longer eligible for the family investment program due to earned income. The department shall provide transitional medical assistance to the individual for the maximum period allowed for federal financial participation under federal law.

s. Is an individual who is no longer eligible for the family investment program due to the receipt of child or spousal support. The department shall provide transitional medical assistance to the individual for the maximum period allowed for federal financial participation under federal law.

2. Medical assistance may also, within the limits of available funds and in accordance with section 249A.4, subsection 1, be provided to, or on behalf of, other individuals and families who are not excluded under subsection 5 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. As allowed under 42 U.S.C. § 1396a(a)(10)(A)(ii)(XIII), individuals with disabilities, who are less than sixty-five years of age, who are members of families whose income is less than two hundred fifty percent of the most recently revised official poverty line published by the federal office of management and budget for the family, who have earned income and who are eligible for medical assistance or additional medical assistance under this section if earnings are disregarded. As allowed by 42 U.S.C. § 1396a(r)(2), unearned income shall also be disregarded in determining whether an individual is eligible for assistance under this paragraph. For the purposes of determining the amount of an individual's resources under this paragraph and as allowed by 42 U.S.C. § 1396a(r)(2), a maximum of ten thousand dollars of available resources shall be disregarded and any additional resources held in a retirement account, in a medical savings account, or in any other account approved under rules adopted by the department shall also be disregarded. Individuals eligible for assistance under this paragraph, whose individual income exceeds one hundred fifty per-

cent of the official poverty line published by the federal office of management and budget for an individual, shall pay a premium. The amount of the premium shall be based on a sliding fee schedule adopted by rule of the department and shall be based on a percentage of the individual's income. The maximum premium payable by an individual whose income exceeds one hundred fifty percent of the official poverty line shall be commensurate with premiums charged for private group health insurance in this state. This paragraph shall be implemented no later than March 1, 2000.

b. 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 supplemental 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.

c. 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.

d. 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, or who are sixty-five years of age or older and who meet the conditions for eligibility in paragraph "a" of this subsection.

e. Individuals and families whose incomes and resources are such that they are eligible for federal supplemental security income or the family investment program, but who are not actually receiving such public assistance.

f. 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.

g. 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.

h. 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.

i. 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 supplemental 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, subsection 1, 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, subsection 1, may be provided to or on behalf of those individuals and families described in subsection 2, paragraph "h" 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.

5A. In determining eligibility for children under subsection 1, paragraphs "b", "f", "g", "j", "k", "h", and "s"; subsection 2, paragraphs "b", "d", "e", "g", and "h"; and subsection 5, paragraph "b", all resources of the family, other than monthly income, shall be disregarded.

6. In determining the eligibility of an individual for medical assistance under this chapter, for resources transferred to the individual's spouse before October 1, 1989, or to a person other than the individual's spouse before July 1, 1989, the department shall include, as resources still available to the individual, those nonexempt resources or interests in resources, owned by the individual within the preceding twenty-four months, which the individual gave away or sold at less than fair market value for the purpose of establishing eligibility for medical assistance under this chapter.

a. A transaction described in this subsection is presumed to have been for the purpose of establishing eligibility for medical assistance under this chapter unless the individual furnishes convincing evidence to establish that the transaction was exclusively for some other purpose.

b. The value of a resource or an interest in a resource in determining eligibility under this subsection is the fair market value of the resource or interest at the time of the transaction less the amount of any compensation received.

c. If a transaction described in this subsection results in uncompensated value exceeding twelve thousand dollars, the department shall provide by rule for a period of ineligibility which exceeds twenty-four months and has a reasonable relationship to the uncompensated value above twelve thousand dollars.

7. In determining the eligibility of an individual for medical assistance under this chapter, the department shall consider resources transferred to the individual's spouse on or after October 1, 1989, or to a person other than the individual's spouse on or after July 1, 1989, and prior to August 11, 1993, as provided by the federal Medicare Catastrophic Coverage Act of 1988, Pub. L. No. 100-360, § 303(b), as amended by the federal Family Support Act of 1988, Pub. L. No. 100-485, § 608(d)(16)(B), (D), and the federal Omnibus Budget Reconciliation Act of 1989, Pub. L. No. 101-239, § 6411(e)(1).

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 behalf 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.

11. a. In determining the eligibility of an individual for medical assistance, the department shall consider transfers of assets made on or after August 11, 1993, as provided by the federal Social Security Act, section 1917(c), as codified in 42 U.S.C. § 1396p(c).

b. The department shall exercise the option provided in 42 U.S.C. § 1396p(c) to provide a period of ineligibility for medical assistance due to a

transfer of assets by a noninstitutionalized individual or the spouse of a noninstitutionalized individual. For noninstitutionalized individuals, the number of months of ineligibility shall be equal to the total, cumulative uncompensated value of all assets transferred by the individual or the individual's spouse on or after the look-back date specified in 42 U.S.C. § 1396p(c)(1)(B)(i), divided by the average monthly cost to a private patient for nursing facility services in Iowa at the time of application. The services for which noninstitutionalized individuals shall be made ineligible shall include any long-term care services for which medical assistance is otherwise available. Notwithstanding section 17A.4, the department may adopt rules providing a period of ineligibility for medical assistance due to a transfer of assets by a noninstitutionalized individual or the spouse of a noninstitutionalized individual without notice of opportunity for public comment, to be effective immediately upon filing under section 17A.5, subsection 2, paragraph "b", subparagraph (1).

12. In determining the eligibility of an individual for medical assistance, the department shall consider income or assets relating to trusts or similar legal instruments or devices established on or before August 10, 1993, as available to the individual, in accordance with the federal Comprehensive Omnibus Budget Reconciliation Act of 1986, Pub. L. No. 99-272, § 9506(a), as amended by the federal Omnibus Budget Reconciliation Act of 1986, Pub. L. No. 99-509, § 9435(c).

13. In determining the eligibility of an individual for medical assistance, the department shall consider income or assets relating to trusts or similar legal instruments or devices established after August 10, 1993, as available to the individual, in accordance with 42 U.S.C. § 1396p(d) and sections 633.708 and 633.709.

99 Acts, ch 94, §1; 99 Acts, ch 203, §50; 99 Acts, ch 208, §50
Emergency rulemaking authority; 99 Acts, ch 203, §7
Internal reference change applied
Subsection 2, unnumbered paragraph 1 amended
Subsection 2, NEW paragraph a and former paragraphs a-h relettered as b-i
NEW subsection 5A

249A.4 Duties of director.

The director shall be responsible for the effective and impartial administration of this chapter and shall, in accordance with the standards and priorities established by this chapter, by applicable federal law, by the regulations and directives issued pursuant to federal law, by applicable court orders, and by the state plan approved in accordance with federal law, make rules, establish policies, and prescribe procedures to implement this chapter. Without limiting the generality of the foregoing delegation of authority, the director is hereby specifically empowered and directed to:

1. Determine the greatest amount, duration, and scope of assistance which may be provided, and the broadest range of eligible individuals to whom

assistance may effectively be provided, under this chapter within the limitations of available funds. In so doing, the director shall at least every six months evaluate the scope of the program currently being provided under this chapter, project the probable cost of continuing a like program, and compare the probable cost with the remaining balance of the state appropriation made for payment of assistance under this chapter during the current appropriation period. After each evaluation of the scope of the program, the director shall report to the general assembly through the legislative council or in another manner as the general assembly may by resolution direct.

2. Reserved.

3. Have authority to provide for payment under this chapter of assistance rendered to any applicant prior to the date the application is filed.

4. Have authority to contract with any corporation authorized to engage in this state in insuring groups or individuals for all or part of the cost of medical, hospital, or other health care or with any corporation maintaining and operating a medical, hospital, or health service prepayment plan under the provisions of chapter 514 or with any health maintenance organization authorized to operate in this state, for any or all of the benefits to which any recipients are entitled under this chapter to be provided by such corporation or health maintenance organization on a prepaid individual or group basis.

5. May, to the extent possible, contract with a private organization or organizations whereby such organization will handle the processing of and the payment of claims for services rendered under the provisions of this chapter and under such rules and regulations as shall be promulgated by such department. The state department may give due consideration to the advantages of contracting with any organization which may be serving in Iowa as "intermediary" or "carrier" under Title XVIII of the federal Social Security Act, as amended.

6. Shall cooperate with any agency of the state or federal government in any manner as may be necessary to qualify for federal aid and assistance for medical assistance in conformity with the provisions of chapter 249, this chapter and Titles XVI and XIX of the federal Social Security Act, as amended.

7. Shall provide for the professional freedom of those licensed practitioners who determine the need for or provide medical care and services, and shall provide freedom of choice to recipients to select the provider of care and services, except when the recipient is eligible for participation in a health maintenance organization or prepaid health plan which limits provider selection and which is approved by the department. However, this shall not limit the freedom of choice to recipients to select providers in instances where such provider services are eligible for reimbursement under the

medical assistance program but are not provided under the health maintenance organization or under the prepaid health plan, or where the recipient has an already established program of specialized medical care with a particular provider. The department may also restrict the recipient's selection of providers to control the individual recipient's overuse of care and services, provided the department can document this overuse. The department shall promulgate rules for determining the overuse of services, including rights of appeal by the recipient.

8. Shall advise and consult at least semiannually with a council composed of the presidents of the following organizations, or a president's representative who is a member of the organization represented by the president: the Iowa medical society, the Iowa osteopathic medical association, the Iowa academy of family physicians, the Iowa physical therapy association, the Iowa state dental society, the Iowa state nurses association, the Iowa pharmacists association, the Iowa podiatry society, the Iowa optometric association, the community mental health centers association of Iowa, the Iowa psychological association, the association of Iowa hospitals and health systems, the Iowa association of rural health clinics, the Iowa osteopathic hospital association, opticians' association of Iowa, inc., the Iowa hearing aid society, the Iowa speech, language, and hearing association, the Iowa health care association, the Iowa association for home care, the Iowa council of health care centers, the Iowa physician assistant society, the Iowa association of nurse practitioners, the Iowa occupational therapy association, and the Iowa association of homes and services for the aging, the Iowa psychiatric nurse managers network, the arc of Iowa which was formerly known as the association for retarded citizens of Iowa, the alliance for the mentally ill of Iowa, Iowa state association of counties, and the Iowa governor's planning council for developmental disabilities, together with one person designated by the Iowa state board of chiropractic examiners; one state representative from each of the two major political parties appointed by the speaker of the house, one state senator from each of the two major political parties appointed by the president of the senate, after consultation with the majority leader and the minority leader of the senate, each for a term of two years; four public representatives, appointed by the governor for staggered terms of two years each, none of whom shall be members of, or practitioners of, or have a pecuniary interest in any of the professions or businesses represented by any of the several professional groups and associations specifically represented on the council under this subsection, and at least one of whom shall be a recipient of medical assistance; the director of public health, or a representative designated by the director; and the dean of the college of

medicine, university of Iowa, or a representative designated by the dean.

For each council meeting, other than those held during the time the general assembly is in session, each legislative member of the council shall be reimbursed for actual traveling and other necessary expenses and shall receive a per diem as specified in section 7E.6 for each day in attendance, as shall the public representatives, regardless of whether the general assembly is in session.

The director shall consider the advice and consultation offered by the council in the director's preparation of medical assistance budget recommendations.

9. Adopt rules pursuant to chapter 17A in determining the method and level of reimbursement for all medical and health services referred to in section 249A.2, subsection 1 or 7, after considering all of the following:

a. The promotion of efficient and cost-effective delivery of medical and health services.

b. Compliance with federal law and regulations.

c. The level of state and federal appropriations for medical assistance.

d. Reimbursement at a level as near as possible to actual costs and charges after priority is given to the considerations in paragraphs "a", "b", and "c".

10. Shall provide an opportunity for a fair hearing before the department of inspections and appeals to an individual whose claim for medical assistance under this chapter is denied or is not acted upon with reasonable promptness. Upon completion of a hearing, the department of inspections and appeals shall issue a decision which is subject to review by the department of human services.

11. In determining the medical assistance eligibility of a pregnant woman, infant, or child under the federal Social Security Act, § 1902(l), resources which are used as tools of the trade shall not be considered.

12. In determining the medical assistance eligibility of a pregnant woman, infant, or child under the federal Social Security Act, § 1902(l), or pursuant to section 249A.3, subsection 2, paragraph "h", the department shall establish resource standards and exclusions not less generous than the resource standards and exclusions adopted pursuant to section 255A.5, if in compliance with federal laws and regulations.

13. In implementing subsection 9, relating to reimbursement for medical and health services under this chapter, when a selected out-of-state acute care hospital facility is involved, a contractual arrangement may be developed with the out-of-state facility that is in accordance with the requirements of Titles XVIII and XIX of the federal Social Security

Act. The contractual arrangement is not subject to other reimbursement standards, policies, and rate setting procedures required under this chapter.

14. A medical assistance copayment shall only be applied to those services and products specified in administrative rules of the department in effect on February 1, 1991, which under federal medical assistance requirements, are provided at the option of the state.

15. Establish appropriate reimbursement rates for community mental health centers that are accredited by the mental health and developmental disabilities commission. The reimbursement rates shall be phased in over the three-year period beginning July 1, 1998, and ending June 30, 2001.

Judicial review of the decisions of the department of human services may be sought in accordance with chapter 17A. If a petition for judicial review is filed, the department of human services shall furnish the petitioner with a copy of the application and all supporting papers, a transcript of the testimony taken at the hearing, if any, and a copy of its decision.

99 Acts, ch 96, §27
Internal reference change applied
Subsection 15 amended

249A.18 Cost-based reimbursement — rural health clinics and federally qualified health centers.

Rural health clinics and federally qualified health centers shall receive cost-based reimbursement for one hundred percent of the reasonable costs for the provision of services to recipients of medical assistance.

99 Acts, ch 203, §51
Section amended

249A.19 Health care facilities — penalty.

The department shall adopt rules pursuant to chapter 17A to assess and collect, with interest, a civil penalty for each day a health care facility which receives medical assistance reimbursements does not comply with the requirements of the federal Social Security Act, section 1919, as codified in 42 U.S.C. § 1396r. A civil penalty shall not exceed the amount authorized under 42 C.F.R. § 488.438 for health care facility violations. Any moneys collected by the department pursuant to this section shall be applied to the protection of the health or property of the residents of the health care facilities which are determined by the state or by the federal health care financing administration to be out of compliance. The purposes for which the collected moneys shall be applied may include payment for the costs of relocation of residents to other facilities, maintenance or operation of a health care facility pending correction of deficiencies or closure of the facility, and reimbursing residents for per-

sonal funds lost. If a health care facility is assessed a civil penalty under this section, the health care facility shall not be assessed a penalty under section 135C.36 for the same violation.

Appropriation for fiscal year beginning July 1, 1999, of penalties collected to fund recruitment and retention strategies to provide training and support for certified nurse aides; 99 Acts, ch 203, §7, 53
Section not amended; footnote added

249A.26 State and county participation in funding for services to persons with disabilities.

1. The state shall pay for one hundred percent of the nonfederal share of the services paid for under any prepaid mental health services plan for medical assistance implemented by the department as authorized by law.

2. The county of legal settlement shall pay 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. To the maximum extent allowed under federal law and regulations, the department shall consult with and inform a county of legal settlement's single entry point process, as defined in section 331.440, regarding the necessity for and the provision of any service for which the county is required to provide reimbursement under this subsection.

3. To the maximum extent allowed under federal law and regulations, a person with mental illness or mental retardation shall not be eligible for any service which is funded in whole or in part by a county share of the nonfederal portion of medical assistance funds unless the person is referred through the single entry point process, as defined in section 331.440. However, to the extent federal law allows referral of a medical assistance recipient to a service without approval of the single entry point process, the county of legal settlement shall be billed for the nonfederal share of costs for any adult person for whom the county would otherwise be responsible.

State to pay nonfederal share of services included in state cases coverage plan; 99 Acts, ch 203, §7, 53
Section not amended; footnote revised

CHAPTER 249F

TRANSFER OF ASSETS — MEDICAL ASSISTANCE DEBT

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 sent by restricted certified mail as defined in section 618.15, to the transferee at the transferee's last known address. If service of the notice is unable to be completed by restricted certified mail, 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, which

ever 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 re-

quest 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.

99 Acts, ch 52, §1

Subsection 1, unnumbered paragraph 1 amended

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, if applicable, 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.

99 Acts, ch 52, §2

Subsection 2 amended

CHAPTER 252

SUPPORT OF THE POOR

252.27 Form of assistance — condition.

The board of supervisors shall determine the form of the assistance. However, legal aid shall be only in civil matters and provided only through a legal aid program approved by the board of supervisors. The amount of assistance issued shall be determined by standards of assistance established by the board of supervisors. They may require any able-bodied person to work on public programs or projects at the prevailing local rate per hour in payment for and as a condition of granting assistance. The labor shall be performed under the direction of the officers having charge of the public programs or projects. Subject to section 142.1, assistance may consist of the burial of nonresident indigent tran-

sients and the payment of the reasonable cost of burial, not to exceed two hundred fifty dollars.

The board shall record its proceedings relating to the provision of assistance to specific persons under this chapter. A person who is aggrieved by a decision of the board may appeal the decision as if it were a contested case before an agency and as if the person had exhausted administrative remedies in accordance with the procedures and standards in section 17A.19, subsections 2 to 12 except subsection 10, paragraphs "b" and "g", and section 17A.20.

98 Acts, ch 1202, §38, 46

1998 amendment is effective July 1, 1999, and applies to agency proceedings commenced, or conducted on remand from a court or other agency, on or after that date; 98 Acts, ch 1202, §38, 46

Unnumbered paragraph 2 amended

CHAPTER 252D

SUPPORT PAYMENTS — INCOME WITHHOLDING

252D.23 Filing of withholding order — order effective as district court order.

An income withholding order entered by the child support recovery unit pursuant to this chapter shall be filed with the clerk of the district court. In lieu of any signature on the order which may otherwise be required by law or rule, the order shall have affixed the name and address of the appropriate child support office. For the purposes of demonstrating compliance by the payor of income, the copy of the withholding order or the notice of the order received, whether or not the copy of the

order is file-stamped, shall have all the force, effect, and attributes of a docketed order of the district court including, but not limited to, availability of contempt of court proceedings against a payor of income for noncompliance. However, any information contained in the income withholding order or the notice of the order related to the amount of the accruing or accrued support obligation which does not reflect the correct amount of support due does not modify the underlying support judgment.

99 Acts, ch 127, §2
Section amended

CHAPTER 252I

SUPPORT PAYMENTS — LEVIES AGAINST ACCOUNTS

252I.4 Verification of accounts and immunity from liability.

1. The unit may contact a financial institution to obtain verification of the account number, the names and social security numbers listed for the account, and the account balance of any account held by an obligor. Contact with a financial institution may be by telephone or by written communication. The financial institution may require positive voice recognition and may require the telephone number of the authorized person from the unit before releasing an obligor's account information by telephone.

2. The unit and financial institutions doing business in Iowa shall enter into agreements to develop and operate a data match system, using automated data exchanges to the maximum extent feasible. The data match system shall allow a means by which each financial institution shall provide to the unit for each calendar quarter the name, record address, social security number or other taxpayer identification number, and other identifying information for each obligor who maintains an account at the institution and who owes past-due support, as identified by the unit by name and social security number or other taxpayer identification number. The unit shall work with representatives of financial institutions to develop a system to assist non-automated financial institutions in complying with the provisions of this section.

3. The unit may pay a reasonable fee to a financial institution for conducting the data match required in subsection 2, not to exceed the lower of either one hundred fifty dollars for each quarterly data match or the actual costs incurred by the financial institution for each quarterly data match. However, the unit may also adopt rules pursuant to

chapter 17A to specify a fee amount for each quarterly data match based upon the estimated state share of funds collected under this chapter, which, when adopted, shall be applied in lieu of the one hundred fifty dollar fee under this subsection. In addition, the unit may pay a reasonable fee to a financial institution for automation programming development performed in order to conduct the data match required in subsection 2, not to exceed the lower of either five hundred dollars or the actual costs incurred by the financial institution. The unit may use the state share of funds collected under this chapter to pay the fees to financial institutions under this subsection. For state fiscal years beginning July 1, 1999, and July 1, 2000, the unit may use up to one hundred percent of the state share of such funds. For state fiscal years beginning on or after July 1, 2001, the unit may use up to fifty percent of the state share of such funds. Notwithstanding any other provision of law to the contrary, a financial institution shall have until a date provided in the agreement in subsection 2 to submit its claim for a fee under this subsection. If the unit does not have sufficient funds available under this subsection for payment of fees under this subsection, the cost may be carried forward to a future year. The unit may also use funds from an amount assessed a child support agency of another state, as defined in section 252H.2, to conduct a data match requested by that child support agency as provided in 42 U.S.C. § 666(a)(14) to pay fees to financial institutions under this subsection.

4. The financial institution is immune from any liability, civil or criminal, which might otherwise be incurred or imposed for any of the following:

- a. Any information released by the financial institution to the unit pursuant to this section.
- b. Any encumbrance or surrender of any assets held by the financial institution in response to a notice of lien or levy issued by the unit.
- c. Any other action taken in good faith to com-

ply with this section or section 252I.7.

5. The financial institution or the unit is not liable for the cost of any early withdrawal penalty of an obligor's certificate of deposit.

99 Acts, ch 127, §3
Subsection 3 amended

CHAPTER 255

MEDICAL AND SURGICAL TREATMENT OF INDIGENT PERSONS

255.1 Complaint — determination of medical assistance eligibility.

Any adult resident of the state may file a complaint in the office of the clerk of any juvenile court, charging that any legal resident of Iowa residing in the county where the complaint is filed is pregnant or is suffering from some malady or deformity that can probably be improved or cured or advantageously treated by medical or surgical treatment or hospital care, and that neither such person nor persons legally chargeable with the person's support are able to pay therefor.

The county general assistance director shall ascertain from the local office of human services if an applicant for the indigent patient program would qualify for medical assistance or the medically needy program under chapter 249A without the spend-down provision required pursuant to section 249A.3, subsection 2, paragraph "h". If the applicant qualifies, the patient shall be certified for medical assistance and shall not be counted under this chapter.

Section not amended; internal reference change applied

CHAPTER 256

DEPARTMENT OF EDUCATION

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 chapter 258.
- 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 for any 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. Adopt rules under chapter 17A for the use of telecommunications as an instructional tool for students enrolled in kindergarten through grade twelve and served by local school districts, accredited or approved nonpublic schools, area education agencies, community colleges, institutions of higher education under the state board of regents, and independent colleges and universities in elementary and secondary school classes and courses. The rules shall include but need not be limited to rules relating to programs, educational policy, instructional practices, staff development, use of pilot projects, curriculum monitoring, and the accessibility of licensed teachers.

When curriculum is provided by means of telecommunications, it shall be taught by an appropriately licensed teacher. The teacher shall either be present in the classroom, or be present at the location at which the curriculum delivered by means of telecommunications originates.

The rules shall provide that when the curriculum is taught by an appropriately licensed teacher at the location at which the telecommunications originates, the curriculum received shall be under the supervision of a licensed teacher. For the purposes of this subsection, "supervision" means that the curriculum is monitored by a licensed teacher

and the teacher is accessible to the students receiving the curriculum by means of telecommunications.

The state board shall establish an advisory committee to make recommendations for rules required under this subsection on the use of telecommunications as an instructional tool. The committee shall be composed of representatives from community colleges, area education agencies, accredited or approved nonpublic schools, and local school districts from various enrollment categories. The representatives shall include board members, school administrators, teachers, parents, students, and associations interested in education.

For the purpose of the rules adopted by the state board, telecommunications means narrowcast communications through systems that are directed toward a narrowly defined audience and includes interactive live communications.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. Adopt rules that 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.

17. Receive and review the budget and unified plan of service submitted by the division of libraries and information services.

18. 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 instruc-

tion 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.

19. Define the minimum school day as a day consisting of five and one-half hours of instructional time for grades one through twelve. The minimum hours shall be exclusive of the lunch period, but may include passing time between classes. Time spent on parent-teacher conferences shall be considered instructional time. A school or school district may record a day of school with less than the minimum instructional hours as a minimum school day if any of the following apply:

a. If emergency health or safety factors require the late arrival or early dismissal of students on a specific day.

b. If the total hours of instructional school time for grades one through twelve for any five consecutive school days equal a minimum of twenty-seven and one-half hours, even though any one day of school is less than the minimum instructional hours because of a staff development opportunity provided for the professional instructional staff or because parent-teacher conferences have been scheduled beyond the regular school day. Furthermore, if the total hours of instructional time for the first four consecutive days equal at least twenty-seven and one-half hours because parent-teacher conferences have been scheduled beyond the regular school day, a school or school district may record zero hours of instructional time on the fifth consecutive school day as a minimum school day.

20. Adopt rules that require the board of directors of a school district to waive school fees for indigent families.

21. Develop and adopt rules by July 1, 1999, incorporating accountability for student achievement into the standards and accreditation process described in section 256.11. The rules shall provide for all of the following:

a. Requirements that all school districts and accredited nonpublic schools develop, implement, and file with the department a comprehensive school improvement plan that includes, but is not limited to, demonstrated school, parental, and community involvement in assessing educational needs, establishing local education standards and student achievement levels, and, as applicable, the

consolidation of federal and state planning, goal-setting, and reporting requirements.

b. A set of core academic indicators in mathematics and reading in grades four, eight, and eleven, a set of core academic indicators in science in grades eight and eleven, and another set of core indicators that includes, but is not limited to, graduation rate, postsecondary education, and successful employment in Iowa. Annually, the department shall report state data for each indicator in the condition of education report.

c. A requirement that all school districts and accredited nonpublic schools annually report to the department and the local community the district-wide progress made in attaining student achievement goals on the academic and other core indicators and the district-wide progress made in attaining locally established student learning goals. The school districts and accredited nonpublic schools shall demonstrate the use of multiple assessment measures in determining student achievement levels. The school districts and accredited nonpublic schools may report on other locally determined factors influencing student achievement. The school districts and accredited nonpublic schools shall also report to the local community their results by individual attendance center.

98 Acts, ch 1202, §39, 46

1998 amendment to subsection 6 is effective July 1, 1999, and applies to agency proceedings commenced, or conducted on remand from a court or other agency, on or after that date; 98 Acts, ch 1202, §39, 46

Subsection 6 amended

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. Direct that any amendments or changes in the school laws, with necessary notes and suggestions, be distributed as prescribed in subsection 26 annually.

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. Reserved.

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.

34. Conduct or direct the area education agency to conduct feasibility surveys and studies, if requested under section 282.11, of the school districts within the area education agency service areas and all adjacent territory, including but not limited to contiguous districts in other states, for the purpose of evaluating and recommending proposed whole grade sharing agreements requested under section 282.7 and section 282.10, subsections 1 and 4. The surveys and studies shall be revised periodically to reflect reorganizations which may have taken place in the area education agency, adjacent territory, and contiguous districts in other states. The surveys and studies shall include a cover page containing recommendations and a short explanation of the recommendations. The factors to be used in determining the recommendations include, but are not limited to:

- a. The possibility of long-term survival of the proposed alliance.
- b. The adequacy of the proposed educational programs versus the educational opportunities offered through a different alliance.
- c. The financial strength of the new alliance.
- d. Geographical factors.
- e. The impact of the alliance on surrounding schools.

Copies of the completed surveys and studies shall be transmitted to the affected districts' school boards.

35. Develop standards and instructional materials to do all of the following:

- a. Assist school districts in developing appropriate before and after school programs for elementary school children.
- b. Assist school districts in the development of child care services and programs to complement half-day and all-day kindergarten programs.
- c. Assist school districts in the development of appropriate curricula for all-day, everyday kindergarten programs.
- d. Assist school districts in the development of appropriate curricula for the early elementary grades one through three.
- e. Assist prekindergarten instructors in the development of appropriate curricula and teaching practices.

Standards and materials developed shall include materials which employ developmentally appropriate practices and incorporate substantial parental involvement. The materials and standards shall include alternative teaching approaches including collaborative teaching and alternative dispute resolution training. The department shall

consult with the child development coordinating council, the state child care advisory council, 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. 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. 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.

40. Develop 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 pro-

grams 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 enhance interinstitutional cooperation in program offerings.

41. 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.

42. Develop 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.

43. 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; 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 com-

ponent 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.

44. 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.

45. Develop 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.

46. 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.

47. Serve as an ex officio member of the commission of libraries.

48. 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.

99 Acts, ch 192, §30

Subsection 35, unnumbered paragraph 2 amended

256.16 Specific criteria for teacher preparation and certain educators.

1. Pursuant to section 256.7, subsection 5, the state board shall adopt rules requiring all higher education institutions providing practitioner preparation to do the following:

a. Administer a basic skills test to practitioner preparation program admission candidates. Rules adopted shall require institutions to deny admission to the program to any candidate who does not successfully pass the test.

b. Include preparation in reading programs, including reading recovery, and integrate reading strategies into content area methods coursework.

c. Include in the professional education program, preparation that contributes to the education of students with disabilities and students who are gifted and talented, and preparation in classroom management addressing high-risk behaviors including, but not limited to, behaviors related to substance abuse. Preparation required under this paragraph must be successfully completed before graduation from the practitioner preparation program.

2. A person initially applying for a license shall successfully complete a professional education program containing the subject matter specified in this section, before the initial action by the board of educational examiners takes place.

99 Acts, ch 191, §1

Board of educational examiners study of performance of teacher education graduates; 99 Acts, ch 191, §3
Section amended

256.22 Extended year school grant program.

1. Subject to an appropriation of sufficient funds by the general assembly, the department shall establish an extended year school grant pro-

gram to provide for the allocation of grants to school districts, or a collaboration of school districts, to provide technical assistance for conversion of an existing school to an extended school year calendar, or for investigating the possibility of converting an existing school within a district to an extended school year calendar.

2. Grant moneys shall be distributed to qualifying school districts by the department no later than October 15, 1999. Grant amounts shall be distributed as determined by the department.

3. By February 15, 1999, a school district or collaboration of districts receiving moneys under this section shall submit an interim report to the department describing the planning activities conducted by the school district or the collaboration and providing preliminary conclusions. The school district or collaboration shall submit a final report by June 1, 1999, to the department. The department shall summarize the school district reports in a final report to the chairpersons and ranking members of the house and senate standing education committees by January 1, 2000.

4. 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 purposes of this section.

99 Acts, ch 205, §19

Subsection 2 amended

256.44 National board certification pilot project.

1. A national board certification pilot project is established to be administered by the department of education. A teacher, as defined in section 272.1, who registers for or achieves national board for professional teaching standards certification, and who is employed by a school district in Iowa and receiving a salary as a classroom teacher, may be eligible for the following:

a. If a teacher registers for national board for professional teaching standards certification prior to June 30, 2002, a one-time initial reimbursement award in the amount of up to one-half of the registration fee paid by the teacher for registration for certification by the national board for professional teaching standards. The teacher shall apply to the department of education within one year of registration, submitting to the department any documentation the department requires. A teacher who receives an initial reimbursement award shall receive a one-time final registration award in the amount of the remaining national board registration fee paid by the teacher if the teacher notifies the department of the teacher's certification achievement and submits any documentation requested by the department.

b. (1) If, by May 1, 2000, the teacher applies to the department for an annual award and submits documentation of certification by the national

board for professional teaching standards, an annual award in the amount of five thousand dollars. However, if the teacher does not achieve certification on the teacher's first attempt to pass the national board for professional teaching standards assessment, the teacher shall be paid the award amount as provided in subparagraph (2) upon achieving certification. The department shall award not more than a total of fifty thousand dollars in annual awards to an individual during the individual's term of eligibility for annual awards.

(2) If the teacher registers for national board for professional teaching standards certification between January 1, 1999, and January 1, 2002, and achieves certification within three years from the date of initial score notification, an annual award in the amount of two thousand five hundred dollars upon achieving certification by the national board of professional teaching standards.

To receive an annual award pursuant to this paragraph "b", a teacher shall apply to the department for an award within one year of eligibility. Payment for awards shall be made only upon departmental approval of an application or recertification of eligibility. A term of eligibility shall be for ten years or for the years in which the individual maintains a valid certificate, whichever time period is shorter. In order to continue receipt of payments, a recipient shall annually recertify eligibility.

2. *a.* If the amount appropriated annually for purposes of this section is insufficient to pay the full amount of reimbursement awards in accordance with subsection 1, paragraph "a", the department shall annually prorate the amount of the registration awards provided to each teacher who meets the requirements of this section.

b. If the amount appropriated annually for purposes of providing an annual award in accordance with subsection 1, paragraph "b", is insufficient to pay the full annual award to all teachers approved by the department for an annual award, the department shall prorate the amount of the annual award based upon the amount appropriated.

3. A teacher receiving an annual award pursuant to this section may provide additional services to the school district that employs the teacher. The additional services to be provided by the teacher may be mutually agreed upon by the school district and the teacher.

4. Awards shall be paid to teachers by the department as follows:

a. Upon receipt of reimbursement documentation as provided in subsection 1, paragraph "a".

b. Not later than June 1 to teachers whose applications and recertifications for annual awards as provided in subsection 1, paragraph "b", are submitted to the department by May 1 and subsequently approved.

5. Notwithstanding any provision to the contrary, a teacher approved by the department to receive an annual award for certification in accordance with this section in the fiscal year beginning July 1, 1998, shall receive the annual award amount specified in subsection 1, paragraph "b", subparagraph (1), to commence with the fiscal year beginning July 1, 1999.

6. From funds appropriated for purposes of this section by the general assembly to the department of education for each fiscal year in the fiscal period beginning July 1, 1999, and ending June 30, 2004, three hundred thousand dollars, or so much thereof as may be necessary, shall be used for the payment of registration awards as provided in subsection 4, paragraph "a".

7. The department shall prorate the amount of the annual awards paid in accordance with this section when the number of award recipients exceeds one thousand one hundred individuals.

8. Notwithstanding section 8.33, funds appropriated for purposes of this section which remain unencumbered or unobligated at the close 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 purposes of this section.

99 Acts, ch 142, §1; 99 Acts, ch 205, §20
Study of effects of national board certification pilot project; 99 Acts, ch 142, §2
Authority to adopt emergency rules; 99 Acts, ch 142, §3
Section stricken and rewritten
NEW subsection 8

256.67A Insurance eligibility.

Personnel employed by a regional library shall be considered state employees for purposes of eligibility for receiving employee health and dental insurance as provided to state employees by the department of personnel. If a regional library elects to participate in a state employee health and dental insurance program, the regional library shall continue to pay the costs of employee participation in a program from funds appropriated for purposes of the regional libraries by the general assembly.

99 Acts, ch 205, §21
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.

Creation of information technology department effective July 1, 2000; link to division of public broadcasting; transition provisions; 99 Acts, ch 207, §6, 7, 22

Section not amended; footnote added

CHAPTER 256A

CHILD DEVELOPMENT ASSISTANCE

256A.3 Duties of council.

The child development coordinating council shall:

1. Develop a definition of at-risk children for the purposes of this chapter. The definition shall include income, family structure, the child's level of development, and availability or accessibility for the child of a head start or other child care program as criteria.
2. Establish minimum guidelines for comprehensive early child development services for at-risk three-year- and four-year-old children. The guidelines shall reflect current research findings on the necessary components for cost-effective child development services.
3. At least biennially, develop an inventory of child development services provided to at-risk three-year- and four-year-old children in this state and identify the number of children receiving and not receiving these services, the types of programs under which the services are received, the degree to which each program meets the council's minimum guidelines for a comprehensive program, and the reasons children not receiving the services are not being served. The council is not required to conduct independent research in developing the inventory, but shall determine information needs necessary to provide a more complete inventory.
4. Make recommendations to the department of education and the general assembly regarding appropriate curricula and staff qualifications and training for early elementary education, coordination of the curricula with child development programs, and the development of an at-risk children definition for use in school-district-sponsored early elementary and before and after school child care programs.
5. Subject to the availability of funds appropriated or otherwise available for the purpose of providing child development services, award grants for programs that provide new or additional child development services to at-risk children.

In awarding program grants to an agency or individual, the council shall consider the following:

- a. The quality of the staff and staff background in child development services.

- b. The degree to which the program is or will be integrated with existing community resources and has the support of the local community.

c. The ability of the program to provide for child care in addition to child development services for families needing full-day child care.

d. A staff-to-children ratio within the guidelines established under subsection 2, but not less than one staff member per eight children.

e. The degree to which the program involves and works with the parents, and includes home visits, instruction for parents on parenting skills, on enhancement of skills in providing for their children's learning and development, and the physical, mental, and emotional development of children, and experiential education.

f. The manner in which health, medical, dental, and nutrition services are incorporated into the program.

g. The degree to which the program complements existing programs and services for at-risk three-year- and four-year-old children available in the area, including other child care services, services provided through the school district, and services available through area education agencies.

h. The degree to which the program can be monitored and evaluated to determine its ability to meet its goals.

i. The provision of transportation or other auxiliary services that may be necessary for families to participate in the program.

j. The provision of staff training and development, and staff compensation sufficient to assure continuity.

Program grants funded under this subsection may integrate children not meeting at-risk criteria into the program and shall establish a fee for participation in the program in the manner provided in section 279.49, but grant funds shall not be used to pay the costs for those children.

6. Encourage the submission of grant requests from all potential providers of child development services and shall be flexible in evaluating grants, recognizing that different types of programs may be suitable for different locations in the state. However, requests for grants must contain a procedure

for evaluating the effectiveness of the program and accounting procedures for monitoring the expenditure of grant moneys.

The council shall seek to use performance-based measures to evaluate programs. Not more than five percent of any state funds appropriated for child development purposes may be used for administration and evaluation.

7. Encourage the establishment of regional councils designed to facilitate the development on a regional basis of programs for at-risk three-year- and four-year-old children.

8. Annually, submit recommendations to the governor and the general assembly on the need for investment in child development services in the state.

9. Subject to a decision by the council to initiate

the programs, develop criteria for and award grants under section 279.51, subsection 2.

10. Encourage the establishment of programs that will enhance the skills of parents in parenting and in providing for the learning and development of their children.

11. Cooperate with the department of education in establishing the family resource center demonstration program. Assistance shall include, but is not limited to, identification of various funding sources which, in addition to or in combination with state funds, can be used to support the services provided in a family resource center demonstration program and the development of recommended approaches for obtaining and blending funds from various sources.

99 Acts, ch 192, §33
Terminology change applied

CHAPTER 256C

FAMILY RESOURCE CENTER DEMONSTRATION PROGRAM

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 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 child care home 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 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.

99 Acts, ch 192, §31, 33
See Code editor's note to §10A.202
Terminology changes applied
Subsection 5 amended

CHAPTER 256D

IOWA EARLY INTERVENTION AND SCHOOL IMPROVEMENT TECHNOLOGY BLOCK GRANT PROGRAMS

Chapter repealed effective July 1, 2003;
99 Acts, ch 18, §9

256D.1 Iowa early intervention block grant program established — goals.

1. An Iowa early intervention block grant program is established within the department of education. The program's goals for kindergarten through grade three are to provide the resources needed to reduce class sizes in basic skills instruction to the state goal of seventeen students for every one teacher; provide direction and resources for early intervention efforts by school districts to achieve a higher level of student success in the basic skills, especially reading skills; and increase communication and accountability regarding student performance. The Iowa early intervention block grant program shall consist of the following:

a. Class size management. School districts shall develop a class size management strategy to work toward, or to maintain, class sizes in basic skills instruction for kindergarten through grade three that are at the state goal of seventeen students for every one teacher.

b. Improving instruction in the basics. The department of education shall identify diagnostic assessment tools that can be used to assist teachers in measuring reading accuracy and fluency skills, including but not limited to, phonemic awareness, oral reading ability, and comprehensive skills, to improve student achievement in kindergarten through grade three. The department, in collaboration with the area education agencies, school districts, and institutions with approved practitioner preparation programs, shall identify and serve as a clearinghouse on intensive, research-based strategies and programs for training teachers in both diagnosis and appropriate instruction interventions.

(1) A school district shall at a minimum biannually inform parents of their individual child's performance on the diagnostic assessments in kindergarten through grade three. If intervention is appropriate, the school district shall inform the parents of the actions the school district intends to take to improve the child's reading skills and provide the parents with strategies to enable the parents to improve their child's skills. The board of directors of each school district shall adopt a policy indicating the methods the school district will use to inform parents of their individual child's performance.

(2) The department shall also identify for school districts programs and materials by which parents may support classroom reading instruction.

2. A school district shall integrate its specific early intervention block grant program goals and activities into the comprehensive school improvement plan required under section 256.7, subsection 21, paragraph "a".

3. For purposes of this chapter, unless the context otherwise requires, "parent" means a biological or adoptive parent, a stepparent, or a legal guardian or custodian of a student.

99 Acts, ch 18, §1
NEW section

256D.2 Program expenditures.

A school district shall expend funds received pursuant to section 256D.4 at the kindergarten through grade three levels to reduce class sizes to the state goal of seventeen students for every one teacher and to achieve a higher level of student success in the basic skills, especially reading. In order to support these efforts, school districts may expend funds received pursuant to section 256D.4 at the kindergarten through grade three level on programs, instructional support, and materials that include, but are not limited to, the following: additional licensed instructional staff; additional support for students, such as before and after school programs, tutoring, and intensive summer programs; the acquisition and administration of diagnostic reading assessments; the implementation of research-based instructional intervention programs for students needing additional support; the implementation of all-day, everyday kindergarten programs; and the provision of classroom teachers with intensive training programs to improve reading instruction and professional development in best practices, including but not limited to training programs related to instruction to increase students' phonemic awareness, reading abilities, and comprehension skills.

99 Acts, ch 18, §2
NEW section

256D.3 Annual reports.

1. A school district shall report annually to its school community the proportion of fourth grade students who are proficient in reading in accordance with section 256.7, subsection 21, paragraph "c". School districts are encouraged to submit to their communities composite information concerning the reading proficiency of their kindergarten through grade three enrollments, by grade level.

2. The annual report submitted to the department of education in accordance with section 256.7, subsection 21, paragraph "c", shall include the dis-

trict's current class sizes for kindergarten through grade three.

3. Beginning January 15, 2001, the department shall submit an annual report to the chairpersons and ranking members of the senate and house education committees that includes the statewide average school district class size in basic skills instruction in kindergarten through grade three, by grade level and by district size, and describes school district progress toward achieving early intervention block grant program goals and the ways in which school districts are using moneys received pursuant to section 256D.4.

99 Acts, ch 18, §3
NEW section

256D.4 Program allocation.

1. For each fiscal year in the fiscal period beginning July 1, 1999, and ending June 30, 2001, moneys appropriated pursuant to section 256D.5, subsection 1, paragraph "a" or "b", shall be allocated to school districts in accordance with the following formula:

a. Fifty percent of the allocation shall be based upon the proportion that the kindergarten through grade three enrollment of a district bears to the sum of the kindergarten through grade three enrollments of all school districts in the state as reported for the base year.

b. Fifty percent of the allocation shall be based upon the proportion that the number of children who are eligible for free or reduced price meals under the federal National School Lunch Act and the federal Child Nutrition Act of 1966, 42 U.S.C. § 1751-1785, in grades one through three of a school district bears to the sum of the number of children who are eligible for free or reduced price meals under the federal National School Lunch Act and the federal Child Nutrition Act of 1966, 42 U.S.C. § 1751-1785, in grades one through three in all school districts in the state for the base year.

2. For each fiscal year in the fiscal period beginning July 1, 2001, and ending June 30, 2003, moneys appropriated pursuant to section 256D.5, subsection 1, paragraph "c", shall be allocated to school districts as follows:

a. Allocation of the sum of twenty million dollars shall be based upon the proportion that the kindergarten through grade three enrollment of a district bears to the sum of the kindergarten through grade three enrollments of all school districts in the state as reported for the base year.

b. Allocation of the sum of ten million dollars shall be based upon the proportion that the number of children who are eligible for free or reduced price meals under the federal National School Lunch Act and the federal Child Nutrition Act of 1966, 42 U.S.C. § 1751-1785, in grades one through three of a school district bears to the sum of the number of children who are eligible for free or reduced price meals under the federal National School Lunch Act and the federal Child Nutrition Act of 1966, 42

U.S.C. § 1751-1785, in grades one through three in all school districts in the state for the base year.

3. For each year in which an appropriation is made to the Iowa early intervention block grant program, the department of education shall notify the department of revenue and finance of the amount of the allocation to be paid to each school district as provided in subsections 1 and 2. The allocation to each school district shall be made in one payment on or about October 15 of the fiscal year for which the appropriation is made, taking into consideration the relative budget and cash position of the state resources. Moneys received under this section shall not be commingled with state aid payments made under section 257.16 to a school district and shall be accounted for by the local school district separately from state aid payments. Payments made to school districts under this section are miscellaneous income for purposes of chapter 257. A school district shall maintain a separate listing within its budget for payments received and expenditures made pursuant to this section. A school district shall certify to the department of education that moneys received under this section were used to supplement, not supplant, moneys otherwise received and used by the school district.

4. For purposes of this section, unless the context otherwise requires, "*kindergarten through grade three enrollment*" means the enrollment as reported in the basic educational data survey for the base year.

99 Acts, ch 18, §4
NEW section

256D.5 Appropriations.

1. There is appropriated from the general fund of the state to the department of education, the following amounts, for the following fiscal years, for the Iowa early intervention block grant program:

a. For the fiscal year beginning July 1, 1999, and ending June 30, 2000, the sum of ten million dollars.

b. For the fiscal year beginning July 1, 2000, and ending June 30, 2001, the sum of twenty million dollars.

c. For each fiscal year of the fiscal period beginning July 1, 2001, and ending June 30, 2003, the sum of thirty million dollars.

2. There is appropriated from the general fund of the state to the department of education for each fiscal year of the fiscal period beginning July 1, 2001, and ending June 30, 2003, the sum of thirty million dollars for the school improvement technology block grant program.

99 Acts, ch 18, §5
NEW section

256D.6 Distribution of school improvement technology block grant funds.

1. From the moneys appropriated in section 256D.5, subsection 2, other than the moneys allocated in subsection 2 of this section, for each fiscal year in which moneys are appropriated, the

amount of moneys allocated to school districts shall be in the proportion that the basic enrollment of a district bears to the sum of the basic enrollments of all school districts in the state for the budget year. However, except as provided in subsection 6, a district shall not receive less than ten thousand dollars in a fiscal year. The Iowa braille and sight saving school, the state school for the deaf, and the Price laboratory school at the university of northern Iowa shall annually certify their basic enrollments to the department of education by October 1. The department of human services shall certify the average student yearly enrollments of the institutions under department of human services control as provided in section 218.1, subsections 1 through 3, 5, 7, and 8, to the department of education by October 1.

2. From the moneys appropriated in section 256D.5, subsection 2, for each fiscal year in which moneys are appropriated, the sum of one hundred fifty thousand dollars shall be divided among the area education agencies based upon each area education agency's percentage of the total full-time equivalent elementary and secondary teachers employed in the school districts in this state. An area education agency may contract with an appropriate accredited institution of higher education in Iowa to provide staff development and training in accordance with section 256D.7.

3. For each year in which an appropriation is made to the school improvement technology block grant program, the department of education shall notify the department of revenue and finance of the amount to be paid to each school district and area education agency based upon the distribution plan set forth for the appropriation made pursuant to this section. The allocation to each school district and area education agency under this section shall be made in one payment on or about October 15 of the fiscal year in which the appropriation is made, taking into consideration the relative budget and cash position of the state resources.

4. Payments made to school districts and area education agencies under this section are miscellaneous income for purposes of chapter 257. Moneys received under this section 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 local school district or area education agency separately from state aid payments.

5. Moneys received under this section shall not be used for payment of any collective bargaining agreement or arbitrator's decision negotiated or awarded under chapter 20.

6. For purposes of this section and section 256D.8, "school district" means a school district, the Iowa braille and sight saving school, the state school for the deaf, the Price laboratory school at the university of northern Iowa, and the institutions under the control of the department of human

services as provided in section 218.1, subsections 1 through 3, 5, 7, and 8. However, notwithstanding subsection 1, the amount of moneys allocated to the institutions under the control of the department of human services as provided in section 218.1, subsections 1, 2, 3, and 5, shall be a total of not more than twenty thousand dollars for each fiscal year, to be distributed proportionately between the four institutions by the department of education.

99 Acts, ch 18, §6
NEW section

256D.7 School improvement technology planning.

1. Commencing with the fiscal year beginning July 1, 2001, each school district shall include a technology plan as a component of the annual report submitted to the department of education in accordance with section 256.7, subsection 21, paragraphs "a" and "c". The plan shall be developed by licensed professional staff of the district, including both teachers and administrators. The plan shall, at a minimum, focus on the attainment of student achievement goals on academic and other core indicators, consider the district's interconnectivity with the Iowa communications network, and demonstrate how the board will utilize technology to improve student achievement. The technology plan shall be kept on file in the district and a copy of the plan, and any subsequent amendments to the plan, shall be sent to the appropriate area education agency.

2. Prior to receiving funds under this chapter, each area education agency shall develop a plan to assist school districts in the development of a technology planning process to meet the purposes of the school improvement technology block grant program. The plan shall describe how the area education agency intends to support school districts with instructional technology staff development and training. The department shall approve each plan prior to the disbursement of funds. An area education agency needs to develop only one plan and send it to the department of education while this chapter is effective. An area education agency may submit a plan that meets the requirements of chapter 295, Code 2001. An annual progress report shall be submitted to the department of education.

3. Prior to receiving funds pursuant to section 256D.5, subsection 2, the Iowa braille and sight saving school, the state school for the deaf, and the Price laboratory school at the university of northern Iowa shall each submit to the state board of regents and the department of education a technology plan that supports and improves student achievement, demonstrates how technology will be utilized to improve student achievement, and includes an evaluation component. The schools listed in this subsection need to develop only one plan each to send to the state board of regents and the

department of education while this chapter is effective. An annual progress report shall be submitted to the state board of regents and the department of education.

4. Prior to receiving funds pursuant to section 256D.5, subsection 2, the institutions under the control of the department of human services as provided in section 218.1, subsections 1 through 3, 5, 7, and 8, shall each submit to the departments of education and human services a technology plan that supports and improves student achievement, demonstrates the manner in which technology will be utilized to improve student achievement, and includes an evaluation component. Each institution developing a plan under this subsection needs to develop only one plan to send to the departments of education and human services while this chapter is effective. Each institution shall submit an annual progress report to the departments of education and human services.

99 Acts, ch 18, §7; 99 Acts, ch 208, §51
NEW section
Subsection 4 amended

256D.8 School improvement technology block grant expenditures.

1. Except as provided in subsection 2, a school district shall expend funds received pursuant to section 256D.5, subsection 2, for the acquisition, lease, lease-purchase, installation, and maintenance

of instructional technology equipment, including hardware and software, materials and supplies related to instructional technology, and staff development and training related to instructional technology, and shall establish priorities for the use of the funds. However, funds received by a school district pursuant to section 256D.5, subsection 2, shall not be expended to add a full-time equivalent position or otherwise increase staffing.

2. A school district may expend up to two-thirds of the funds received annually pursuant to section 256D.5, subsection 2, for any of the purposes described in section 256D.2, including for the employment of additional licensed instructional staff.

3. Funds received by an area education agency pursuant to section 256D.6, subsection 2, shall be expended for the costs related to supporting school districts within the area served with technology planning and equipment, including hardware and software, materials and supplies related to instructional technology, and staff development and training related to instructional technology.

99 Acts, ch 18, §8
NEW section

256D.9 Future repeal.

This chapter is repealed effective July 1, 2003.

99 Acts, ch 18, §9
NEW section

CHAPTER 256E

BEGINNING TEACHER INDUCTION PROGRAMS

Emergency rulemaking authority; 99 Acts, ch 205, §45

256E.1 Definitions.

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

1. *“Beginning teacher”* means an individual serving under an initial provisional or conditional license, issued by the board of educational examiners under chapter 272, who is assuming a position as a classroom teacher.

2. *“Board”* means the board of directors of a school district or a collaboration of boards of directors of school districts.

3. *“Classroom teacher”* means an individual who holds a valid practitioner’s license and who is employed under a teaching contract with a school district or area education agency in this state to provide classroom instruction to students.

4. *“Department”* means the department of education.

5. *“Director”* means the director of the department of education.

6. *“District facilitator”* means a licensed professional pursuant to chapter 272 who is appointed by a board to serve as the liaison between the board

and the department for the beginning teacher induction program.

7. *“Mentor”* means an individual employed by a school district or area education agency as a classroom teacher who holds a valid license to teach issued under chapter 272. The individual must have a record of four years of successful teaching practice, must be employed as a classroom teacher on a nonprobationary basis, and must demonstrate professional commitment to the improvement of teaching and learning, and the development of beginning teachers.

99 Acts, ch 205, §22
NEW section

256E.2 Beginning teacher induction program established — grants.

1. If the general assembly appropriates moneys for purposes of teacher induction, the department of education shall coordinate a beginning teacher induction program to promote excellence in teaching, build a supportive environment within school districts, increase the retention of promising

beginning teachers, and promote the personal and professional well-being of teachers.

2. The department shall adopt rules concerning the grant application and award process, including reasonable cost estimates for beginning teacher induction programs. The department may disapprove a plan submitted by a board if the plan does not meet the minimum criteria set forth in section 256E.3, subsection 2, or the plan exceeds the reasonable costs as determined by the department. If the cost estimates submitted by a board exceed reasonable cost estimates as determined by the department, the department shall work with the board to identify measures for reducing plan costs. If the department determines that moneys appropriated by the general assembly are insufficient to meet the grant requests for all approved beginning teacher induction program plans, the department shall award grants based on the geographic location and district population of the school districts with approved plans. Grants may be awarded in subsequent years based upon the most recent plan on file with the department. It is the intent of the general assembly that the department approve plans that incorporate local innovation and take into consideration local needs.

99 Acts, ch 205, §23
NEW section

256E.3 District facilitator and plan.

1. An area education agency shall prepare a model beginning teacher induction program plan and shall provide the model plan to each school district within its area. The plan shall include a model evaluation component by which a school district may measure the effectiveness of its program. Any modifications to the model plan shall be submitted to school districts as soon as practical. A board that wishes to participate in the program shall adopt a beginning teacher induction program plan and written procedures for the program, and may use, alter, or revise the model plan provided by the area education agency at the board's discretion.

2. A board that wishes to participate in the beginning teacher induction program shall appoint a district facilitator, whose duties shall include, but are not limited to, overseeing the implementation of a plan for meeting the goals of the program as set forth in section 256E.2. The plan shall, at a minimum, provide the process for the selection of and the number of mentors; the mentor training process; the timetable by which the plan shall be implemented; placement of mentors and beginning teachers; the minimum amount of contact time between mentors and beginning teachers; the minimum amount of release time for mentors and beginning teachers for meetings for planning, demonstration, observation, feedback, and workshops; the process for dissolving mentor and beginning teacher partnerships; and the process for measuring the results of the program.

3. The district facilitator shall submit the plan, and the proposed costs of implementing the plan, to the board, which shall consider the plan and, once approved, submit the plan and a reasonable cost proposal to the department of education.

4. The district facilitator is encouraged to work with area education agencies and postsecondary institutions in the preparation and implementation of a plan.

5. The district facilitator shall place beginning teachers participating in the program in a manner that provides the greatest opportunity to work with the largest number of mentors.

99 Acts, ch 205, §24
NEW section

256E.4 Beginning teacher induction state subsidy — fund.

1. A mentor in a beginning teacher induction program approved under this chapter shall be eligible for an award of five hundred dollars per semester, at a minimum, for participation in the program, which shall be paid from moneys received pursuant to this chapter by the school district.

2. Moneys received by a school district pursuant to this chapter shall be expended to provide mentors with awards in accordance with subsection 1, to implement the plan, to provide for a stipend for the district facilitator, and to pay any applicable costs of the employer's share of contributions to federal social security and the Iowa public employees' retirement system or a pension and annuity retirement system established under chapter 294, for such amounts paid by the district.

3. Moneys received by a school district under this chapter are miscellaneous income for purposes of chapter 257 or are considered encumbered. A school district shall maintain a separate listing within its budget for payments received and expenditures made pursuant to this section.

4. A beginning teacher induction fund is established in the office of the treasurer of state to be administered by the department. Moneys appropriated by the general assembly for deposit in the fund shall be used to provide funding to school districts pursuant to this section.

99 Acts, ch 205, §25
NEW section

256E.5 Reports.

The board implementing an approved beginning teacher induction program as provided in this chapter shall submit an assessment of the program's results by July 1 of the fiscal year succeeding the year in which the school district received moneys under this chapter. The department shall annually report the statewide results of the program to the chairpersons and the ranking members of the senate and house education committees by January 1.

99 Acts, ch 205, §26
NEW section

CHAPTER 257

FINANCING SCHOOL PROGRAMS

Chapter repealed effective July 1, 2001; 89 Acts, ch 135, §135

257.1 State school foundation program — state aid.

1. *Program established.* A state school foundation program is established for the school year commencing July 1, 1991, and succeeding school years.

2. *State school foundation aid — foundation base.* For a budget year, each school district in the state is entitled to receive foundation aid, in an amount per pupil equal to the difference between the amount per pupil of foundation property tax in the district, and the combined foundation base per pupil or the combined district cost per pupil, whichever is less. However, if the amount of foundation aid received by a school district under this chapter is less than three hundred dollars per pupil, the district is entitled to receive three hundred dollars per pupil unless the receipt of three hundred dollars per pupil plus the per pupil amount raised by the foundation property tax exceeds the combined district cost per pupil of the district for the budget year. In that case, the district is entitled to receive an amount per pupil equal to the difference between the per pupil amount raised by the foundation property tax for the budget year and the combined district cost per pupil for the budget year.

For the budget year commencing July 1, 1999, and for each succeeding budget year the regular program foundation base per pupil is eighty-seven and five-tenths percent of the regular program state cost per pupil. For the budget year commencing July 1, 1991, and for each succeeding budget year the special education support services foundation base is seventy-nine percent of the special education support services state cost per pupil. The combined foundation base is the sum of the regular program foundation base and the special education support services foundation base.

For the budget year commencing July 1, 1999, the department of management shall add the amount of the additional budget adjustment computed in section 257.14, subsection 1, to the combined foundation base.

3. *Computations rounded.* In making computations and payments under this chapter, except in the case of computations relating to funding of special education support services, media services, and educational services provided through the area education agencies, the department of management shall round amounts to the nearest whole dollar.

99 Acts, ch 2, §1, 4; 99 Acts, ch 178, §1, 10

1996 amendment to subsection 2, unnumbered paragraph 2, applies to computation of aid payable during school budget years beginning on or after July 1, 1996; 96 Acts, ch 1197, §6

1999 amendment to subsection 2, unnumbered paragraph 2, applies to the computation of school aid for school budget years beginning on or after July 1, 1999; 99 Acts, ch 178, §10

1999 amendment to subsection 2, unnumbered paragraph 3, applies to computation of school aid for school budget year beginning July 1, 1999; 99 Acts, ch 2, §4

Partial item veto applied

Subsection 2, unnumbered paragraphs 2 and 3 amended

257.8 State percent of growth — allowable growth.

1. *State percent of growth.* The state percent of growth for the budget year beginning July 1, 1999, is three percent. The state percent of growth for the budget year beginning July 1, 2000, is four percent. The state percent of growth for each subsequent budget year shall be established by statute which shall be enacted within thirty days of the submission in the year preceding 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. *Alternate allowable growth — gifted and talented programs.* Notwithstanding the calculation in subsection 2, the department of management shall calculate the regular program allowable growth for the budget year beginning July 1, 1999, by multiplying the state percent of growth for the budget year by the regular program state cost per pupil for the base year, and add to the resulting product thirty-eight dollars. For purposes of determining the amount of a budget adjustment as defined in section 257.14, for a school district which calculated allowable growth for the budget year beginning July 1, 1999, pursuant to this subsection, thirty-eight dollars shall be subtracted from the school district's regular program cost per pupil for the budget year beginning July 1, 1999, prior to determining the amount of the adjustment.

4. *Alternate allowable growth — regular program state cost.* A school district which calculated allowable growth for the budget year beginning July 1, 1999, pursuant to the provisions of subsection 3, shall calculate allowable growth pur-

suant to the provisions of subsection 2 for the school budget year beginning July 1, 2000, and succeeding budget years, utilizing a regular program state cost per pupil figure which incorporates the thirty-eight dollar increase in regular program allowable growth calculated for the budget year beginning July 1, 1999.

5. *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.

6. *Alternate allowable growth — definitions.* For budget years beginning July 1, 2000, and subsequent budget years, references to the terms “allowable growth”, “regular program state cost per pupil”, and “regular program district cost per pupil” shall mean those terms as calculated for those school districts that calculated regular program allowable growth for the school budget year beginning July 1, 1999, with the additional thirty-eight dollars.

99 Acts, ch 1, §1, 2; 99 Acts, ch 178, §2, 10

1999 amendment to subsection 1 applies to the school budget year beginning July 1, 2000; 99 Acts, ch 1, §2

Subsections 3, 4, and 6 apply to computation of school aid for school budget years beginning on or after July 1, 1999; 99 Acts, ch 178, §10

Partial item veto applied

Subsection 1 amended

NEW subsections 3 and 4 and former subsection 3 renumbered as 5

NEW subsection 6

257.10 District cost per pupil — district cost.

1. *Regular program district cost per pupil for 1991-1992.* For the budget year beginning July 1, 1991, in order to determine the regular program district cost per pupil for a district, the department of management shall divide the product of the regular program district cost per pupil of the district for the base year, as regular program district cost per pupil would have been calculated under section 442.9, Code 1989, multiplied by its budget enrollment for the base year as budget enrollment would have been calculated under section 442.4, Code 1989, plus the amount added to district cost pursuant to section 442.21, Code 1989, for each school district, by the budget enrollment of the school district for the budget year beginning July 1, 1990, calculated under section 257.6, subsection 4, as if section 257.6, subsection 4, had been in effect for that budget year. The regular program district cost per pupil for the budget year beginning July 1, 1991, is the amount calculated by the department of management under this subsection plus the allowable growth amount calculated for regular program state cost per pupil, except that if the regular program district cost per pupil for the budget year calculated under this subsection in any school dis-

trict exceeds one hundred ten percent of the regular program state cost per pupil for the budget year, the department of management shall reduce the regular program district cost per pupil of that district for the budget year to an amount equal to one hundred ten percent of the regular program state cost per pupil for the budget year, and if the regular program district cost per pupil for the budget year calculated under this subsection in any school district is less than the regular program state cost per pupil for the budget year, the department of management shall increase the regular program district cost per pupil of that district to an amount equal to the regular program state cost per pupil for the budget year.

2. *Regular program district cost per pupil for 1992-1993 and succeeding years.*

a. For the budget year beginning July 1, 1992, and succeeding budget years, the regular program district cost per pupil for each school district for a budget year is the regular program district cost per pupil for the base year plus the regular program allowable growth for the budget year except as otherwise provided in this subsection.

b. If the regular program district cost per pupil of a school district for the budget year under paragraph “a” exceeds one hundred five percent of the regular program state cost per pupil for the budget year and the state percent of growth for the budget year is greater than two percent, the regular program district cost per pupil for the budget year for that district shall be reduced to one hundred five percent of the regular program state cost per pupil for the budget year. However, if the difference between the regular program district cost per pupil for the budget year and the regular program state cost per pupil for the budget year is greater than an amount equal to two percent multiplied by the regular program state cost per pupil for the base year, the regular program district cost per pupil for the budget year shall be reduced by the amount equal to two percent multiplied by the regular program state cost per pupil for the base year.

3. *Special education support services district cost per pupil for 1991-1992.* For the budget year beginning July 1, 1991, for the special education support services district cost per pupil, the department of management shall divide the approved budget of each area education agency for special education support services for that year approved by the state board of education, under section 273.3, subsection 12, by the total of the weighted enrollment for special education support services in the area for that budget year.

The special education support services district cost per pupil for each school district in an area for the budget year is the amount calculated by the department of management under this subsection.

4. *Special education support services district cost per pupil for 1992-1993 and succeeding years.* For the budget year beginning July 1, 1992, and

succeeding budget years, the special education support services district cost per pupil for the budget year is the special education support services district cost per pupil for the base year plus the special education support services allowable growth for the budget year.

Notwithstanding the special education support services district cost per pupil for the budget year beginning July 1, 1991, calculated under subsection 3, for area education agencies that have fewer than three and five-tenths public school pupils per square mile, the special education support services district cost per pupil for the budget year beginning July 1, 1991, is one hundred forty-seven dollars.

5. *Combined district cost per pupil.* The combined district cost per pupil for a school district is the sum of the regular program district cost per pupil and the special education support services district cost per pupil. Combined district cost per pupil does not include additional allowable growth added for school districts that have a negative balance of funds raised for special education instruction programs, additional allowable growth granted by the school budget review committee for a single school year, or additional allowable growth added for programs for dropout prevention.

6. *Regular program district cost.* Regular program district cost for a school district for a budget year is equal to the regular program district cost per pupil for the budget year multiplied by the budget enrollment for the budget year.

7. *Special education support services district cost.* Special education support services district cost for a school district for a budget year is equal to the special education support services district cost per pupil for the budget year multiplied by the special education support services weighted enrollment for the district for the budget year. If the special education support services district cost for a school district for a budget year is less than the special education support services district cost for that district for the base year, the department of management shall adjust the special education support services district cost for that district for the budget year to equal the special education support services district cost for the base year.

8. *Combined district cost.* Combined district cost is the sum of the regular program district cost per pupil multiplied by the weighted enrollment and the special education support services district cost, plus the additional district cost allocated to the district to fund media services and educational services provided through the area education agency.

A school district may increase its combined district cost for the budget year to the extent that an excess tax levy is authorized by the school budget review committee.

99 Acts, ch 178, §3, 10

1999 amendment to subsection 5 applies to computation of school aid for school budget years beginning on or after July 1, 1999; 99 Acts, ch 178, §10
Subsection 5 amended

257.13 On-time funding for new students.

1. For the school budget year beginning July 1, 1999, if a district's actual enrollment for the budget year, determined under section 257.6, is greater than its budget enrollment for the budget year, the district may submit a request to the school budget review committee for on-time funding for new students. The school budget review committee shall consider the relative increase in enrollment on a district-by-district basis, in determining whether to approve the request, and shall determine the amount of additional funding to be provided if the request is granted. An application for on-time funding pursuant to this subsection must be received by the department of education by November 1. Written notice of the committee's decision shall be given through the department of education to the school board for a district.

2. If the school budget review committee approves a request for on-time funding for new students, the funding shall be in an amount up to the product of the state cost per pupil for the budget year multiplied by the difference between the actual enrollment for the budget year and the budget enrollment for the budget year. The additional funding received under this section is miscellaneous income to the district.

3. There is appropriated for the fiscal year beginning July 1, 1999, and ending June 30, 2000, from the general fund of the state to the department of education up to four million dollars to pay additional funding authorized under this section, which shall be paid to school districts in the same manner as other state aids payable under section 257.16. If the requests approved by the school budget review committee exceed the appropriation in this subsection, the payments to school districts receiving approval for on-time funding shall be prorated such that each school district approved for on-time funding shall receive an amount of on-time funding equal to the percentage that the on-time funding to be provided to the district bears to the total amount of on-time funding to be provided to all districts receiving approval.

4. If the board of directors of a school district determines that a need exists for additional funds exceeding the state aid amount provided in this section, a request for modified allowable growth based upon increased enrollment may be submitted to the school budget review committee as provided in section 257.31.

5. A school district which is receiving a budget adjustment for a budget year pursuant to section 257.14 shall receive on-time funding for increased enrollment, reduced by the amount of the budget adjustment for that budget year. The resulting amount shall not be less than zero. The school district shall comply with the procedures established in subsection 1.

6. If a district receives additional funding under this section for a budget year, the department of management shall determine the amount of the additional funding which would have been generated by local property tax revenues, in proportion to the amount of funding actually received pursuant to this section, if the actual enrollment for the budget year had been used in determining district cost for that budget year. The department of management shall reduce, but not by more than the amount of the additional funding, the district's total state school aids otherwise available under this chapter for the next following budget year by the amount so determined, and shall increase the district's additional property tax levy for the next following budget year by the amount necessary to compensate for the reduction in state aid, so that the local property tax for the next following year will be increased only by the amount which it would have been increased in the budget year if the enrollment calculated in this section could have been used to establish the levy.

99 Acts, ch 2, §2, 4

Section applies to computation of school aid for school budget year beginning July 1, 1999; 99 Acts, ch 2, §4
NEW section

257.14 Budget adjustment.

1. For the budget years commencing July 1, 1997, July 1, 1998, and July 1, 1999, 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.

2. For the budget year beginning July 1, 1995, if the department of management determines that the regular program district cost plus the budget adjustment computed under subsection 1 of a school district is less than one hundred one percent of 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 an additional budget adjustment for that budget year that is equal to the difference.

99 Acts, ch 2, §3, 4

1999 amendment to subsection 1 applies to computation of school aid for school budget years beginning July 1, 1999; 99 Acts, ch 2, §4
Subsection 1 amended

257.42 Gifted and talented children.

Boards of school districts, individually or jointly with the boards of other school districts, shall annually submit program plans for gifted and talented children programs and budget costs to the department of education and to the applicable gifted and talented children advisory council, if an advisory council has been established, as provided in this chapter.

The parent or guardian of a pupil may request that a gifted and talented children program be established for pupils who qualify as gifted and talented children under section 257.44, including demonstrated achievement or potential ability in a single subject area.

The department shall employ a consultant for gifted and talented children programs.

The department of education shall adopt rules under chapter 17A relating to the administration of sections 257.42 through 257.49. The rules shall prescribe the format of program plans submitted under section 257.43 and shall require that programs fulfill specified objectives. The department shall encourage and assist school districts to provide programs for gifted and talented children.

The department may request that the staff of the auditor of state conduct an independent program audit to verify that the gifted and talented programs conform to a district's program plans.

99 Acts, ch 178, §5, 10

1999 amendments to unnumbered paragraphs 1, 4, and 5 apply to computation of school aid for school budget years beginning on or after July 1, 1999; 99 Acts, ch 178, §10

Unnumbered paragraphs 1, 4, and 5 amended

257.43 Program plans.

The program plans submitted by school districts shall be part of the school improvement plan submitted pursuant to section 256.7, subsection 21, paragraph "a", and shall include all of the following:

1. Program goals, objectives, and activities to meet the needs of gifted and talented children.
2. Student identification criteria and procedures.
3. Staff in-service education design.
4. Staff utilization plans.
5. Evaluation criteria and procedures and performance measures.
6. Program budget.
7. Qualifications required of personnel administering the program.
8. Other factors the department requires.

99 Acts, ch 178, §6, 10

1999 amendment applies to computation of school aid for school budget years beginning on or after July 1, 1999; 99 Acts, ch 178, §10
Section amended

257.45 Submission of program plans.

1. The board of directors of a school district shall submit applications for approval for the programs to the department not later than November 1 preceding the fiscal year during which the program will be offered. The board shall also submit a copy of the program plans to the gifted and talented children advisory council, if an advisory council has been established. The department shall review the program plans and shall prior to January 15 either grant approval for the program or return the request for approval with comments of the department included. Any unapproved request for a program may be resubmitted with modifications to the department not later than a date established

by the department. Not later than February 15 the department shall notify the department of management and the school budget review committee of the names of the school districts for which gifted and talented children programs have been approved and the approved budget of each program listed separately for each school district having an approved program.

2. The department of education may waive the November 1 deadline, if the department finds that the school district applying for approval of gifted and talented programs missed the deadline for good cause. The department shall adopt rules defining good cause for purposes of this section.

99 Acts, ch 178, §7, 10

1999 amendment to subsection 1 applies to computation of school aid for school budget years beginning on or after July 1, 1999; 99 Acts, ch 178, §10
Subsection 1 amended

257.46 Funding.

1. The budget of an approved gifted and talented children program for a school district, after subtracting funds received from other sources for that purpose, shall be funded annually on a basis of

one-fourth or more from the district cost of the school district.

2. The remaining portion of the budget shall be funded by the thirty-eight dollar increase in allowable growth for the school budget year beginning July 1, 1999, increased by the growth of the regular program district cost each year. School districts shall annually report the amount expended for a gifted and talented program to the department of education. The proportion of a school district's budget which corresponds to the thirty-eight dollar increase in allowable growth for the school budget year beginning July 1, 1999, added to the amount in subsection 1, shall be utilized exclusively for a school district's talented and gifted program*.

3. If any portion of the gifted and talented program budget remains unexpended at the end of the budget year, the remainder shall be carried over to the subsequent budget year and added to the gifted and talented program budget for that year.

99 Acts, ch 178, §§, 10

**("Gifted and talented program" probably intended; corrective legislation is pending

1999 amendment applies to computation of school aid for school budget years beginning on or after July 1, 1999; 99 Acts, ch 178, §10

Partial item veto applied
Section amended

CHAPTER 259

VOCATIONAL REHABILITATION

259.4 Duties of division.

The division of vocational rehabilitation services shall:

1. Cooperate with the secretary of education in the administration of the federal law cited in section 259.1.

2. Administer legislation pursuant to the federal law cited in section 259.1, and direct the disbursement and administer the use of funds provided by the federal government and this state for the vocational rehabilitation of individuals with disabilities.

3. Utilize in the rehabilitation of individuals with disabilities existing educational and other facilities as are advisable and practicable, including public and private educational institutions, community rehabilitation programs, public or private establishments, plants, factories, and the services of individuals specially qualified for the instruction and vocational rehabilitation of individuals with disabilities.

4. Promote the establishment and assist in the development of training agencies for the vocational

rehabilitation of individuals with disabilities.

5. Cooperate with an agency of the federal government or of the state, or of a county or other municipal authority within the state, or any other agency, public or private, in carrying out the purposes of this chapter.

6. Do those things necessary to secure the rehabilitation of those individuals entitled to the benefits of this chapter, including those individuals with significant disabilities.

7. Provide rehabilitation services to individuals with significant disabilities who are homebound, and other individuals with significant disabilities, who can wholly or substantially achieve an ability to live independently.

8. Provide financial and other necessary assistance to public or private agencies in the development or expansion of community rehabilitation programs, or programs in other public agencies, needed for the rehabilitation of individuals with disabilities.

99 Acts, ch 28, §1

Subsections 6 and 7 amended

CHAPTER 260C

COMMUNITY COLLEGES

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, 1997. 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. For the academic year commencing July 1, 1998, 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 remains 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 accred-

itation 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 col-

lege. 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.

99 Acts, ch 114, §15
Subsection 1, unnumbered paragraph 1 amended

260C.69 Dormitory space priority.

Each community college which completes a project, as defined under section 260C.56, subsection 4, shall set aside a percentage of available dormitory space for the purposes of meeting the needs of the following students:

1. Students, with families, who are participating in specialized or intensive programs.
2. Students who are participating in specialized or intensive programs.
3. Child care arrangements for students, faculty, or staff.
4. Students whose residence is located too far from the community college to permit commuting to and from school, as determined by the board of directors of the merged area.
5. Students whose disabilities require special housing adaptations.

Once all priorities have been met, students shall be allotted rooms on a first come, first served basis.

99 Acts, ch 192, §33
Terminology change applied

CHAPTER 260G

ACCELERATED CAREER EDUCATION PROGRAM

Rules providing for prioritization of funding
for projects under the program;
99 Acts, ch 204, §3

260G.1 Title.

This chapter shall be known and may be cited as the "Accelerated Career Education Program Act".

99 Acts, ch 179, §1, 12
NEW section

260G.2 Definitions.

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

1. "Accelerated career education program" means a program established pursuant to section 260G.3.
2. "Agreement" means a program agreement referred to in section 260G.3 between an employer and a community college.
3. "Board of directors" means the board of directors of a community college.
4. "Community college" means a community college established under chapter 260C or a consortium of two or more community colleges.

5. "Employee" means a person employed in a program job.

6. "Employer" means a business or consortium of businesses engaged in interstate or intrastate commerce for the purpose of manufacturing, processing, or assembling products, construction, conducting research and development, or providing services in interstate or intrastate commerce, but excludes retail services.

7. "Highly skilled job" means a job with a broadly based, high performance skill profile including advanced computation and communication skills, technology skills, and workplace behavior skills, and for which an applied technical education is required.

8. "Participant" means an individual who is enrolled in an accelerated career education program at a community college.

9. "Participant position" means the individual student enrollment position available in an accelerated career education program.

10. “*Program capital costs*” includes, but is not limited to, costs related to any or all of the following:

- a. Classroom and laboratory renovation.
- b. New classroom and laboratory construction.
- c. Site acquisition or preparation.
- d. Instructional equipment and technology.

11. “*Program costs*” means all necessary and incidental costs of providing program services.

12. “*Program job*” means a highly skilled job available from an employer pursuant to a program agreement.

13. “*Program job position*” means a job position which is planned or available for an employee by the employer pursuant to a program agreement.

14. “*Program services*” includes, but is not limited to, all of the following provided they are pursuant to a program agreement:

- a. Program needs assessment and development.
- b. Job task analysis.
- c. Curriculum development and revision.
- d. Instruction.
- e. Instructional materials and supplies.
- f. Computer software and upgrades.
- g. Instructional support.
- h. Administrative and student services.
- i. Related school-to-career training programs.
- j. Skill or career interest assessment services and testing.
- k. Contracted services.

99 Acts, ch 179, §2, 12
 Partial item veto applied
 NEW section

260G.3 Program agreements.

1. A community college may enter into an agreement with an employer in the community college’s merged area to establish an accelerated career education program. The program shall be developed by an employer, a community college, and any employee of an employer who represents a program job. If a bargaining agreement is in place, a representative of the employee bargaining unit shall also take part in the development of the program.

2. An agreement may include reasonable and necessary provisions to implement the accelerated career education program. The community college shall also file a copy of the agreement with the department of economic development. The agreement shall provide for program costs, including deferred costs, which may be paid from any of the following sources:

- a. Cash or in-kind contributions by the employer toward the program cost. At a minimum, the employer contribution shall be twenty percent of the program costs.
- b. Tuition, student fees, or special charges fixed by the board of directors to defray program costs.

c. Guarantee by the employer of payments to be received under paragraph “a”.

3. An agreement shall include a provision which specifies the type and amount of funding sources which shall be used to pay for program costs.

4. An agreement shall describe program services and schedules for implementation.

5. The term of an agreement shall not exceed five years from the date of the agreement. However, the agreement may be renewed.

6. As part of the agreement, the employer shall agree to interview graduating participants for full-time positions with the employer and to provide future hiring preferences to graduates of the accelerated career education program provided for in the agreement.

7. As part of an agreement, if an employer has more than four sponsored participants in the program, the employer shall agree to offer a program job position of full-time employment to at least twenty-five percent of those participants who successfully complete the program.

8. An agreement shall provide for a wage level of no less than two hundred percent of the federal poverty level for a family of two as defined by the most recently revised poverty income guidelines as published by the United States department of health and human services at the time the agreement is entered into. The wage level shall be recertified for each year provided in the agreement on the anniversary of the effective date of the agreement.

9. An agreement shall allow an employer to decline to satisfy any provisions in the agreement relating to subsections 6 and 7 if an employer experiences an economic downturn. For purposes of this subsection, “*economic downturn*” may include a layoff of existing employees, reduced employment levels, increased inventories, or reduced sales, if specified in the agreement.

10. Participants shall agree to interview with the employer following completion of the accelerated career education program.

11. An agreement shall provide for employer default procedures.

99 Acts, ch 179, §3, 12
 Partial item veto applied
 NEW section

260G.4 Program eligibility and designation.

1. Any of the following community college programs are eligible for designation and approval as an accelerated career education program by the board of directors:

- a. A credit career, vocational, or technical education program resulting in the conferring of a certificate, diploma, associate of science degree, or associate of applied science degree, which in-

creases program capacity to enroll added participants.

b. A credit equivalent career, vocational, or technical educational program consisting of not less than five hundred forty contact hours of classroom and laboratory instruction and resulting in the conferring of a certificate or other recognized, competency-based credential, which increases program capacity to enroll added participants.

2. Program costs shall be calculated or recalculated on an annual basis based on the required program services and for a specific number of participant positions.

99 Acts, ch 179, §4, 12
NEW section

260G.5 Customer tracking system.

All participants in an accelerated career education program shall be included in the customer tracking system implemented by the department of workforce development pursuant to section 84A.5

following program completion.

99 Acts, ch 179, §8, 12
NEW section

260G.6 Program capital funds allocation.

If moneys are appropriated by the general assembly to support program capital costs, the moneys shall be allocated according to rules adopted by the department* pursuant to chapter 17A. In order to receive such moneys a program agreement approved by the community college board of directors must be in place, program capital cost requests shall be approved by the Iowa economic development board created in section 15.103, program capital cost requests shall be approved or denied not later than sixty days following receipt of the request by the department,* and employer contributions toward program capital costs shall be certified and agreed to in the agreement.

99 Acts, ch 179, §9, 12

*"Department of economic development" probably intended; corrective legislation is pending
NEW section

CHAPTER 261

COLLEGE STUDENT AID COMMISSION

261.12 Amount of grant.

1. The amount of a tuition grant to a qualified full-time student for the fall and spring semesters, or the trimester equivalent, shall be the amount of the student's financial need for that period. However, a tuition grant shall not exceed the lesser of:

a. The total tuition and mandatory fees for that student for two semesters or the trimester or quarter equivalent, less the base amount determined annually by the college student aid commission, which base amount shall be within ten dollars of the average tuition for two semesters or the trimester equivalent of undergraduate study at the state universities under the board of regents, but in any event the base amount shall not be less than four hundred dollars; or

b. For the fiscal year beginning July 1, 1999, and for each following fiscal year, three thousand nine hundred dollars.

2. The amount of a tuition grant to a qualified full-time student for the summer semester or trimester equivalent shall be one-half the amount of the tuition grant the student receives under subsection 1.

3. The amount of a tuition grant to a qualified part-time student enrolled in a course of study including at least three semester hours but fewer than twelve semester hours for the fall, spring, and summer semesters, or the trimester or quarter equivalent, shall be equal to the amount of a tuition grant that would be paid to a full-time student times a number which represents the number of hours in which the part-time student is actually en-

rolled divided by twelve semester hours, or the trimester or quarter equivalent.

99 Acts, ch 205, §28
Subsection 1, paragraph b amended

261.17 Vocational-technical tuition grants.

1. A vocational-technical tuition grant may be awarded to any resident of Iowa who is admitted and in attendance as a full-time or part-time student in a vocational-technical or career option program at a community college in the state, and who establishes financial need.

2. All classes, including liberal arts classes, identified by the community college as required for completion of the student's vocational-technical or career option program shall be considered a part of the student's vocational-technical or career option program for the purpose of determining the student's eligibility for a grant. Notwithstanding subsection 3, if a student is making satisfactory academic progress but the student cannot complete a vocational-technical or career option program in the time frame allowed for a student to receive a vocational-technical tuition grant as provided in subsection 3 because additional classes are required to complete the program, the student may continue to receive a vocational-technical tuition grant for not more than one additional enrollment period.

3. A qualified full-time student may receive vocational-technical tuition grants for not more than four semesters or the trimester or quarter

equivalent of two full years of study. A qualified part-time student enrolled in a course of study including at least three semester hours but fewer than twelve semester hours or the trimester or quarter equivalent may receive vocational-technical tuition grants for not more than eight semesters or the trimester or quarter equivalent of two full years of full-time study.

However, if a student resumes study after at least a two-year absence, the student may again be eligible for the specified amount of time, except that the student shall not receive assistance for courses for which credit was previously received.

4. *a.* The amount of a vocational-technical tuition grant to a qualified full-time student shall not exceed the lesser of six hundred fifty dollars per year or the amount of the student's established financial need.

b. The amount of a vocational-technical tuition grant to a qualified part-time student enrolled in a course of study including at least three semester hours but fewer than twelve semester hours or the trimester or quarter equivalent shall be equal to the amount of a vocational-technical tuition grant that would be paid to a full-time student, except that the commission shall prorate the amount in a manner consistent with the federal Pell grant program proration.

5. A vocational-technical tuition grant shall be awarded on an annual basis, requiring reapplication by the student for each year. Payments under the grant shall be allocated equally among the semesters or quarters of the year upon certification by the institution that the student is in full-time or part-time attendance in a vocational-technical or career option program, as defined under rules of the department of education. If the student discontinues attendance before the end of any term after receiving payment of the grant, the entire amount of any refund due that student, up to the amount of any payments made under the annual grant, shall be paid by the institution to the state.

6. If a student receives financial aid under any other program, the full amount of that financial aid shall be considered part of the student's financial resources available in determining the amount of the student's financial need for that period.

7. The commission shall administer this program and shall:

a. Provide application forms for distribution to students by Iowa high schools and community colleges.

b. Adopt rules for determining financial need, defining residence for the purposes of this section, processing and approving applications for grants and determining priority for grants.

c. Approve and award grants on an annual basis.

d. Make an annual report to the governor and general assembly.

e. Establish a late application deadline for new applicants which shall not be earlier than August 1 of the fiscal year in which the appropriation received pursuant to section 261.25, subsection 3, is made. From the funds appropriated by section 261.25, subsection 3, not less than sixty-three thousand dollars shall be used for tuition grants for late applicants as provided in this paragraph.

8. Each applicant, in accordance with the rules established by the commission, shall:

a. Complete and file an application for a vocational-technical tuition grant.

b. Be responsible for the submission of the financial information required for evaluation of the applicant's need for a grant, on forms determined by the commission.

c. Report promptly to the commission any information requested.

d. Submit a new application and financial statement for re-evaluation of the applicant's eligibility to receive a second-year renewal of the grant.

99 Acts, ch 205, §29, 30
Subsection 3, unnumbered paragraph 1 amended
Subsection 4 amended

261.21 National guard tuition aid program. Repealed by 99 Acts, ch 205, § 47.

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 forty-seven million six hundred sixty-four thousand seven hundred fifty 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 ninety-eight thousand five hundred forty dollars for scholarships.

3. There is appropriated from the general fund of the state to the commission for each fiscal year the sum of two million four hundred eighty-two thousand four hundred 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 em-

ployment 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.

99 Acts, ch 205, §31, 32
 Subsections 1-3 amended
 Subsection 4 stricken and former subsections 5 and 6 renumbered as 4 and 5

261.38 Loan reserve and agency operating accounts.

1. The commission shall establish a loan reserve account and an agency operating account as authorized by the federal Higher Education Act of 1965. The commission shall credit to these accounts all moneys provided for the state student loan program by the United States, the state of Iowa, or any of their agencies, departments or instrumentalities, as well as any funds accruing to the program which are not required for current administrative expenses. The commission may expend moneys in the loan reserve and agency operating accounts as authorized by the federal Higher Education Act of 1965.

2. The payment of any funds for the default on a guaranteed student loan shall be solely from the loan reserve and agency operating accounts. The general assembly shall not be obligated to appropriate any moneys to pay for any defaults or to appropriate any moneys to be credited to the loan reserve account. The commission shall not give or lend the credit of the state of Iowa.

3. Notwithstanding section 8.33, funds on deposit in the loan reserve and operating accounts shall not revert to the state general fund at the close of any fiscal year.

4. The treasurer of state shall invest any funds, including those in the loan reserve and operating accounts, and, notwithstanding section 12C.7, the interest income earned shall be credited back to the appropriate account.

5. The commission may enter into agreements with the Iowa student loan liquidity corporation in order to increase access for students to education loan programs that the commission determines meet the education needs of Iowa residents. The agreements shall permit the establishment, funding, and operation of alternative education loan programs, as described in section 144(b)(1)(B) of the Internal Revenue Code of 1986 as amended, as defined in section 422.3, in addition to programs permitted under the federal Higher Education Act of 1965. In accordance with those agreements, the Iowa student loan liquidity corporation may issue bonds, notes, or other obligations to the public and others for the purpose of funding the alternative education loan programs. This authority to issue bonds, notes, or other obligations shall be in addition to the authority established in the articles of incorporation and bylaws of the Iowa student loan liquidity corporation.

Bonds, notes, or other obligations issued by the Iowa student loan liquidity corporation are not an obligation of this state or any political subdivision of this state within the meaning of any constitutional or statutory debt limitations, but are special obligations of the Iowa student loan liquidity corporation, and the corporation shall not pledge the credit or taxing power of this state or any political subdivision of this state, or make its debts payable out of any of the moneys except those of the corporation.

99 Acts, ch 205, §33-37
 Subsection 1 amended
 Subsection 2 stricken and former subsections 3-5 renumbered as 2-4
 Subsections 2-4 amended
 Subsection 6 stricken and former subsection 7 renumbered as 5
 Subsection 5, unnumbered paragraph 1 amended

261.71 Chiropractic graduate student forgivable loans.

1. A chiropractic graduate student forgivable loan program is established, to be administered by the college student aid commission for resident graduate students who are enrolled at Iowa chiropractic colleges and universities. A resident graduate student attending an Iowa chiropractic college or university is eligible for loan forgiveness under the program if the student meets all of the following conditions:

a. The student graduates from an Iowa chiropractic college or university that meets the requirements for approval under section 151.4.

b. The student has completed a chiropractic residency program.

c. The student agrees to practice in an underserved area in the state of Iowa for a period of time to be determined by the commission at the time the loan is awarded.

d. The student has received a loan from moneys appropriated to the college student aid commission for this program.

2. The contract for the loan repayment shall stipulate the time period the chiropractor shall practice in an underserved area in this state. In addition, the contract shall stipulate that the chiropractor repay any funds paid on the chiropractor's loan by the commission if the chiropractor fails to practice in an underserved area in this state for the required period of time. Forgivable loans made to eligible students shall not become due, for repayment purposes, until one year after the student has graduated. A loan that has not been forgiven may be sold to a bank, savings and loan association, credit union, or nonprofit agency eligible to participate in the guaranteed student loan program under the federal Higher Education Act of 1965, 20 U.S.C. § 1071 et seq., by the commission when the loan becomes due for repayment.

3. For purposes of this section "graduate student" means a student who has completed at least ninety semester hours, or the trimester or quarter equivalent, of postsecondary course work at a public higher education institution or at an accredited private institution, as defined under section 261.9.

“*Underserved area*” means a geographical area included on the Iowa governor’s health practitioner shortage area list, which is compiled by the center for rural health and primary care of the Iowa department of public health. The commission shall adopt rules, consistent with rules used for students enrolled in higher education institutions under the control of the state board of regents, for purposes of determining Iowa residency status of graduate students under this section. The commission shall also adopt rules which provide standards, guidelines, and procedures for the receipt, processing, and administration of student applications and loans under this section.

99 Acts, ch 205, §38, 39
 Subsection 1, paragraph c amended
 Subsections 2 and 3 amended

NATIONAL GUARD EDUCATIONAL
 ASSISTANCE

261.86 National guard educational assistance program.

1. A national guard educational assistance program is established to be administered by the college student aid commission for members of the Iowa national guard who are enrolled as undergraduate students in a community college, an institution of higher learning under the state board of regents, or an accredited private institution. The college student aid commission shall adopt rules pursuant to chapter 17A to administer this section. An individual is eligible for the national guard educational assistance program if the individual meets all of the following conditions:

- a. Is a resident of the state and a member of an Iowa army or air national guard unit while receiving educational assistance pursuant to this section.
- b. Satisfactorily completed required initial active duty training.
- c. Maintains satisfactory performance of duty upon return from initial active duty training, including attending a minimum ninety percent of scheduled drill dates and attending annual training.
- d. Is enrolled as an undergraduate student in a community college as defined in section 260C.2, an institution of higher learning under the control of the board of regents, or an accredited private institution as defined in section 261.9, and is maintaining satisfactory academic progress.
- e. Provides proper notice of national guard status to the community college or institution at the time of registration for the term in which tuition benefits are sought.
- f. Submits an application to the adjutant general of Iowa, on forms prescribed by the adjutant general, who shall determine eligibility and whose decision is final.

2. The amount of educational assistance received by a national guard member pursuant to this section shall be determined by the adjutant

general and shall not exceed the resident tuition rate established for institutions of higher learning under the control of the state board of regents. If the amount appropriated in a fiscal year for purposes of this section is insufficient to provide educational assistance to all national guard members who apply for the program and who are determined by the adjutant general to be eligible for the program, the adjutant general shall determine the amount of educational assistance each eligible guard member shall receive. However, educational assistance paid to an eligible national guard member shall not be less than an amount equal to fifty percent of the resident tuition rate established for institutions of higher learning under the control of the state board of regents. The adjutant general shall not determine educational assistance amounts based upon a national guard member’s unit, the location at which drills are attended, or whether the eligible individual is a member of the Iowa army or air national guard.

3. An eligible member of the national guard, attending an institution as provided in subsection 1, paragraph “d”, as a full-time student, shall not receive educational assistance under this section for more than eight semesters, or if attending as a part-time student for not more than sixteen semesters, of undergraduate study, or the trimester or quarter equivalent. A national guard member who has met the educational requirements for a baccalaureate degree is ineligible for educational assistance under this section.

4. The eligibility of applicants and amounts of educational assistance to be paid shall be certified by the adjutant general of Iowa to the college student aid commission, and all amounts that are or become due to a community college, accredited private institution, or institution of higher learning under the control of the state board of regents under this section shall be paid to the college or institution by the college student aid commission upon receipt of certification by the president or governing board of the educational institution as to accuracy of charges made, and as to the attendance and academic progress of the individual at the educational institution. The college student aid commission shall maintain an annual record of the number of participants and the dollar value of the educational assistance provided.

5. For purposes of this section, unless otherwise required, “*educational assistance*” means the same as “*cost of attendance*” as defined in Title IV, part B, of the federal Higher Education Act of 1965 as amended.

99 Acts, ch 205, §40
 NEW section

WORK FOR COLLEGE PROGRAM
 — EDUCATION SAVINGS PROGRAM

261.87 through 261.91 Repealed by 95 Acts, ch 70, § 3.

TEACHER SHORTAGE FORGIVABLE
LOAN PROGRAM

261.111 Teacher shortage forgivable loan program.

1. A teacher shortage forgivable loan program is established to be administered by the college student aid commission. An individual is eligible for the forgivable loan program if the individual is a resident of this state who is enrolled as a sophomore, junior, senior, or graduate student in an approved practitioner preparation program in a designated area in which teacher shortages are anticipated at an institution of higher learning under the control of the state board of regents or an accredited private institution as defined in section 261.9.

2. The director of the department of education shall annually designate the areas in which teacher shortages are anticipated. The director shall periodically conduct a survey of school districts, accredited nonpublic schools, and approved practitioner preparation programs to determine current shortage areas and predict future shortage areas.

3. Each applicant shall, in accordance with the rules of the commission, do the following:

a. Complete and file an application for a teacher shortage forgivable loan. The individual shall be responsible for the prompt submission of any information required by the commission.

b. File a new application and submit information as required by the commission annually on the basis of which the applicant's eligibility for the renewed forgivable loan will be evaluated and determined.

4. Forgivable loans to eligible students shall not become due until after the student graduates or leaves school. The individual's total loan amount, including principal and interest, shall be reduced by twenty percent for each year in which the individual remains an Iowa resident and is employed in Iowa by a school district or an accredited nonpublic

school as a practitioner in the teacher shortage area for which the loan was approved. If the commission determines that the person does not meet the criteria for forgiveness of the principal and interest payments, the commission shall establish a plan for repayment of the principal and interest over a ten-year period. If a person required to make the repayment does not make the required payments, the commission shall provide for payment collection.

5. The amount of a teacher shortage forgivable loan shall not exceed three thousand dollars annually, or the amount of the student's established financial need, whichever is less.

6. The commission shall prescribe by rule the interest rate for the forgivable loan.

7. A teacher shortage forgivable loan repayment fund is created for deposit of payments made by forgivable loan recipients who do not fulfill the conditions of the forgivable loan program and any other moneys appropriated to or received by the commission for deposit in the fund. Notwithstanding section 8.33, moneys deposited in the fund shall not revert to the general fund of the state at the end of any fiscal year but shall remain in the forgivable loan repayment fund and be continuously available to make additional loans under the program. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys deposited in the fund shall be credited to the fund.

8. For purposes of this section, unless the context otherwise requires, "teacher" means the same as defined in section 272.1.

99 Acts, ch 205, §41
Former industrial technology forgivable loan program repealed by strike and rewrite of section; see 99 Acts, ch 205, §41
Section stricken and rewritten

INDUSTRIAL TECHNOLOGY
FORGIVABLE LOAN PROGRAM

261.112 Industrial technology forgivable loan administration. Repealed by 99 Acts, ch 207, § 47.

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, soybean-based inks. All inks purchased that are used internally or are contracted for by the board shall be soybean-based to the extent formulations for such inks are available.

a. 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 soybean-based inks.

b. The department of natural resources shall assist the board in locating suppliers of recycled content products and soybean-based inks and collecting data on recycled content and soybean-based ink purchases.

c. The board, in conjunction with the department of natural resources, shall adopt rules to carry out the provisions of this section.

d. The department of natural resources shall cooperate with the board in all phases of implementing this section.

5. 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.

6. 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 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; shall, in accordance with the requirements of section 18.6, require product content statements 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.

7. With the approval of the executive council, acquire real estate for the proper uses of said institutions, and dispose of real estate belonging to said institutions when not necessary for their purposes. A disposal of such real estate shall be made upon such terms, conditions and consideration as the board may recommend and subject to the approval of the executive council. If real estate subject to sale hereunder has been purchased or acquired from appropriated funds, the proceeds of such sale shall be deposited with the treasurer of state and cred-

ited 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.

8. 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.

9. 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.

10. Collect the highest rate of interest, consistent with safety, obtainable on daily balances in the hands of the treasurer of each institution.

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. The letters patent or copyright on inventions when so secured shall be the property of the state, and the royalties and earnings thereon shall be credited to the funds of the institution in which such patent or copyright originated.

12. Perform all other acts necessary and proper for the execution of the powers and duties conferred by law upon it.

13. Grant leaves of absence with full or partial compensation to staff members to undertake approved programs of study, research, or other professional activity which in the judgment of the board will contribute to the improvement of the institutions. Any staff member granted such leave shall agree either to return to the institution granting such leave for a period of not less than two years or to repay to the state of Iowa such compensation as the staff member shall have received during such leave.

14. Lease properties and facilities, either as lessor or lessee, for the proper use and benefit of said institutions upon such terms, conditions, and considerations as the board deems advantageous, including leases with provisions for ultimate ownership by the state of Iowa, and to pay the rentals from funds appropriated to the institution for operating expenses thereof or from such other funds as may be available therefor.

15. In its discretion employ or retain attorneys or counselors when acting as a public employer for the purpose of carrying out collective bargaining and related responsibilities provided for under chapter 20. This subsection shall supersede the provisions of section 13.7.

The state board of regents may make payment to an attorney or counselor for services rendered prior to July 1, 1978, to the state board of regents in connection with its responsibilities as a public employer pursuant to chapter 20.

16. In its discretion, adopt rules relating to the classification of students enrolled in institutions of higher education under the board who are residents of Iowa's sister states as residents or nonresidents for fee purposes.

17. In issuing bonds or notes under this chapter, chapter 262A, chapter 263A, or other provision of law, select and fix the compensation for, through a competitive selection procedure, attorneys, accountants, financial advisors, banks, underwriters, insurers, and other employees and agents which in the board's judgment are necessary to carry out the board's intention. Prior to the initial selection, the board shall establish a procedure which provides for a fair and open selection process including, but not limited to, the opportunity to present written proposals and personal interviews. The board shall maintain a list of firms which have requested to be notified of requests for proposal. The selection criteria shall take into consideration, but are not limited to, compensation, expenses, experience with similar issues, scheduling, ability to provide the services of individuals with specific knowledge in the relevant subject matter and length of engagement. The board may waive the requirements for a competitive selection procedure for any specific employment upon adoption of a resolution of the board stating why the waiver is in the public interest and shall provide the executive council with written notice of the granting of any such waiver.

18. Not less than thirty days prior to action by the board on any proposal to increase tuition, fees, or charges at one or more of the institutions of higher education under its control, send written notification of the amount of the proposed increase including a copy of the proposed tuition increase docket memorandum prepared for its consideration to the presiding officers of the student government organization of the affected institutions. The final decision on an increase in tuition or mandatory fees charged to all students at an institution for a fiscal year shall be made no later than the regular meeting held in November of the preceding fiscal year and shall be reflected in a final docket memorandum that states the estimated total cost of attending each of the institutions of higher education under the board's control. The regular meeting held in November shall be held in Ames, Cedar Falls, or Iowa City and shall not be held dur-

ing 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. Develop a policy requiring 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. However, the board shall establish criteria by which an institution may discontinue annual evaluations of a specific person providing instruction. The criteria shall include receipt by the institution of two consecutive positive annual evaluations from the majority of students evaluating the person.

25. 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 as necessary, which shall be submitted in a report to the general assembly on a timely basis.

27. Develop and implement a written policy, which is disseminated during registration or orien-

tation, 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.

29. Authorize the institutions of higher learning under the board to charge an interest rate, not to exceed the prime rate plus six percent, on delinquent bills. However, the board shall prohibit the institutions from charging interest on late tuition payments and room and board payments if financial aid payments to students enrolled in the institutions are delayed by the lending institution.

99 Acts, ch 114, §16; 99 Acts, ch 121, §9
See Code editor's note to §10A.202
Subsection 6 amended

262.14 Loans — conditions — other investments.

The board may invest funds belonging to the institutions, subject to the following regulations:

1. Each loan shall be secured by a mortgage paramount to all other liens upon approved farm lands in this state, accompanied by abstract showing merchantable title in the borrower. The loan shall not exceed sixty-five percent of the cash value of the land, exclusive of buildings.

2. Each such loan if for a sum more than one-fourth of the value of the farm shall be on the basis of stipulated annual principal reductions.

3. Any portion of the funds may be invested by the board. In the investment of the funds, the board shall exercise the judgment and care, under the circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in their own affairs as provided in section 633.123, subsection 1.

The board shall give appropriate consideration to those facts and circumstances that the board knows or should know are relevant to the particular investment involved, including the role the investment plays in the total value of the board's funds.

For the purposes of this subsection, appropriate consideration includes, but is not limited to, a determination by the board that the particular in-

vestment is reasonably designed to further the purposes prescribed by law to the board, taking into consideration the risk of loss and the opportunity for gain or other return associated with the investment and consideration of the following factors as they relate to the funds of the board:

a. The composition of the funds of the board with regard to diversification.

b. The liquidity and current return of the investments relative to the anticipated cash flow requirements.

c. The projected return of the investments relative to the funding objectives of the board.

The board shall have a written investment policy, the goal of which is to provide for the financial health of the institutions governed by the board. The board shall establish investment practices that preserve principal, provide for liquidity sufficient for anticipated needs, and maintain purchasing power of investable assets of the board and its institutions. The policy shall also include a list of authorized investments, maturity guidelines, procedures for selecting and approving investment managers and other investment professionals as described in section 11.2, subsection 2, and provisions for regular and frequent oversight of investment decisions by the board, including audit. The board shall make available to the auditor of state and treasurer of state the most recent annual report of any investment entity or investment professional employed by an institution governed by the board. The investment policy shall cover investments of endowment and nonendowment funds.

Consistent with this subsection, investments made under this subsection shall be made in a manner that will enhance the economy of this state, and in particular, will result in increased employment of the residents of this state.

4. Any gift accepted by the Iowa state board of regents for the use and benefit of any institution under its control may be invested in securities designated by the donor, but whenever such gifts are accepted and the money invested according to the request of the said donor, neither the state, the Iowa state board of regents, nor any member thereof, shall be liable therefor or on account thereof.

5. A register containing a complete abstract of each loan and investment, and showing its actual condition, shall be kept by the board and be at all times open to inspection.

6. All loans made under the provisions of this section shall have an interest rate of not less than three and one-half percent per annum.

See 99 Acts, ch 125, §103, 109, for future amendment to subsection 3 effective July 1, 2000

Section not amended; footnote added

CHAPTER 266

IOWA STATE UNIVERSITY OF SCIENCE AND TECHNOLOGY

266.39 Leopold center for sustainable agriculture.

1. For the purposes of this section, “sustainable agriculture” means the appropriate use of crop and livestock systems and agricultural inputs supporting those activities which maintain economic and social viability while preserving the high productivity and quality of Iowa’s land.

2. The Leopold center for sustainable agriculture is established in the Iowa agricultural and home economics experiment station at Iowa state university of science and technology. The center shall conduct and sponsor research to identify and reduce negative environmental and socio-economic impacts of agricultural practices. The center also shall research and assist in developing emerging alternative practices that are consistent with a sustainable agriculture. The center shall develop in association with the Iowa cooperative extension service in agriculture and home economics an educational framework to inform the agricultural community and the general public of its findings.

3. An advisory board is established consisting of the following members:

- a. Three persons from Iowa state university of science and technology, appointed by its president.
- b. Two persons from the state university of Iowa, appointed by its president.
- c. Two persons from the university of northern Iowa, appointed by its president.
- d. Two representatives of private colleges and universities within the state, to be nominated by the Iowa association of independent colleges and universities, and appointed by the Iowa coordinating council for post-high school education.
- e. One representative of the department of agriculture and land stewardship, appointed by the secretary of agriculture.
- f. One representative of the department of natural resources, appointed by the director.
- g. One man and one woman, actively engaged in agricultural production, appointed by the state soil conservation committee.
- h. Four persons actively engaged in agriculture who are appointed by the titular head of each of the following agricultural organizations:
 - (1) The Iowa farm bureau federation.
 - (2) The Iowa farmers union.

(3) The practical farmers of Iowa.

(4) The agribusiness association of Iowa.

The terms of the members shall begin and end as provided in section 69.19 and any vacancy shall be filled by the original appointing authority. The terms shall be for four years and shall be staggered as determined by the president of Iowa state university of science and technology. The members appointed by the titular heads of agricultural organizations shall be reimbursed for actual and necessary expenses incurred while engaged in their official duties, but shall not be entitled to per diem compensation as authorized under section 7E.6.

4. The Iowa agricultural and home economics experiment station shall employ a director for the center, who shall be appointed by the president of Iowa state university of science and technology. The director of the center shall employ the necessary research and support staff. The director and staff shall be employees of Iowa state university of science and technology. No more than five hundred thousand dollars of the funds received from the agriculture management account annually shall be expended by the center for the salaries and benefits of the employees of the center, including the salary and benefits of the director. The remainder of the funds received from the agriculture management account shall be used to sponsor research grants and projects on a competitive basis from Iowa colleges and universities and private nonprofit agencies and foundations. The center may also solicit additional grants and funding from public and private nonprofit agencies and foundations.

The director shall prepare an annual report.

5. The board shall provide the president of Iowa state university of science and technology with a list of three candidates from which the director shall be selected. The board shall provide an additional list of three candidates if requested by the president. The board shall advise the director in the development of a budget, on the policies and procedures of the center, in the funding of research grant proposals, and regarding program planning and review.

99 Acts, ch 91, §1, 2
 Subsection 3, NEW paragraph h
 Subsection 3, unnumbered paragraph 2 amended

CHAPTER 270

SCHOOL FOR THE DEAF

270.7 Payment by county.

The county auditor shall, upon receipt of the certificate, pass it to the credit of the state, and issue a

notice to the county treasurer authorizing the county treasurer to transfer the amount to the general state revenue, which shall be filed by the trea-

surer as authority for making the transfer, and the county treasurer shall include the amount in the next remittance of state taxes to the treasurer of the state, designating the fund to which it belongs.

If a county fails to pay these bills within sixty days from the date of certificate from the superintendent, the director of revenue and finance shall

charge the delinquent county a penalty of three-fourths of one percent per month on and after sixty days from the date of certificate until paid. The penalties shall be credited to the general fund of the state.

Method for payment for prescription drug costs for fiscal year beginning July 1, 1999; 99 Acts, ch 205, §18
Section not amended; footnote revised

CHAPTER 272

EDUCATIONAL EXAMINERS BOARD

272.10 Fees.

It is the intent of the general assembly that licensing fees established by the board of educational examiners be sufficient to finance the activities of the board under this chapter.

Licensing fees are payable to the treasurer of state and shall be deposited with the executive director of the board. The executive director shall deposit the fees with the treasurer of state and the fees shall be credited to the general fund of the state. The executive director shall keep an accurate and detailed account of fees received and paid to the treasurer of state.

Use of funds received from increase in fees after July 1, 1997, for purposes related to board of educational examiners duties for fiscal year beginning July 1, 1999; 99 Acts, ch 205, §9, 48
Section not amended; footnote added

272.25 Rules for practitioner preparation programs.

Not later than January 1, 1991, the state board of education shall adopt rules pursuant to chapter 17A to implement the following for approved practitioner preparation programs:

1. A requirement that each student admitted to an approved practitioner preparation program must participate in field experiences that include both observation and participation in teaching activities in a variety of school settings. These field experiences shall comprise a total of at least fifty hours in duration, at least ten hours of which shall occur prior to a student's acceptance in an approved practitioner preparation program. The student teaching experience shall be a minimum of twelve weeks in duration during the student's final year of the practitioner preparation program.

2. A requirement that faculty members in professional education maintain an ongoing involvement in activities in elementary, middle, or secondary schools. The activities shall include at least forty hours of team teaching during a period not exceeding five years in duration at the elementary, middle, or secondary level.

3. A requirement that the program include instruction in skills and strategies to be used in classroom management of individuals, and of small and large groups, under varying conditions; skills for communicating and working constructively with

pupils, teachers, administrators, and parents; and skills for understanding the role of the board of education and the functions of other education agencies in the state. The requirement shall be based upon recommendations of the department of education after consultation with teacher education faculty members in colleges and universities.

4. A requirement that prescribes minimum experiences and responsibilities to be accomplished during the student teaching experience by the student teacher and by the cooperating teacher based upon recommendations of the department of education after consultation with teacher education faculty members in colleges and universities. The student teaching experience shall consist of interactive experiences involving the college or university personnel, the student teacher, the cooperating teacher, and administrative personnel from the cooperating teacher's school district.

5. A requirement that each approved practitioner preparation or professional development institution annually offer a workshop of at least one day in duration for prospective cooperating teachers. The workshop shall define the objectives of the student teaching experience, review the responsibilities of the cooperating teacher, and provide the cooperating teacher other information and assistance the institution deems necessary.

6. A requirement that practitioner preparation students receive instruction in the use of electronic technology for classroom and instructional purposes.

7. A requirement that approved practitioner preparation institutions annually solicit the views of the education community regarding the institution's practitioner preparation programs.

8. A requirement that an approved practitioner preparation institution submit evidence that the college or department of education is communicating with other colleges or departments in the institution so that practitioner preparation students may integrate teaching methodology with subject matter areas of specialization.

9. A requirement that an approved practitioner preparation program submit evidence that the evaluation of the performance of a student teacher

is a cooperative process that involves both the faculty member supervising the student teacher and the cooperating teacher. The rules shall require that each institution develop a written evaluation procedure for use by the cooperating teacher and a

form for evaluating student teachers, and require that a copy of the completed form be included in the student teacher's permanent record.

99 Acts, ch 191, §2
Subsection 1 amended

CHAPTER 279

DIRECTORS — POWERS AND DUTIES

279.49 Child care programs.

1. For the purposes of this section unless the context otherwise requires, "*child care program*" means child care that is not licensed or approved by the department of human services under chapter 237A except as provided under this section.

2. The board of directors of a school corporation may operate or contract for the operation of a program to provide child care to children not enrolled in school or to students enrolled in kindergarten through grade six before and after school, or to both. Programs operated or contracted by a board shall either meet standards for child care programs adopted by the state board of education or shall be licensed by the department of human services under chapter 237A as a child care center. A program operated by a board under contract which is not located on property owned or leased by the board must be licensed by the department of human services.

3. The person employed to be responsible for a program operated or contracted by a board that is not licensed by the department of human services shall be an appropriately licensed teacher under chapter 272 or shall meet other standards adopted by the state board of education.

4. The facilities housing a program operated under this section shall comply with standards adopted by the state fire marshal for school buildings under chapter 100. In addition, if a program involves children who are younger than school age, the facilities housing those children shall meet the fire safety standards which would apply to that age of child in a child care facility licensed by the department of human services.

5. The board may establish a fee for the cost of participation in a child care program authorized under this section. The fee shall be established pursuant to a sliding fee schedule based upon staffing costs and other expenses and a family's ability to pay. If a fee is established, the parent or guardian of a child participating in a program shall be responsible for payment of any agreed upon fee. The board may require the parent or guardian to furnish transportation of the child.

6. The board may utilize or make application for program subsidies from any existing child care funding streams.

7. The components of programs established under this section for child care shall include, but are not limited to, parental involvement in program design and direction, activities designed to further children's physical, mental, and emotional development, and a parental education component to educate parents about the physical, mental, and emotional development of children.

99 Acts, ch 192, §33
Terminology change applied

279.51 Programs for at-risk children.

1. There is appropriated from the general fund of the state to the department of education for the fiscal year beginning July 1, 1998, and each succeeding fiscal year, the sum of fifteen million three hundred sixty thousand dollars.

The moneys shall be allocated as follows:

a. Two hundred seventy-five thousand dollars of the funds appropriated shall be allocated to the area education agencies to assist school districts in developing program plans and budgets under this section and to assist school districts in meeting other responsibilities in early childhood education.

b. For the fiscal year beginning July 1, 1998, and for each succeeding fiscal year, eight million five hundred ten thousand dollars of the funds appropriated shall be allocated to the child development coordinating council established in chapter 256A for the purposes set out in subsection 2 of this section and section 256A.3.

c. For each of the fiscal years during the fiscal period beginning July 1, 1996, and ending June 30, 2000, two million eight hundred thousand dollars of the funds appropriated shall be allocated for the school-based youth services education program established in subsection 3. For each of the fiscal years during the fiscal period beginning July 1, 1994, and ending June 30, 2000, twenty thousand dollars of the funds allocated in this paragraph shall be expended for staff development, research, and the development of strategies for coordination with community-based youth organizations and agencies. A school that received a grant during the fiscal year beginning July 1, 1993, or July 1, 1997, is ineligible to receive a grant under this paragraph. Subject to the approval of the state board of education, the allocation made in this paragraph

may be renewed for additional four-year periods of time.

d. For the fiscal year beginning July 1, 1996, and for each fiscal year thereafter, three million five hundred thousand dollars of the funds appropriated shall be allocated as grants to school districts that have elementary schools that demonstrate the greatest need for programs for at-risk students with preference given to innovative programs for the early elementary school years. School districts receiving grants under this paragraph shall at a minimum provide activities and materials designed to encourage children's self-esteem, provide role modeling and mentoring techniques in social competence and social skills, and discourage inappropriate drug use. The grant allocations made in this paragraph may be renewed for additional periods of time. Of the amount allocated under this paragraph for each fiscal year, seventy-five thousand dollars shall be allocated to school districts which have an actual student population of ten thousand or less and have an actual non-English speaking student population which represents greater than five percent of the total actual student population for grants to elementary schools in those districts.

e. Notwithstanding paragraph "c", for each of the fiscal years during the fiscal period beginning July 1, 1998, and ending June 30, 2000, fifty thousand dollars of the funds allocated in paragraph "c" shall be granted to each of the schools that received grants under subsection 3 during the fiscal year beginning July 1, 1993, or July 1, 1997, to allow for expansion and to include identified minimum services if the school submits a program plan pursuant to subsection 3.

f. Notwithstanding section 256A.3, subsection 6, of the amount appropriated in this subsection for the fiscal year beginning July 1, 1996, and for each succeeding fiscal year, two and one-fourth percent may be used for administrative costs. Any reduction of an allocation under this subsection as necessary to fund the provisions of this paragraph shall be made from the allocation in paragraph "b".

2. Funds allocated under subsection 1, paragraph "b", shall be used by the child development coordinating council for the following:

a. To continue funding for programs previously funded by grants awarded under section 256A.3 and to provide additional grants under section 256A.3. The council shall seek to provide grants on the basis of the location within the state of children meeting at-risk definitions.

b. At the discretion of the child development coordinating council, award grants for the following:

(1) To school districts to establish programs for three-year-, four-year-, and five-year-old at-risk children which are a combination of preschool and full-day kindergarten.

(2) To provide grants to provide educational support services to parents of at-risk children age birth through three years.

3. A school-based youth services education program is established. The department of education, in consultation with the department of human services, the department of workforce development, the Iowa department of public health, the division of criminal and juvenile justice planning of the department of human rights, institutions of higher learning with applicable programs, and the division of job training and entrepreneurship assistance of the department of economic development, shall develop a four-year demonstration grant program that commences in the fiscal year beginning July 1, 1994. The department shall provide grants to individual or consortiums of elementary, middle, or high schools to establish school-based youth services programs, in conjunction with local agencies and community organizations, based upon program plans filed by the board of directors of the school district. The department shall provide grants to establish model programs in at least the following three size categories:

a. A school district with an enrollment of less than one thousand two hundred.

b. A school district with an enrollment of one thousand two hundred to four thousand nine hundred ninety-nine.

c. A school district with an enrollment of at least five thousand.

Priority shall be weighted toward need and given to schools whose plans indicate a high degree of active participation by community-based youth organizations and agencies, and to schools with student populations characterized by high rates of a number of the following: school dropout and absenteeism; teenage pregnancy; juvenile court involvement; family conflict; unemployment; teenage suicide; and child and youth mental health, substance abuse, and other health problems. The department shall coordinate an evaluation initiative with the approved projects designed to investigate program effectiveness in reducing these rates within communities. In developing the evaluation initiative, the department shall consult with the department of human services, the department of workforce development, the Iowa department of public health, the division of criminal and juvenile justice planning of the department of human rights, institutions of higher learning with applicable programs, and the division of job training and entrepreneurship assistance of the department of economic development.

Programs shall provide at a minimum recreation opportunities; personal skills development; activities and materials designed to encourage children's self-esteem, provide role modeling and mentoring techniques in social competence and social skills, and discourage inappropriate drug use; basic aca-

ademic skills development; family interaction opportunities; and mentoring. Additional objectives of the programs shall be: to increase the ability of existing agencies within the community to address the multiple problems of children and youth and to coordinate their activities and to facilitate joint planning to make the most economic and innovative use of community resources. Priority shall be given to programs that provide access to a center for children and youth after school, in the evening, and on weekends, and during the summer and that provide a twenty-four-hour telephone hotline or similar service, and that provide access to child care or on-site child care. Programs shall at a minimum provide career development services, mental health and family counseling services, and primary health care services that include but are not limited to physical examinations, immunizations, hearing and vision screening, and preventive and primary health care services, in the context of the educational needs of the students. Programs shall not include abortion counseling or the dispensing of contraceptives.

The plan shall include the appointment by the board of a local advisory board for each proposed program, which at a minimum shall include a representative of the private industry council serving the area, parents of children enrolled in the school, a teacher recommended by the local teachers association, a representative from the health and mental health community in the area, teenagers enrolled in the school and recommended by the school student government, a representative from the nonprofit provider community, and a representative from the juvenile court system serving the area. Management of the program shall be by the school or by a nonprofit youth service organization. As used in this subsection, "youth service" means

recreational services, employment services, civic services, or juvenile treatment services.

Program proposals shall include a program evaluation component and a written commitment from the school principal and the board of directors that the school will work to coordinate and integrate existing school services and activities with the center and shall include letters of support for the proposal from the local teachers association; parent-teacher organizations; community organizations; nonprofit agencies providing social services, health, or career development services in the area; the juvenile court system serving the area; and the area private industry council.

Grants for the program shall not be used to construct a new facility or to renovate an existing structure.

Program proposals shall include a contribution of at least twenty percent of the total costs of the program, which can include "in-kind" services. Partnerships between the public and private sectors to provide employment and training opportunities for youth served by the program are particularly encouraged. The budget for a proposed program shall not exceed two hundred thousand dollars per year.

4. The department shall seek assistance from foundations and public and private agencies in the evaluation of the programs funded under this section, and in the provision of support to school districts in developing and implementing the programs funded under this section.

5. The state board of education shall adopt rules under chapter 17A for the administration of this section.

99 Acts, ch 192, §33; 99 Acts, ch 195, §11, 12
 See Code editor's note to §10A.202
 Terminology changes applied
 Subsection 1, paragraph d amended
 Subsection 3, unnumbered paragraph 3 amended

CHAPTER 280

UNIFORM SCHOOL REQUIREMENTS

280.3A Accredited nonpublic school child care programs.

Authorities in charge of accredited nonpublic schools may operate or contract for the operation of child care programs, as defined in section 279.49, subsection 1. The provisions of section 279.49 as they relate to child care programs of a school corporation and its board of directors apply to the child care programs of the accredited nonpublic school and the authority in charge.

99 Acts, ch 192, §33
 Terminology changes applied

280.11 Ear-protective devices.

1. Every student and teacher in any public or nonpublic school shall wear industrial quality ear-

protective devices while the student or teacher is participating in any phase or activity of a course which may subject the student or teacher to the risk or hazard of hearing loss from noise in processes or procedures used in vocational or industrial arts shops or laboratories involving experiences with any of the following:

- a. Milling, sawing, turning, shaping, cutting, grinding, or stamping of any solid materials.
- b. Kiln firing of any metal or other materials.
- c. Electric arc welding.
- d. Repair or servicing of any vehicle while in shop.
- e. Static tests, maintenance or repair of internal combustion engines.

f. Letter press, paper folders, monotype.

2. It shall be the duty of the teacher or other person supervising the students in said courses to see that the above requirements are complied with. Any student failing to comply with such requirements may be temporarily suspended from participation in the course and the registration of a student for the course may be canceled for willful, flagrant or repeated failure to observe the above requirements.

3. The board of directors of each local public school district and the authorities in charge of each nonpublic school shall provide the safety devices required in this section. Such devices may be paid for from the general fund, but the board may require students and teachers to pay for the safety

devices and shall make them available to students and teachers at no more than the actual cost to the district or school.

4. *a.* "Industrial quality ear-protective devices", as used in this section, means devices meeting the American National Standard for Measurement of the Real-Ear Attenuation of Ear Protectors at Threshold promulgated by the American National Standards Institute, Inc.

b. "Noise" as used in this section, means a noise level that meets or exceeds damage-risk criteria established by the present federal standard for occupational noise exposure, Occupational Safety and Health Standards.

99 Acts, ch 96, §28
Section amended

CHAPTER 282

SCHOOL ATTENDANCE AND TUITION

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 veterans as defined in section 35.1, as many months after becoming twenty-one years of age as they have spent in the armed forces 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 the

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.

99 Acts, ch 180, §14
Unnumbered paragraph 1 amended

CHAPTER 283A

SCHOOL MEAL PROGRAMS

283A.2 School lunch and breakfast programs.

1. School boards may use gifts, funds disbursed to them under the provisions of this chapter, funds received from sale of school breakfasts or lunches, and any other funds legally available for the purpose of operating a school breakfast or lunch program.

2. All school districts shall operate or provide for the operation of school lunch programs at all public schools in each district. The programs shall provide students with nutritionally adequate meals and shall be operated in compliance with the rules of the state board of education and pertinent

federal rules, for all students in each district who attend public school four or more hours each school day and wish to participate in a school lunch program. School districts may provide school lunch programs for other students.

3. Effective July 1, 1999, all school districts shall operate or provide for the operation of school breakfast programs at all public school attendance centers in each district or, if the school district meets the requirements of paragraphs "b" and "c", shall provide access to a school breakfast program at an alternative site to students who wish to participate in a school breakfast program. The programs shall provide students with nutritionally ad-

equate meals and shall be operated in compliance with the rules of the state board of education and pertinent federal law and regulation, for all students in each district who attend public school and who wish to participate in a school breakfast program.

a. A school or school district unable to meet the requirement to provide a school breakfast program may, not later than June 1, 1999, for the school year beginning July 1, 1999, file a written request to the department of education that the department waive the requirement for that school or school district. The written request shall include the reason for which the waiver is being requested. The state board shall evaluate the application for waiver, determine the validity of the reason for which the waiver is being requested, and grant or deny the application for waiver. The state board shall establish criteria for determination of the validity of reasons for waiver of the requirement that school breakfast programs be operated at each school. However, the state board shall not waive the school breakfast program requirement for a school if thirty-five percent or more of the students in attendance at the school during the month of March 1999 were eligible for free or reduced price meals under the federal National School Lunch Act and the federal Child Nutrition Act of 1966, 42 U.S.C. § 1751-1785.

b. The board of directors of a school district that wishes to provide safe, reasonable student access to a school breakfast program, rather than operate or provide for the operation of a school breakfast program at a specific attendance center within

the school district shall develop an alternative site plan to operate the school breakfast program at another attendance center within the school district and shall annually certify to the department that the plan meets the following criteria:

(1) Provides safe travel routes to and from the alternative breakfast site for all eligible students.

(2) Minimizes student travel time between the student's attendance center and the alternative breakfast site.

(3) Provides for a reasonable relationship between the time breakfast is offered, the time the student is required to arrive at the attendance center and alternative site, and the daily school start time.

(4) Provides an alternative breakfast site facility adequate for the number of students participating in the breakfast program.

c. The board of directors of a school district that wishes to provide access to a school breakfast program in accordance with paragraph "b", shall notify the parent, guardian, or legal or actual custodian of a child enrolled in the district of the school district's intention to develop and implement a plan to provide school breakfast programs only in certain attendance centers. At any time in which the school district proposes to make substantive changes to a plan certified with the department of education, the notification requirements of this paragraph shall apply.

99 Acts, ch 147, §1, 2

For amendments to subsection 2 effective July 1, 2000, see 94 Acts, ch 1193, §24, 38; 99 Acts, ch 147, §1

Subsection 3 to be stricken effective July 1, 2000; 94 Acts, ch 1193, §36
Subsection 3 amended

CHAPTER 285

STATE AID FOR TRANSPORTATION

285.1 When entitled to state aid.

1. The board of directors in every school district shall provide transportation, either directly or by reimbursement for transportation, for all resident pupils attending public school, kindergarten through twelfth grade, except that:

a. Elementary pupils shall be entitled to transportation only if they live more than two miles from the school designated for attendance.

b. High school pupils shall be entitled to transportation only if they live more than three miles from the school designated for attendance.

c. Children attending prekindergarten programs offered or sponsored by the district or nonpublic school and approved by the department of education or department of human services may be provided transportation services. However, transportation services provided nonpublic school chil-

dren are not eligible for reimbursement under this chapter.

d. Districts are not required to maintain seating space on school buses for students who are otherwise to be provided transportation under this subsection if the students do not or will not regularly utilize the district's transportation service for extended periods during the school year. The student, or the student's parent or legal guardian if the student is less than eighteen years of age, shall be notified by the district before transportation services may be suspended, and the suspension may continue until the student, or the student's parent or legal guardian, notifies the district that regular student ridership will continue.

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.

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 effi-

cient 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 sub-

sections 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, persons with disabilities, 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 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.

99 Acts, ch 192, §33
Terminology change applied

CHAPTER 294A

EDUCATIONAL EXCELLENCE PROGRAM — TEACHERS

294A.25 Appropriation.

1. For the fiscal year beginning July 1, 1998, and for each succeeding year, there is appropriated from the general fund of the state to the department of education the amount of eighty-two million eight hundred ninety-one thousand three hundred thirty-six dollars to be used to improve teacher salaries. 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. For the fiscal year beginning July 1, 1997, and ending June 30, 1998, the amount of fifty thousand dollars to be paid to the department of education for participation in a state and national project, the national assessment of education progress, to determine the academic achievement of Iowa students in math, reading, science, United States history, or geography.

6. For the fiscal year beginning July 1, 1999, and ending June 30, 2000, from phase III moneys the amount of fifty thousand dollars to the department of education for the geography alliance.

7. Commencing with the fiscal year beginning July 1, 1990, the amount of seventy-five thousand dollars for the ambassador to education program under section 256.45.

8. 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.

9. Commencing with the fiscal year beginning July 1, 1997, the amount of two hundred thirty thousand dollars for a kindergarten to grade twelve management information system from additional funds transferred from phase I to phase III.

10. For the fiscal year beginning July 1, 1998, and for each succeeding fiscal year, the amount of seventy thousand dollars to the state board of regents for equal distribution to the Iowa braille and sight saving school and the Iowa state school for the deaf from phase III moneys.

11. For the fiscal year beginning July 1, 1999, and ending June 30, 2000, to the department of education from phase III moneys the amount of one million two 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. Of the amount provided in this subsection, one hundred fifty thousand dollars shall be used for the school and community planning initiative.

12. For the fiscal year beginning July 1, 1999, and ending June 30, 2000, to the department of education from phase III moneys the amount of one hundred fifty thousand dollars to the Iowa public broadcasting division for overnight transmitter feeds.

13. For the fiscal year beginning July 1, 1999, and ending June 30, 2000, to the department of education from phase III moneys the amount of fifty thousand dollars for participation in the national assessment of education progress.

14. For the fiscal year beginning July 1, 1999, and ending June 30, 2000, to the department of education from phase III moneys the amount of fifty thousand dollars for the Iowa mathematics

and science coalition.

99 Acts, ch 205, §42, 43
 Subsections 6, 11, and 12 amended
 NEW subsections 13 and 14

CHAPTER 298A

SCHOOL DISTRICT FUND STRUCTURE

298A.12 Child care fund.

A child care fund is an enterprise fund. A child care fund must be established in any school corporation receiving moneys from the child care pro-

gram authorized under section 279.49.

99 Acts, ch 192, §33
 Terminology change applied

CHAPTER 303

DEPARTMENT OF CULTURAL AFFAIRS

303.16 Historical resource development program.

1. The historical division shall administer a program of grants and loans for historical resource development throughout the state, subject to funds for such grants and loans being made available through the appropriations process or otherwise provided by law.

2. The purpose of the historical resource development program is to preserve, conserve, interpret, and enhance historical resources that will encourage and support the economic and cultural health and development of the state and the communities in which the resources are located. For this purpose, the division may make grants and loans as otherwise provided by law with funds as may be made available by applicable law.

3. The following persons are eligible to receive historical resource grants and loans:

- a. County and city governments.
- b. Nonprofit corporations.
- c. Private corporations and businesses.
- d. Individuals.
- e. State agencies.
- f. Governments and traditional tribal societies of recognized resident American Indian tribes in Iowa.

g. Other units of government.

4. Grants and loans may be made for the following purposes:

- a. Acquisition and development of historical resources.
- b. Preservation and conservation of historical resources.
- c. Interpretation of historical resources.
- d. Professional training and educational programs on the acquisition, development, preservation, conservation, and interpretation of historical resources.

5. Grants and loans shall be awarded in each of the following categories:

- a. Museums.
- b. Documentary collections.
- c. Historic preservation.

Not less than twenty percent and not more than sixty percent of the program's funds appropriated in one fiscal year shall be allocated to any single category.

6. Grants and loans are subject to the following restrictions:

a. Not more than twenty percent of the total grant moneys combined shall be given to or received by state agencies and institutions, or their representatives or agents.

b. A portion of the applicant's operating expenses may be used as a cash match or in-kind match as specified by the division's rules.

c. Grant or loan funds shall not be used to support public relations or marketing expenses.

d. Not more than one hundred thousand dollars or twenty percent of the annual appropriation, whichever is more, shall be granted and loaned to recipients within a single county in any given grant cycle.

e. Not more than one hundred thousand dollars or ten percent of the annual appropriation, whichever is more, shall be granted and loaned to any single recipient or its agent within a single fiscal year.

f. Grants under this program may be given only after review and recommendation by the state historical society board of trustees. The division may contract with lending institutions chartered in this state to act as agents for the administration of loans under the program, in which case, the lending institution may have the right of final approval of loans, subject to the division's administrative rules. If the division does not contract with a lend-

ing institution, loans may be made only after review and recommendation by the state historical society board of trustees.

g. The division shall not award grants or loans to be used for goods or services obtained outside the state, unless the proposed recipient demonstrates that it is neither feasible nor prudent to obtain the goods or services within the state.

h. Grant or loan funds shall not be awarded to a city or county government for a project in the historic preservation category unless the city or county government has been approved as a certified local government by the state historic preservation officer.

7. For each dollar of grant funds the following recipients must provide the following matching cash and in-kind resources:

a. All units of government and nonprofit corporations, fifty cents, of which at least twenty-five cents must be in cash.

b. For other private corporations and businesses, one dollar of which at least seventy-five cents must be in cash.

c. For individuals, seventy-five cents of which at least fifty cents must be in cash.

8. The division may use ten percent of the annual appropriation to the division, but in no event more than seventy-five thousand dollars for administration of the grant and loan program.

9. *a.* The division may establish a historical resource grant and loan fund composed of any money appropriated by the general assembly for that purpose, funds allocated pursuant to section 455A.19, and of any other moneys available to and obtained or accepted by the division from the federal government or private sources for placement in that fund. Each loan made under this section shall be for a period not to exceed ten years, shall bear interest at a rate determined by the state historical board, and shall be repayable to the revolving loan fund in equal yearly installments due March 1 of each year the loan is in effect. The interest rate upon loans for which payment is delinquent shall accelerate immediately to the current legal usury limit. Applicants are eligible for not more than one hundred thousand dollars in loans outstanding at any time under this program. A single lending institution contracting with the division pursuant to this section shall not hold more than five hundred thousand dollars worth of outstanding loans under the program.

Any applicant, who is otherwise eligible, who receives a direct or indirect appropriation from the general assembly for a project or portion of a project is ineligible for a historical resources development grant for that same project during the fiscal year for which the appropriation is made. For purposes of this paragraph, "project" includes any related activities, including, but not limited to, construction, restoration, supplies, equipment, consulting, or other services.

b. The division may:

(1) Contract and adopt administrative rules necessary to carry out the provisions of this section, but the division shall not in any manner directly or indirectly pledge the credit of the state of Iowa.

(2) Authorize payment from the historical resource grant and loan fund, from fees and from any income received by investments of money in the fund for costs, commissions, attorney fees and other reasonable expenses related to and necessary for making and protecting direct loans under this section, and for the recovery of moneys loaned or the management of property acquired in connection with such loans.

10. *a.* The general assembly finds that the country school that served Iowa's educational needs for much of its history offered a unique opportunity to students and communities, providing for multigenerational attendance, high educational performance, a safe environment, a focus for community support, and a caring, attentive environment.

b. A country schools historical resource preservation grant program is therefore established to be administered by the historical division for the preservation of one-room and two-room buildings once used as country schools. In developing grant approval criteria, the division shall place a priority on the educational uses planned for the country school building, which may include, but are not limited to, historical interpretation and use as a teaching museum or as an operational classroom accessible to a school district or accredited nonpublic school for provisional instructional purposes.

c. Notwithstanding any other provision of this section, the amount of a grant shall not exceed twenty-five thousand dollars and applicants shall match grant funding on a dollar-for-dollar basis, of which at least one-half of the local match must be in cash.

99 Acts, ch 205, §44
NEW subsection 10

303.89 State poet laureate designated — nominating committee.

1. A state poet laureate nominating committee is created. At the request of the governor, the executive director of humanities Iowa and the executive director of the Iowa arts council shall each appoint three persons who reside in this state to a poet laureate nominating committee. At its initial meeting held at the call of the executive directors of humanities Iowa and the Iowa arts council, the state poet laureate nominating committee shall elect a chairperson and vice chairperson from among its members and adopt rules of procedure. The members of the state poet laureate nominating committee shall be invited to serve without compensation for their services. The nominating committee is charged with considering the diversity of the people and poetry of Iowa.

2. If more than one meeting is required, the state poet laureate nominating committee shall meet at the call of the chairperson or as determined by the nominating committee and select a list of three nominees, along with biographical and professional information and supporting representative material, who are residents of Iowa and who, based on their poetic accomplishments, deserve

recognition as the state poet laureate. The list of nominees shall be transmitted to the governor. The governor may select the state poet laureate from the list of nominees for a two-year term of office. The state poet laureate is an honorary state office and the incumbent is entitled to no compensation as a result of the appointment.

99 Acts, ch 161, §1
NEW section

CHAPTER 306

ESTABLISHMENT, ALTERATION, AND VACATION OF HIGHWAYS

306.19 Right-of-way — access — notice.

1. In the maintenance, relocation, establishment, or improvement of any road, including the extension of such road within cities, the agency having jurisdiction and control of such road shall have authority to purchase or to institute and maintain proceedings for the condemnation of the necessary right-of-way therefor. Such agency shall likewise have power to purchase or institute and maintain proceedings for the condemnation of land necessary for highway drainage, or land containing gravel or other suitable material for the improvement or maintenance of highways, together with the necessary road access or right of access thereto.

2. Whenever the agency condemns or purchases property access rights or alters by lengthening any existing driveway to a road from abutting property, except during the time required for construction and maintenance of the road or highway, the agency shall:

a. Compensate the owner for any diminution in the market value of the property by the denial or alteration by lengthening the driveway; however, in computing such diminution in value no consideration shall be given to the additional maintenance expense for maintaining the additional length of driveway, but in lieu thereof, both in condemnation proceedings or negotiated purchases, the agency shall pay to the owner the sum of five dollars for every lineal foot of additional length of driveway located on said owner's property. This payment shall represent just compensation to said property owner for the additional driveway maintenance caused by reason of the highway or road project.

b. If in the opinion of the agency it would be more economical to purchase the entire tract of the property owner than to provide and pay the maintenance expense required under the provisions of this section, proceed with the acquisition of the entire tract of land; or

c. If mutually agreeable, move buildings from an existing location to a location requiring an equal or lesser length of driveway and provide an adequate driveway to a public road.

3. None of the foregoing requirements shall prohibit the property owner and the agency from entering into a mutually acceptable agreement for the replacement, relocation, construction, or maintenance of any alternate driveway on the owner's property. Compensation for any property rights taken in the establishment of any alternative temporary or permanent access shall be paid as in any other purchase or condemnation of property.

4. Proceedings for the condemnation of land for any highway shall be under the provisions of chapter 6A and chapter 6B. Provided that, in the condemnation of right-of-way for secondary roads that is contiguous to existing road right-of-way for the maintenance, safety improvement, or upgrade of the existing secondary road, the board of supervisors may proceed as provided in sections 306.28 to 306.37.

5. *a.* The department may notify a city or county that a road under the jurisdiction or control of the department will be established, improved, relocated, or maintained and that the department may need to acquire additional right-of-way or property rights within an area described by the department. The notice shall include a depiction of the area on a map provided by the city, county, or the department. This notice shall be valid for a period of three years from the date of notification to the city or county and may be refiled by the department every three years. Within seven days of filing the notice, the department shall publish in a newspaper of public record a description and map of the area and a description of the potential restrictions applied to the city or county with respect to the granting of building permits, approving of subdivision plats, or zoning changes within the area.

b. The city or county shall notify the department of an application for a building permit for construction valued at twenty-five thousand dollars or more, of the submission of a subdivision plat, or of a proposed zoning change within the area at least thirty days prior to granting the proposed building permit, approving the subdivision plat, or changing the zoning.

c. If the department, within the thirty-day period, notifies the city or county that the department is proceeding to acquire all or part of the property or property rights affecting the area, the city or county shall not issue the building permit, approve the subdivision plat, or change the zoning. The department may apply to the city or county for an extension of the thirty-day period. After a public hearing on the matter, the city or county may grant an additional sixty-day extension of the period.

d. The department shall begin the process of acquiring property or property rights from affected persons within ten days of the department's written notification of intent to the city or county.

6. If the agency determines that it is necessary to relocate a utility facility, the agency shall have the authority to institute and maintain proceedings on behalf of the owner of the utility facility for the condemnation of replacement property rights. The replacement property rights shall be equal in substance to the existing rights of the owner of the utility facility, except that the replacement property rights shall be for a width and location deemed appropriate and necessary for the needs of the owner of the utility facility, as determined by the agency and the owner of the facility. The replacement property rights of the owner of the utility facility shall be subordinate to the rights of the agency only to the extent necessary for the construction and maintenance of the designated road. Within a reasonable time after completion of the relocation, all previously owned property rights of the owner of the utility facility no longer required for operation and maintenance of the utility facility shall be released or conveyed to the appropriate parties. The authority of the agency under this subsection may only be exercised upon execution of a relocation agreement between the agency and the owner of the utility facility. For purposes of this subsection, "utility facility" means an electric, gas, water, steam power, or materials transmission or distribution system; a transportation system; a communications system, including cable television; and fixtures, equipment, or other property associated with the operation, maintenance, or repair of the system. A utility facility may be publicly, privately, or cooperatively owned.

7. For the purposes of this section, the term "driveway" shall mean a way of ingress and egress located entirely on private property, consisting of a lane or passageway leading from a residence to a public roadway or highway.

99 Acts, ch 171, §26, 27, 42
1999 amendments to subsections 3 and 4 apply to state highway construction projects approved for commencement by the transportation commission on or after July 1, 1999, and to all other condemnation proceedings in which the application for condemnation is filed on or after July 1, 1999; see 99 Acts, ch 171, §42
Subsections 3 and 4 amended

306.27 Changes for safety, economy, and utility.

The state department of transportation as to primary roads and the boards of supervisors as to sec-

ondary roads on their own motion may change the course of any part of any road or stream, watercourse, or dry run and may pond water in order to avoid the construction and maintenance of bridges, or to avoid grades, or railroad crossings, or to straighten a road, or to cut off dangerous corners, turns or intersections on the highway, or to widen a road above statutory width, or for the purpose of preventing the encroachment of a stream, watercourse, or dry run upon the highway. The department and the board of supervisors shall conduct their proceedings in the manner and form prescribed in chapter 6B, except that the board of supervisors may use the form prescribed in sections 306.28 to 306.37 for the condemnation of right-of-way that is contiguous to existing road right-of-way and necessary for the maintenance, safety improvement, or upgrade of the existing secondary road. Changes are subject to chapter 455B.

99 Acts, ch 171, §28, 42
1999 amendment applies to state highway construction projects approved for commencement by the transportation commission on or after July 1, 1999, and to all other condemnation proceedings in which the application for condemnation is filed on or after July 1, 1999; see 99 Acts, ch 171, §42
Section amended

306.28 Appraisers.

If the board is unable, by agreement with the owner, to acquire the necessary right-of-way to effect such change, a compensation commission shall be selected pursuant to section 6B.4, to appraise the damages consequent on the taking of the right-of-way.

99 Acts, ch 171, §29, 42
1999 amendment applies to state highway construction projects approved for commencement by the transportation commission on or after July 1, 1999, and to all other condemnation proceedings in which the application for condemnation is filed on or after July 1, 1999; see 99 Acts, ch 171, §42
Section stricken and rewritten

306.29 Notice.

The county auditor shall cause the following notice to be served on the individual owner of each tract or parcel of land to be taken for such right-of-way, as shown by the transfer books in the office of such county auditor, and upon each person owning or holding a mortgage, or lease, upon such land as shown by the county records, and upon the actual occupant of such land if other than the owner thereof:

To whom it may concern: Notice is given that the board of supervisors of county, Iowa, propose to condemn for road purposes the following described real estate in said county: (Here describe the right-of-way, and the tract or tracts from which such right-of-way will be taken.) The damages caused by said condemnation will be assessed by a compensation commission appointed as provided by law for the purpose of appraising the damages. All parties interested are further notified that the compensation commission will, when duly appointed, proceed to appraise the damages, will report the appraisal to the board of supervisors and that the board will pass thereon as provided by law, and that at all such times and places

you may be present. You are further notified that at the hearing before the supervisors you may file objections to the use of the land for road purposes and that all such objections not so made will be deemed waived.

.....
County Auditor.

99 Acts, ch 171, §30, 42

1999 amendment to unnumbered paragraph 2 applies to state highway construction projects approved for commencement by the transportation commission on or after July 1, 1999, and to all other condemnation proceed-

ings in which the application for condemnation is filed on or after July 1, 1999; see 99 Acts, ch 171, §42
Unnumbered paragraph 2 amended

306.31 Assessment.

The appraisers shall forthwith proceed to the assessment of damages and shall make written report of the damages to the board of supervisors.

99 Acts, ch 171, §31, 42

1999 amendment applies to state highway construction projects approved for commencement by the transportation commission on or after July 1, 1999, and to all other condemnation proceedings in which the application for condemnation is filed on or after July 1, 1999; see 99 Acts, ch 171, §42
Section amended

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 cooperation with the department of general services.

2. Establish, supervise and maintain a system of centralized electronic data processing for the department, in cooperation 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 cooperation 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 plastic products with recycled content, including but not limited to plastic 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. For purposes of this subsection, "recycled content" means that the content of the product contains a minimum of thirty percent postconsumer material.

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.

(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) Require in accordance with section 18.6 product content statements and compliance with

requirements regarding procurement specifications.

(4) Comply with the requirements for the purchase of lubricating oils, industrial oils, and hydraulic fluids 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) A listing of plastic products which are regularly purchased by the board for which recycled content product alternatives are available, including the cost of the plastic products purchased and the cost of the recycled content product alternatives.

(2) Information relating to soybean-based inks and plastic garbage can liners with recycled content regularly purchased by the department, including the cost of purchasing soybean-based inks and plastic garbage can liners with recycled content and the percentages of soybean-based inks and plastic garbage can liners with recycled content that have been purchased.

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. Of all new passenger vehicles and light pickup trucks purchased by the administrator, 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 any of the following:

a. A flexible fuel which is either of the following:

(1) A fuel blended with not more than fifteen percent gasoline and at least eighty-five percent ethanol.

(2) A fuel which is a mixture of processed soybean oil and diesel fuel. At least twenty percent of the fuel by volume must be processed soybean oil.

(3) A renewable fuel approved by the office of renewable fuels and coproducts pursuant to section 159A.3.

b. Compressed or liquefied natural gas.

c. Propane gas.

d. Solar energy.

e. Electricity.

The provisions of this subsection do not apply to vehicles and trucks purchased and directly used for law enforcement or off-road maintenance work.

6. 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 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.

7. Assist the director in employing the professional, technical, clerical and secretarial staff for the department and maintain employee records, in cooperation with the department of personnel and provide personnel services, including but not limited to training, safety education and employee counseling.

8. Assist the director in coordinating the responsibilities and duties of the various divisions within the department.

9. Carry out all other general administrative duties for the department.

10. 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 gener-

al services and may cooperate with the director of general services by providing centralized purchasing services for the department of general services.

99 Acts, ch 114, §17; 99 Acts, ch 121, §10

Subsection 4, paragraph b, subparagraphs (1) and (3) amended

307.38 Public transit loan. Repealed by 99 Acts, ch 114, § 54.

307.46 Use of reversions.

1. Notwithstanding the provisions of section 8.33 or any other provision of law to the contrary, if on June 30 of a fiscal year a balance of an operational appropriation remains unexpended or unencumbered, not more than fifty percent of the balance may be encumbered by the department and used as provided in this section and the remaining balance shall be deposited in the fund from which the money was appropriated. The department shall not encumber an amount in excess of five hundred thousand dollars under this section in any fiscal year. Moneys encumbered under this section shall be used by the department during the succeeding fiscal year for employee training and for technology enhancement. Moneys which are encumbered under this section but not used shall revert to the fund from which the money was appropriated on June 30 of the succeeding fiscal year.

2. On or before June 30 of the fiscal year following the fiscal year in which funds were encumbered under this section, the department shall report to the joint transportation, infrastructure, and capitals appropriations subcommittee, the legislative fiscal bureau, the department of management, and the legislative fiscal and oversight committees of the legislative council detailing how the moneys were expended. Moneys shall not be encumbered under this section from an appropriation which received a transfer from another appropriation pursuant to section 8.39.

3. For purposes of this section, "*operational appropriation*" means an appropriation from the road use tax fund or primary road fund providing for salaries, support, maintenance, and miscellaneous purposes.

99 Acts, ch 120, §1, 5

NEW section

CHAPTER 309

SECONDARY ROADS

309.42 Review of road, bridge or culvert contracts. Repealed by 99 Acts, ch 13, § 28, 29.

309.56 Project plans. Repealed by 99 Acts, ch 13, § 28, 29.

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 supplies and materials and for the cost of prison labor used in manufacturing motor vehicle reg-

istration 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 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.

11. 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.

12. 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.

13. 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.

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 general fund of the state 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.

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.

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 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.

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 motorcycle rider education fund established in section 321.180B, an amount equal to one dollar per year of license validity for each issued or renewed driver's 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.

17. *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, shall 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, shall credit from the road use tax fund five hundred thousand dollars to the city bridge construction fund, which is hereby created. Moneys credited to the city bridge construction fund shall be allocated to cities by the department for bridge construction and reconstruction based on needs in accordance with rules adopted by the department.

18. 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.

99 Acts, ch 114, §18
Subsection 12 stricken by its own terms and subsections 13-19 renumbered as 12-18
Subsection 16 amended

CHAPTER 313

PRIMARY ROADS

313.4 Disbursement of fund.

1. Said primary road fund is hereby appropriated for and shall be used in the establishment, construction and maintenance of the primary road system, including the drainage, grading, surfacing, construction of bridges and culverts, the elimina-

tion or improvement of railroad crossings, the acquiring of additional right-of-way, all other expense incurred in the construction and maintenance of said primary road system and the maintenance and housing of the department.

The department may expend moneys from the fund for dust control on a secondary road when there is a notable increase in traffic on the secondary road due to closure of a road by the department for purposes of establishing, constructing, or maintaining a primary road.

2. Such fund is also appropriated and shall be used for the construction, reconstruction, improvement and maintenance of state institutional roads and state park roads and bridges on such roads and roads and bridges on community college property as provided in subsection 11 of section 307A.2, for restoration of secondary roads used as primary road detours and for compensation of counties for such use, for restoration of municipal streets so used and for compensation of cities for such use, and for the payments required in section 307.45.

3. There is appropriated from funds appropriated to the department which would otherwise revert to the primary road fund pursuant to the provisions of the Act appropriating the funds or chapter 8, an amount sufficient to pay the increase in salaries, which increase is not otherwise provided for by the general assembly in an appropriation bill, resulting from the annual review of the merit pay plan as provided in subsection 2 of section 19A.9. The appropriation herein provided

shall be in effect from the effective date of the revised pay plan to the end of the fiscal biennium in which it becomes effective.

4. Such fund is appropriated and shall be used by the department to provide energy and for the operation and maintenance of those primary road freeway lighting systems within the corporate boundaries of cities including energy and maintenance costs associated with interchange conflict lighting on existing and future freeway and expressway segments constructed to interstate standards.

The costs of serving freeway lighting for each utility providing the service shall be determined by the utilities division of the department of commerce, and rates for such service shall be no higher than necessary to recover these costs. Funds received under the provisions of this subsection shall be used solely for the operation and maintenance of a freeway lighting system.

5. During the fiscal year beginning July 1, 1990, and ending June 30, 1991, and each subsequent fiscal year, the department shall spend from the primary road fund an amount of not less than thirty million dollars for the network of commercial and industrial highways.

99 Acts, ch 118, §1
Subsection 1, NEW unnumbered paragraph 2

CHAPTER 316

RELOCATION OF PERSONS DISPLACED BY HIGHWAYS

316.1 Definitions.

As used in this chapter the term:

1. *Administrative rules* means all rules subject to the provisions of chapter 17A.

2. *Business* means any lawful activity, excepting a farm operation, conducted primarily:

a. For the purchase, sale, lease and rental of personal and real property, and for the manufacture, processing, or marketing of products, commodities, or any other personal property;

b. For the sale of services to the public;

c. By a nonprofit organization; or

d. Solely for the purposes of section 316.4, for assisting in the purchase, sale, resale, manufacture, processing, or marketing of products, commodities, personal property, or services by the erection and maintenance of an outdoor advertising display or displays, whether or not the display or displays are located on the premises on which any of the above activities are conducted.

3. *Comparable replacement dwelling* means any single family residential unit that is all of the following:

a. Decent, safe, and sanitary.

b. Adequate in size to accommodate the occupants.

c. Within the financial means of the displaced person.

d. Functionally equivalent to the displaced person's dwelling.

e. In an area not subject to unreasonably adverse environmental conditions.

f. In a location generally not less desirable than the location of the displaced person's dwelling with respect to public utilities, facilities, services, and the displaced person's place of employment.

4. *Department* means the state department of transportation.

5. *Displaced person* means:

a. A person who moves from real property or moves the person's personal property from real property in any of the following circumstances:

(1) As a direct result of a written notice of intent to acquire, the initiation of negotiations for, or the acquisition of, the real property in whole or in part for a program or project undertaken with federal financial assistance.

(2) The person moved or moved the person's personal property from real property on which the person is either a residential tenant or conducts a small business, a farm operation, or a business as defined in subsection 2, paragraph "d", as a direct result of rehabilitation or demolition for a program or project undertaken with federal financial assistance in a case in which the head of the displacing

agency determines that the displacement is permanent.

(3) As a direct result of a written notice of intent to acquire by condemnation, the initiation of negotiations for, or the acquisition of, the real property in whole or in part by the state of Iowa or by an entity or person conferred the right to condemn private property.

b. For purposes of section 316.4, subsections 1 and 2, and section 316.7, a person who moves from real property, or moves the person's personal property from real property in any of the following circumstances:

(1) As a direct result of a written notice of intent to acquire, the initiation of negotiations for, or the acquisition of, other real property in whole or in part if the person conducts a business or farm operation on the other real property for a program or project undertaken with federal financial assistance.

(2) As a direct result of rehabilitation or demolition of other real property on which the person conducts a business or a farm operation for a program or project undertaken with federal financial assistance in a case in which the head of the displacing agency determines that the displacement is permanent.

(3) As a direct result of a written notice of intent to acquire by condemnation, the initiation of negotiations for, or the acquisition of, other real property in whole or in part by the state of Iowa or by an entity or person conferred the right to condemn private property if the person conducts a business or farm operation on the other real property.

c. The term "*displaced person*" does not include any of the following:

(1) A person who has been determined to be either in unlawful occupancy of the real property or who has occupied the real property for the purpose of obtaining assistance under this chapter.

(2) A person, other than the person who was the occupant of the real property at the time it was acquired, who occupies the real property on a rental basis for a short term or a period subject to termination when the real property is needed for the program or project.

(3) An owner-occupant who voluntarily sells the owner-occupant's property, after being informed in writing that if a mutually satisfactory

agreement of sale cannot be reached the state agency will not acquire the property.

(4) A person who retains the right of use and occupancy of the real property for life following its acquisition by a state agency.

6. "*Displacing agency*" means the state or a state agency carrying out a program or project, or any person carrying out a program or project with federal financial assistance, which causes a person to be a displaced person.

7. "*Farm operation*" means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

8. "*Federal financial assistance*" means a grant, loan, or contribution provided by the United States; however, "*federal financial assistance*" does not include any federal guarantee or insurance and any interest reduction payment to an individual in connection with the purchase and occupancy of a residence by that individual.

9. "*Federal Uniform Relocation Act*" means the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. No. 91-646, as amended by the Uniform Relocation Act Amendments of 1987, Title IV, Pub. L. No. 100-17.

10. "*Mortgage*" means such classes of liens as are commonly given to secure advances on, or the unpaid purchase price of real property, under the laws of this state, together with the credit instruments, if any, secured thereby.

11. "*Person*" means any individual, partnership, corporation, or association.

12. "*State agency*" means any of the following:
a. A department, agency, or instrumentality of the state or of a political subdivision of the state.

b. A department, agency, or instrumentality of two or more political subdivisions of the state, or states.

c. A person who has the authority to acquire property by eminent domain under state law.

99 Acts, ch 171, §32, 42

1999 amendment to subsection 5 applies to state highway construction projects approved for commencement by the transportation commission on or after July 1, 1999, and to all other condemnation proceedings in which the application for condemnation is filed on or after July 1, 1999; see 99 Acts, ch 171, §42

Subsection 5, paragraphs a and b amended

CHAPTER 321

MOTOR VEHICLES AND LAW OF THE ROAD

321.1 Definitions of words and phrases.

The following words and phrases when used in this chapter shall, for the purpose of this chapter, have the meanings respectively ascribed to them.

1. "*Agricultural hazardous material*" means a hazardous material, other than hazardous waste, whose end use directly supports the production of an agricultural commodity, including, but not lim-

ited to, a fertilizer, pesticide, soil conditioner, or fuel. *"Agricultural hazardous material"* is limited to material in class 3, 8, or 9, division 2.1, 2.2, 5.1, or 6.1, or an ORM-D material as defined in 49 C.F.R. § 171.8.

1A. *"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 recreational use but not including farm tractors or equipment, 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.

If authorized to transport students or clients by the superintendent of the Iowa braille and sight saving school or of the Iowa school for the deaf, or the superintendent's respective designee, an employee of the Iowa braille and sight saving school or the Iowa school for the deaf is not a chauffeur when transporting the students or clients.

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 driver's 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 carrier"* means a person responsible for the safe operation of a commercial motor vehicle.

e. *"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 or vehicles have a gross weight rating or gross combination 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 persons with disabilities.

(4) The motor vehicle is used in the transportation of hazardous material of a type or quantity requiring vehicle placarding.

f. *“Foreign jurisdiction”* means a jurisdiction outside the fifty United States, the District of Columbia, and Canada.

g. *“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.

h. *“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.

15A. *“Crane”* means a machine for raising, shifting, and lowering heavy weights by means of a projecting swinging arm.

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.

20A. *“Driver’s 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 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 this chapter and chapters 321A, 321C, and 321J, *“driver’s license”* includes any privilege to operate a motor vehicle.

21. *“Endorsement”* means an authorization to a person’s driver’s 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.

24A. “*Fence-line feeder*” means a vehicle used exclusively for the mixing and dispensing of nutrients to bovine animals at a feedlot.

24B. “*Financial liability coverage*” means any of the following:

a. An owner’s policy of liability insurance which is issued by an insurance carrier authorized to do business in Iowa to or for the benefit of the person named in the policy as insured, and insuring the person named as insured and any person using an insured motor vehicle with the express or implied permission of the named insured against loss from liability imposed by law for damages arising out of the ownership, maintenance, or use of an insured motor vehicle within the United States of America or Canada, but subject to minimum limits, exclusive of interest and costs, in the amounts specified in section 321A.21 or specified in another provision of the Code, whichever is greater.

b. A bond filed with the department pursuant to section 321A.24.

c. A valid certificate of deposit of money or security issued by the treasurer of state pursuant to section 321A.25.

d. A valid certificate of self-insurance issued by the department pursuant to section 321A.34.

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.

28A. “*Grain cart*” means a vehicle with a non-steerable single or tandem axle designed to move grain.

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 a vehicle or special mobile equipment manufactured, designed, or reconstructed for agricultural purposes and, except for incidental uses, exclusively used in the conduct of agricultural operations. “*Implements of husbandry*” includes all-terrain vehicles operated in compliance with section 321.234A, fence-line feeders, and vehicles used exclusively for the application of organic or inorganic plant food materials, organic agricultural limestone, or agricultural chemicals. To be considered an implement of husbandry, a self-propelled implement of husbandry must be operated at speeds of thirty-five miles per hour or less. “*Reconstructed*” as used in this subsection means materially altered from the original construction by the removal, addition, or substitution of essential parts, new or used.

A vehicle covered under this subsection, if it otherwise qualifies, may be operated as special mobile equipment and under such circumstances this subsection shall not be applicable to such vehicle, and such vehicle shall not be required to comply with sections 321.384 through 321.423, when such vehicle is moved during daylight hours; 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*" means every county, municipal, and other local board or body having authority to adopt local police regulations under the Constitution and laws of this state.

36A. "*Manufactured housing*" is a factory-built structure constructed under authority of 42 U.S.C. § 5403, which is required by federal law to display a seal from the United States department of housing and urban development, and was constructed on or after June 15, 1976.

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 per-

mit 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, manufactured, or constructed to permit its use as a conveyance upon the public streets and highways and designed to permit its use as a place of human habitation by one or more persons. The vehicle may be up to eight feet six inches in width and its overall length shall not exceed forty feet. The vehicle shall be customarily or ordinarily used for vacation or recreational purposes and not used as a place of permanent habitation. If the 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 provided in this paragraph.

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 motor vehicle or new car" means a motor vehicle subject to registration 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. Reserved.

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" means 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.

54A. "Product identification number" or the acronym PIN means a group of unique numerical or alphabetical designations assigned to a complete fence-line feeder, grain cart, or tank wagon by the manufacturer or by the department and affixed to the vehicle, pursuant to rules adopted by the department, as a means of identifying the vehicle or the year of manufacture.

54B. "Proof of financial liability coverage card" means either a liability insurance card issued under section 321.20B, a bond insurance card issued under section 321A.24, a security insurance card issued under section 321A.25, or a self-insurance card issued under section 321A.34.

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.

63A. "Retractable axle" means an axle designed with the capability of manipulation or adjustment of the weight on the axle.

64. "Right-of-way" means the privilege of the immediate use of the highway.

64A. "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.

65. "Roadway" means that portion of a highway improved, designed, or ordinarily used for vehicular travel.

66. "Road work zone" means the portion of a highway which is identified by posted or moving signs as the site of construction, maintenance, survey, or utility work. The zone starts upon meeting the first sign identifying the zone and continues until a posted or moving sign indicates that the work zone has ended.

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 or a regional transit system as defined in section 324A.1 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 this paragraph 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, 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. “*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. “*Special truck*” also 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 who assists another person engaged in farming through an exchange of services. A “*special truck*” does not include a truck tractor operated more than fifteen thousand 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.

80A. “*Tank wagon*” means a vehicle designed to carry liquid animal or human excrement.

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.

99 Acts, ch 13, §1–3, 29; 99 Acts, ch 108, §1–3; 99 Acts, ch 188, §1
See Code editor’s note
NEW subsection 24A and former subsection 24A renumbered as 24B
NEW subsection 28A
Subsection 32 amended
NEW subsection 36A
NEW subsection 54A and former subsection 54A renumbered as 54B
Subsection 69, paragraph c amended
Subsection 76 amended
NEW subsection 80A

321.11 Records of department.

All records of the department, other than those made confidential or not permitted to be open in accordance with 18 U.S.C. § 2721 et seq., adopted as of a specific date by rule of the department, shall be open to public inspection during office hours.

Personal information shall be disclosed to a requestor if the individual whose personal information is requested has not elected to prohibit disclosure of the information to the general public. The department shall give notice in a clear and conspicuous manner on forms for issuance or renewal of driver’s licenses, titles, registrations, or nonoperator’s identification cards that personal information collected by the department may be disclosed to any person. The department shall provide in a clear and conspicuous manner on these forms an opportunity for an individual to prohibit disclosure of personal information to the general public. As used in this paragraph, “personal information” means information that identifies a person, including a person’s photograph, social security number, driver’s license number, name, address, telephone number, and medical or disability information, but does not include information on vehicular accidents, driving violations, and driver’s status or a person’s zip code.

Notwithstanding other provisions of this section to the contrary, the department shall not release personal information to a person, other than to an officer or employee of a law enforcement agency, an employee of a federal or state agency or political subdivision in the performance of the employee’s official duties, a contract employee of the department of inspections and appeals in the conduct of an investigation, or a licensed private investigation agency or a licensed security service or a licensed employee of either, if the information is requested by the presentation of a registration plate number. In addition, an officer or employee of a law enforcement agency may release the name, address, and telephone number of a motor vehicle registrant to a person requesting the information by the presentation of a registration plate number if the officer or employee of the law enforcement agency believes that the release of the information is necessary in the performance of the officer’s or employee’s duties.

The department shall not sell personal information which is in the form of a person’s photograph or digital image or a digital reproduction of a person’s photograph, regardless of whether an individual has elected to prohibit disclosure of the information to the general public. This paragraph does not prohibit the department from collecting reasonable fees for copies of records or other services provided pursuant to section 22.3, 321.10, or 622.46.

99 Acts, ch 198, §4
NEW unnumbered paragraph 4

321.18 Vehicles subject to registration — exception.

Every motor vehicle, trailer, and semitrailer when driven or moved upon a highway shall be subject to the registration provisions of this chapter except:

1. Any such vehicle driven or moved upon a highway in conformance with the provisions of this chapter relating to manufacturers, transporters, dealers, or nonresidents as contemplated by section 321.53 and chapter 326, or under a temporary registration permit issued by the department as hereinafter authorized.
2. Any such vehicle which is driven or moved upon a highway only for the purpose of crossing such highway from one property to another.
3. Any implement of husbandry.
4. Any special mobile equipment as herein defined.
5. Any vehicle which is used exclusively for interplant purposes, in the operation of an industrial or manufacturing plant, consisting of a single unit comprising a group of buildings separated by streets, alleys, or railroad tracks, and which vehicle is used solely to transport materials from one part of the plant to another or from an adjacent railroad track to the plant and in so doing incidentally using said streets or alleys for not more than one thousand feet.
6. Any vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails.
7. Any school bus in this state used exclusively for the transportation of pupils to and from school or a school function or for the purposes provided in section 285.1, subsection 1, and section 285.10, subsection 9, or used exclusively for the transportation of children enrolled in a federal head start program. Upon application the department shall, without charge, issue a registration certificate and shall also issue registration plates which shall have imprinted thereon the words “Private School Bus” and a distinguishing number assigned to the applicant. Such plates shall be attached to the front and rear of each bus exempt from registration under this subsection.
8. Any mobile home or manufactured housing.

99 Acts, ch 188, §2
Subsection 8 amended

321.19 Exemptions — distinguishing plates — definitions of urban transit company and regional transit system.

1. All vehicles owned or leased for a period of sixty days or more by the government and used in the transaction of official business by the representatives of foreign governments or by officers, boards, or departments of the government of the United States, and by the state, counties, municipalities and other political subdivisions of the state including vehicles used by an urban transit company operated by a municipality or a regional transit system, and self-propelling vehicles used neither for the conveyance of persons for hire, pleasure, or business nor for the transportation of freight other than those used by an urban transit company operated by a municipality or a regional transit system, all fire trucks, providing they are not owned and operated for a pecuniary profit, and authorized emergency vehicles used only in disaster relief owned and operated by an organization not operated for pecuniary profit, are exempted from the payment of the fees imposed by this chapter, except as provided for urban transit companies in subsection 2, but are not exempt from the penalties provided in this chapter.

The department shall furnish, on application, free of charge, distinguishing plates for vehicles thus exempted, which plates except plates on Iowa state patrol vehicles shall bear the word "official" and the department shall keep a separate record. Registration plates issued for Iowa state patrol vehicles, except unmarked patrol vehicles, shall bear two red stars on a yellow background, one before and one following the registration number on the plate, which registration number shall be the officer's badge number. Registration plates issued for county sheriff's patrol vehicles shall display one seven-pointed gold star followed by the letter "S" and the call number of the vehicle. However, the director of general services or the director of transportation may order the issuance of regular registration plates for any exempted vehicle used by peace officers in the enforcement of the law, persons enforcing chapter 124 and other laws relating to controlled substances, persons in the department of justice, the alcoholic beverages division of the department of commerce, disease investigators of the Iowa department of public health, the department of inspections and appeals, and the department of revenue and finance, who are regularly assigned to conduct investigations which cannot reasonably be conducted with a vehicle displaying "official" state registration plates, persons in the lottery division of the department of revenue and finance whose regularly assigned duties relating to security or the carrying of lottery tickets cannot reasonably be conducted with a vehicle displaying "official" registration plates, and persons in the department of economic development who are regularly assigned duties relating to existing industry

expansion or business attraction. For purposes of sale of exempted vehicles, the exempted governmental body, upon the sale of the exempted vehicle, may issue for in-transit purposes a pasteboard card bearing the words "Vehicle in Transit", the name of the official body from which the vehicle was purchased, together with the date of the purchase plainly marked in at least one-inch letters, and other information required by the department. The in-transit card is valid for use only within forty-eight hours after the purchase date as indicated on the bill of sale which shall be carried by the driver.

2. "Urban transit company" means any person, firm, corporation, company, or municipality which operates buses or trolley cars or both, primarily upon the streets of cities over well-defined routes between certain termini, for the transportation of passengers for a uniform fare, and which accepts for passengers all who present themselves for transportation without discrimination up to the limit of the capacity of each vehicle. Included are street railways, plants, equipment, property, and rights, used and useful in the transportation of passengers. Motor carriers and interurbans subject to the jurisdiction of the state department of transportation, and taxicabs, are not included.

The department, in accordance with subsection 1, shall furnish distinguishing plates for vehicles used by urban transit companies operated by a municipality. No other provision of law providing for the payment of taxes, registration, or license fees for vehicles shall be applicable to any bus, car, or vehicle for the transportation of passengers owned and operated by any urban transit company.

Chapter 326 is not applicable to urban transit companies or systems.

3. "Regional transit system" means a public transit system serving one county or all or part of a multicounty area whose boundaries correspond to the same boundaries as those of the regional planning areas designated by the governor, except as agreed upon by the department. Each county board of supervisors within the region is responsible for determining the service and funding within its county. However, the administration and overhead support services for the overall regional transit system shall be consolidated into one existing or new agency to be mutually agreed upon by the participating members. Privately chartered bus services and uses other than providing services that are open and public on a shared ride basis shall not be construed to be a regional transit system.

99 Acts, ch 141, §37
Subsection 1, unnumbered paragraph 2 amended

321.20 Application for registration and certificate of title.

Except as provided in this chapter, an owner of a vehicle subject to registration shall make application to the county treasurer, of the county of the owner's residence, or if a nonresident to the county

treasurer of the county where the primary users of the vehicle are located, or if a lessor of the vehicle pursuant to chapter 321F which vehicle has a gross vehicle weight of less than ten thousand pounds, to the county treasurer of the county of the lessee's residence, for the registration and issuance of a certificate of title for the vehicle upon the appropriate form furnished by the department. However, upon the transfer of ownership, the owner of a vehicle subject to the proportional registration provisions of chapter 326 shall make application for registration and issuance of a certificate of title to either the department or the appropriate county treasurer. The application shall be accompanied by a fee of ten dollars, and shall bear the owner's signature written with pen and ink. A nonresident owner of two or more vehicles subject to registration may make application for registration and issuance of a certificate of title for all vehicles subject to registration to the county treasurer of the county where the primary user of any of the vehicles is located. The owner of a mobile home or of manufactured housing shall make application for a certificate of title under this section. The application shall contain:

1. The name; social security number or, if the owner does not have a social security number but has a passport, the passport number; driver's license number, whether the license was issued by this state, another state, another country, or is an international driver's license; date of birth; bona fide residence; and mailing address of the owner. If the owner is a firm, association, or corporation, the application shall contain the business address and federal employer identification number of the owner.

2. A description of the vehicle including, insofar as the hereinafter specified data may exist with respect to a given vehicle, the make, model, type of body, the number of cylinders, the type of motor fuel used, the serial number of the vehicle, manufacturer's identification number, the engine or other number of the vehicle and whether new or used and if a new vehicle the date of sale by the manufacturer or dealer to the person intending to operate such vehicle.

3. Such further information as may reasonably be required by the department.

4. A statement of the applicant's title and of all liens or encumbrances upon said vehicle and the names and addresses of all persons having any interest therein and the nature of every such interest. When such application refers to a new vehicle, it shall be accompanied by a manufacturer's or importer's certificate duly assigned as provided in section 321.45.

5. The amount of tax to be paid under section 423.7.

Notwithstanding contrary provisions of this chapter or chapter 326 regarding titling and registration by means other than electronic means, the

department may develop and implement a program to test the feasibility of electronic applications, titling, registering, and electronic funds transfer for vehicles traveling in interstate commerce in order to improve the efficiency and timeliness of the processes and to reduce costs for all parties involved.

99 Acts, ch 8, §1; 99 Acts, ch 188, §3
Unnumbered paragraph 1 amended
Subsection 4 amended

321.20B Proof of security against liability — driving without liability coverage.

1. Notwithstanding chapter 321A, which requires certain persons to maintain proof of financial responsibility, a person shall not drive a motor vehicle on the highways of this state unless financial liability coverage, as defined in section 321.1, subsection 24B, is in effect for the motor vehicle and unless the driver has in the motor vehicle the proof of financial liability coverage card issued for the motor vehicle, or if the vehicle is registered in another state, other evidence that financial liability coverage is in effect for the motor vehicle.

It shall be conclusively presumed that a motor vehicle driven upon a parking lot which is available to the public without charge or which is available to customers or invitees of a business or facility without charge was driven on the highways of this state in order to enter the parking lot, and this section shall be applicable to such a motor vehicle. As used in this section, "parking lot" includes access roads, drives, lanes, aisles, entrances, and exits to and from a parking lot described in this paragraph.

This subsection does not apply to the operator of a motor vehicle owned by or leased to the United States, this state or another state, or any political subdivision of this state or of another state, or to a motor vehicle which is subject to section 325A.6 or 327B.6.

2. *a.* An insurance company transacting business in this state shall issue to its insured owners of motor vehicles registered in this state a financial liability coverage card for each motor vehicle insured. Each financial liability coverage card shall identify the registration number or vehicle identification number of the motor vehicle insured and shall indicate the expiration date of the applicable insurance coverage. The financial liability coverage card shall also contain the name and address of the insurer or the name of the insurer and the name and address of the insurance agency, the name of the insured, and an emergency telephone number of the insurer or emergency telephone number of the insurance agency.

b. The insurance division and the department, as appropriate, shall adopt rules regarding the contents of a financial liability coverage card to be issued pursuant to this section. Notwithstanding the provisions of this section, a fleet owner is not required to maintain in each vehicle a financial liability coverage card with the individual registration

number or the vehicle identification number of the vehicle included on the card. Such fleet owner shall be required to maintain a financial liability coverage card in each vehicle in the fleet including information deemed appropriate by the commissioner of insurance or the director, as applicable.

3. If the financial liability coverage for a motor vehicle which is registered in this state is canceled or terminated effective prior to the expiration date indicated on the financial liability coverage card issued for the vehicle, the person to whom the financial liability coverage card was issued shall destroy the card.

4. *a.* If a peace officer stops a motor vehicle registered in this state and the driver is unable to provide proof of financial liability coverage, the peace officer shall do one of the following:

(1) Issue a warning memorandum to the driver.

(2) Issue a citation to the driver. If a citation is issued, the citation shall be issued under this subparagraph unless the driver has been previously charged and cited for a violation of subsection 1. A citation which is issued and subsequently dismissed shall be disregarded for purposes of determining if the driver has been previously charged and cited.

(3) Issue a citation and remove the motor vehicle's license plates and registration receipt. Upon removing the license plates and registration receipt, the peace officer shall deliver the plates for destruction, as appropriate, and forward the registration receipt and evidence of the violation, as determined by the department, to the county treasurer of the county in which the motor vehicle is registered. The motor vehicle may be driven for a time period of up to forty-eight hours after receiving the citation solely for the purpose of removing the motor vehicle from the highways of this state, unless the driver's operating privileges are otherwise suspended.

After receiving the citation, the driver shall keep the citation in the motor vehicle at all times while driving the motor vehicle as provided in this subparagraph, as proof of the driver's privilege to drive the motor vehicle for such limited time and purpose.

(4) *a.* Issue a citation, remove the motor vehicle's license plates and registration receipt, and impound the motor vehicle. The peace officer shall deliver the plates for destruction, as appropriate, and forward the registration receipt and evidence of the violation, as determined by the department, to the county treasurer of the county in which the motor vehicle is registered.

b. A motor vehicle which is impounded may be claimed by a person if the owner provides proof of financial liability coverage and proof of payment of any applicable fine and the costs of towing and storage for the motor vehicle. If the motor vehicle is not claimed within thirty days after impoundment, the

motor vehicle may be treated as an abandoned vehicle pursuant to section 321.89.

c. The holder of a security interest in a motor vehicle which is impounded pursuant to this subparagraph shall be notified of the impoundment within seventy-two hours of the impoundment of the motor vehicle and shall have the right to claim the motor vehicle upon the payment of all fees. However, if the value of the vehicle is less than the security interest, all fees shall be divided equally between the lienholder and the political subdivision impounding the vehicle.

b. An owner or driver of a motor vehicle who is charged with a violation of subsection 1 and issued a citation under paragraph "a", subparagraph (3) or (4), is subject to the following:

(1) An owner or driver who produces to the clerk of court, within thirty days of the issuance of the citation under paragraph "a", or prior to the date of the individual's court appearance as indicated on the citation, whichever is earlier, proof that financial liability coverage was in effect for the motor vehicle at the time the person was stopped and cited, or, if the driver is not the owner of the motor vehicle, proof that liability coverage was in effect for the driver with respect to the motor vehicle being driven at the time the driver was stopped and cited, in the same manner as if the motor vehicle were owned by the driver, shall be given a receipt indicating that such proof was provided and be subject to one of the following:

a. If the person was cited pursuant to paragraph "a", subparagraph (3), the owner or driver shall provide a copy of the receipt to the county treasurer of the county in which the motor vehicle is registered and the owner shall be assessed a fifteen dollar administrative fee by the county treasurer who shall issue new license plates and registration to the person after payment of the fee.

b. If the person was cited pursuant to paragraph "a", subparagraph (4), the owner or driver, after the owner provides proof of financial liability coverage to the clerk of court, may claim the motor vehicle after such person pays any applicable fine and the costs of towing and storage for the motor vehicle, and the owner or driver provides a copy of the receipt and the owner pays to the county treasurer of the county in which the motor vehicle is registered a fifteen dollar administrative fee, and the county treasurer shall issue new license plates and registration to the person.

(2) An owner or driver who is charged with a violation of subsection 1 and is unable to show that financial liability coverage was in effect for the motor vehicle at the time the person was stopped and cited may do either of the following:

a. Sign an admission of violation on the citation and remit to the clerk of court a scheduled fine as provided in section 805.8, subsection 2, for a violation of subsection 1. Upon payment of the fine

to the clerk of court of the county where the citation was issued, payment of a fifteen dollar administrative fee to the county treasurer of the county in which the motor vehicle is registered, and providing proof of payment of any applicable fine and proof of financial liability coverages to the county treasurer of the county in which the motor vehicle is registered, the treasurer shall issue new license plates and registration to the owner.

(b) Request an appearance before the court on the matter. If the matter goes before the court, and the owner or driver is found guilty of a violation of subsection 1, the court may impose a fine as provided in section 805.8, subsection 2, for a violation of subsection 1, or the court may order the person to perform unpaid community service instead of the fine. Upon the payment of the fine or the entry of the order for unpaid community service, the person shall provide proof of payment or entry of such order and the county treasurer of the county in which the motor vehicle is registered shall issue new license plates and registration to the owner upon the owner providing proof of financial liability coverage and paying a fifteen dollar administrative fee to the county treasurer.

c. An owner or driver cited for a violation of subsection 1, who produces to the clerk of court within thirty days of the issuance of the citation proof that financial liability coverage was in effect for the motor vehicle at the time the person was stopped and cited, shall not be convicted of such violation and the citation issued shall be dismissed.

5. If the motor vehicle is not registered in this state and the driver is a nonresident, the peace officer shall do one of the following:

a. Issue a warning memorandum to the driver.
b. Issue a citation. An owner or driver who produces to the clerk of court within thirty days of the issuance of the citation, or prior to the date of the individual's court appearance as indicated on the citation, whichever is earlier, proof that the financial liability coverage was in effect for the motor vehicle at the time the person was stopped and cited, or if the driver is not the owner of the motor vehicle, proof that liability coverage was in effect for the driver with respect to the motor vehicle being driven at the time the driver was stopped and cited in the same manner as if the motor vehicle were owned by the driver, shall be given a receipt indicating that proof was provided, and the citation issued shall be dismissed.

6. This section does not apply to a motor vehicle identified in section 321.18, subsections 1 through 6, and subsection 8.

7. This section does not apply to a lienholder who has a security interest in a motor vehicle subject to the registration requirements of this chapter, so long as such lienholder maintains financial liability coverage for any motor vehicle driven or moved by the lienholder in which the lienholder has an interest.

8. This section does not apply to a motor vehicle owned by a motor vehicle dealer or wholesaler licensed pursuant to chapter 322.

9. The director of transportation and the commissioner of insurance shall adopt rules pursuant to chapter 17A to administer this section.

99 Acts, ch 110, §1; 99 Acts, ch 114, §19
Subsection 1, NEW unnumbered paragraph 2
Subsection 4, paragraph c amended

321.21 Special mobile equipment plates.
Repealed by 99 Acts, ch 13, § 28, 29.

321.23 Titles to specially constructed and foreign vehicles.

1. If the vehicle to be registered is a specially constructed, reconstructed, remanufactured, or foreign vehicle, such fact shall be stated in the application. A fee of ten dollars shall be paid by the person making the application upon issuance of a certificate of title by the county treasurer. With reference to every specially constructed or reconstructed motor vehicle subject to registration the application shall be accompanied by a statement from the department authorizing the motor vehicle to be titled and registered in this state. The department shall cause a physical inspection to be made of all specially constructed or reconstructed motor vehicles, upon application for a certificate of title by the owner, to determine whether the motor vehicle complies with the definition of specially constructed motor vehicle or reconstructed motor vehicle in this chapter and to determine that the integral component parts are properly identified and that the rightful ownership is established before issuing the owner the authority to have the motor vehicle registered and titled. The purpose of the physical inspection under this section is not to determine whether the motor vehicle is in a condition safe to operate. With reference to every foreign vehicle which has been registered outside of this state, the owner shall surrender to the treasurer all registration plates, registration cards, and certificates of title, or, if the vehicle to be registered is from a nontitle state, the evidence of foreign registration and ownership as may be prescribed by the department except as provided in subsection 2.

2. Where in the course of operation of a vehicle registered in another state it is desirable to retain registration of said vehicle in such other state, such applicant need not surrender but shall submit for inspection said evidence of such foreign registration and the treasurer upon a proper showing shall register said vehicle in this state but shall not issue a certificate of title for such vehicle.

3. In the event an applicant for registration of a foreign vehicle for which a certificate of title has been issued is able to furnish evidence of being the registered owner of the vehicle to the county treasurer of the owner's residence, although unable to surrender such certificate of title, the county treasurer may issue a registration receipt and plates

upon receipt of the required registration fee but shall not issue a certificate of title thereto. Upon surrender of the certificate of title from the foreign state, the county treasurer shall issue a certificate of title to the owner, or person entitled thereto, of such vehicle as provided in this chapter. The owner of a vehicle registered under this subsection shall not be required to obtain a certificate of title in this state and may transfer ownership of the vehicle to a motor vehicle dealer licensed under chapter 322 if, at the time of the transfer, the certificate of title is held by a secured party and the dealer has forwarded to the secured party the sum necessary to discharge the security interest pursuant to section 321.48, subsection 1.

4. A vehicle which does not meet the equipment requirements of this chapter due to the particular use for which it is designed or intended, may be registered by the department upon payment of appropriate fees and after inspection and certification by the department that the vehicle is not in an unsafe condition. A person is not required to have a certificate of title to register a vehicle under this subsection. If the owner elects to have a certificate of title issued for the vehicle, a fee of ten dollars shall be paid by the person making the application upon issuance of a certificate of title. If the department's inspection reveals that the vehicle may be safely operated only under certain conditions or on certain types of roadways, the department may restrict the registration to limit operation of the vehicle to the appropriate conditions or roadways. This subsection does not apply to snowmobiles as defined in section 321G.1. Section 321.382 does not apply to a vehicle registered under this subsection which is operated exclusively by a person with a disability who has obtained a persons with disabilities parking permit as provided in section 321L.2, if the persons with disabilities parking permit is carried in or on the vehicle and shown to a peace officer on request.

99 Acts, ch 13, §4
Surcharge imposed; §321.52A
Subsection 3 amended

321.24 Issuance of registration and certificate of title.

Upon receipt of the application for title and payment of the required fees for a motor vehicle, trailer, or semitrailer, the county treasurer or the department shall, when satisfied as to the application's genuineness and regularity, and, in the case of a mobile home or manufactured housing, that taxes are not owing under chapter 435, issue a certificate of title and, except for a mobile home or manufactured housing, a registration receipt, and shall file the application, the manufacturer's or importer's certificate, the certificate of title, or other evidence of ownership, as prescribed by the department. The registration receipt shall be delivered to the owner and shall contain upon its face the date issued, the name and address of the owner, the reg-

istration number assigned to the vehicle, the title number assigned to the owner of the vehicle, the amount of the fee paid, the amount of tax paid pursuant to section 423.7, the type of fuel used, and a description of the vehicle as determined by the department, and upon the reverse side a form for notice of transfer of the vehicle.

The county treasurer shall maintain in the county record system information contained on the registration receipt. The information shall be accessible by registration number and shall be open for public inspection during reasonable business hours. Copies the department requires shall be sent to the department in the manner and at the time the department directs.

The certificate of title shall contain upon its face the identical information required upon the face of the registration receipt. In addition, the certificate of title shall contain a statement of the owner's title, the amount of tax paid pursuant to section 423.7, the name and address of the previous owner, and a statement of all security interests and encumbrances as shown in the application, upon the vehicle described, including the nature of the security interest, date of notation, and name and address of the secured party.

If the prior certificate of title is from another state and indicates that the vehicle was rebuilt, the new certificate of title shall contain the designation of "REBUILT" stamped or printed on its face together with the name of the state issuing the prior title. The designation of "REBUILT" and the name of the other state shall be retained on all subsequent Iowa certificates of title for the vehicle. If the prior certificate of title is from another state and indicates that the vehicle was rebuilt, the registration receipt shall contain the designation of "REBUILT" stamped and printed on its face. The stamped designation of "REBUILT" shall be located on the center of the right side of the registration receipt in black letters no bigger than sixteen point type. The designation shall be retained on the face of all subsequent registration receipts for the vehicle.

If the prior certificate of title is from another state and indicates that the vehicle was junked, an Iowa junking certificate shall be issued according to section 321.52, subsections 2 and 3. If the prior certificate of title from another state indicates that the vehicle is salvaged and not rebuilt or is a salvage certificate of title, an Iowa salvage certificate of title shall be issued and a "SALVAGE" designation shall be retained on all subsequent Iowa certificates of title and registration receipts for the vehicle, except as provided under section 321.52, subsection 4, paragraph "b". The department may require that subsequent Iowa certificates of title retain other states' designations which indicate that a vehicle had incurred prior damage. The department shall determine the manner in which

other states' rebuilt, salvage, or other designations are to be indicated on Iowa titles.

The certificate shall bear the seal of the county treasurer or of the department, and the signature of the county treasurer, the deputy county treasurer, or the department director or deputy designee. The certificate shall provide space for the signature of the owner. The owner shall sign the certificate of title in the space provided with pen and ink upon its receipt. The certificate of title shall contain upon the reverse side a form for assignment of title or interest and warranty by the owner, for reassignments by a dealer licensed in this state or in another state if the state in which the dealer is licensed permits Iowa licensed dealers to similarly reassign certificates of title. Attached to the certificate of title shall be an application for a new certificate of title by the transferee as provided in this chapter. However, titles for mobile homes or manufactured housing shall not be reassigned by licensed dealers. All certificates of title shall be typewritten or printed by other mechanical means. Notwithstanding section 321.1, subsection 17, as used in this paragraph "dealer" means every person engaged in the business of buying, selling, or exchanging vehicles of a type required to be registered under this chapter.

The original certificate of title shall be delivered to the owner if no security interest or encumbrance appears on the certificate. Otherwise the certificate of title shall be delivered by the county treasurer or the department to the person holding the first security interest or encumbrance as shown in the certificate.

The county treasurer or the department shall maintain in the county or department records system information contained on the certificate of title. The information shall be accessible by title certificate number for a period of three years from the date of notification of cancellation of title or that a new title has been issued as provided in this chapter. Copies the department requires shall be sent to the department in the manner and at the time the department directs. The department shall designate a uniform system of title numbers to indicate the county of issuance.

A vehicle shall be registered for the registration year. A vehicle registered for the first time in this state shall be registered for the remaining unexpired months of the registration year and pay a registration fee prorated for the remaining unexpired months of the registration year.

If the county treasurer or department is not satisfied as to the ownership of the vehicle or that there are no undisclosed security interests in it, or a junking certificate has been issued for the vehicle but a certificate of title will not be reissued under section 321.52, subsection 3, and the vehicle qualifies as an antique vehicle under section 321.115, subsection 1, the county treasurer or department may register the vehicle but shall as a condition of

issuing a certificate of title and registration receipt, require the applicant to file with the department a bond in the form prescribed by the department and executed by the applicant, and either accompanied by the deposit of cash with the department or also executed by a person authorized to conduct a surety business in this state. The bond shall be in an amount equal to one and one-half times the current value of the vehicle as determined by the department and conditioned to indemnify any prior owner and secured party and any subsequent purchaser of the vehicle or person acquiring any security interest in it, and their respective successors in interest, against any expense, loss, or damage, including reasonable attorney's fees, by reason of the issuance of the certificate of title of the vehicle or on account of any defect in or undisclosed security interest upon the right, title and interest of the applicant in and to the vehicle. Any such interested person has a right of action to recover on the bond for any breach of its conditions, but the aggregate liability of the surety to all persons shall not exceed the amount of the bond. The bond, and any deposit accompanying it, shall be returned at the end of three years or prior thereto if the vehicle is no longer registered in this state and the currently valid certificate of title is surrendered to the department, unless the department has been notified of the pendency of an action to recover on the bond.

99 Acts, ch 188, §4
Unnumbered paragraphs 1 and 6 amended

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 forty-five 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 thirty 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. Only one card shall be issued in accordance with this subsection for each vehicle purchased.

99 Acts, ch 13, §5
Unnumbered paragraph 1 amended

321.30 Grounds for refusing registration or title.

The department or the county treasurer shall refuse registration and issuance of a certificate of title or any transfer of title and registration upon any of the following grounds:

1. That the application contains any false or fraudulent statement or that the applicant has failed to furnish required information or reasonable additional information requested by the department or that the applicant is not entitled to registration and issuance of a certificate of title of the vehicle under this chapter.

2. That the vehicle is mechanically unfit or unsafe to be operated or moved upon the highways, providing such condition is revealed by a member of this department, or any peace officer.

3. That the department or the county treasurer has reasonable ground to believe that the vehicle is a stolen or embezzled vehicle or that the granting of registration and issuance of a certificate of title would constitute a fraud against the rightful owner.

4. That the registration of the vehicle stands suspended or revoked for any reason as provided in the motor vehicle laws of this state.

5. That the required fee has not been paid except as provided in section 321.48.

6. That the required use tax has not been paid.

7. If application for registration and certificate of title for a new vehicle is not accompanied by a manufacturer's or importer's certificate duly assigned.

8. If application for a transfer of registration and issuance of a certificate of title for a used vehicle registered in this state is not accompanied by a certificate of title duly assigned.

9. If application and supporting documents are insufficient to authorize the issuance of a certificate of title as provided by this chapter, except that an initial registration or transfer of registration may be issued as provided in section 321.23.

10. In the case of a mobile home or manufactured housing, that taxes are owing under chapter 435 for a previous year.

11. In the case of a mobile home or manufactured housing converted from real estate, real estate taxes which are delinquent.

12. If a commercial motor vehicle has been assigned to be operated by a commercial motor carrier whose ability to operate has been terminated or denied by a federal agency.

13. The department or the county treasurer knows that an applicant for renewal of a registration has a delinquent account, charge, fee, loan, taxes, or other indebtedness owed to or being collected by the state, from information received pursuant to section 421.17. An applicant may contest this action by requesting a contested case proceeding from the agency that referred the debt for collection pursuant to section 421.17. This subsection shall apply only to a renewal of registration and shall not apply to the issuance of an original registration or to the issuance of a certificate of title.

The department or the county treasurer shall also refuse registration of a vehicle if the applicant for registration of the vehicle has failed to pay the required registration fees of any vehicle owned or previously owned when the registration fee was required to be paid by the applicant, and for which vehicle the registration was suspended or revoked under section 321.101, subsection 4, until the fees are paid together with any accrued penalties.

99 Acts, ch 188, §5
Subsections 10 and 11 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 an annual validation sticker indicating payment of registration fees. The department shall issue one validation sticker for each set of registration plates. The sticker shall specify the month and year of expiration of the registration plates. The sticker shall be displayed only on the rear registration plate, except that the sticker shall be displayed on the front registration plate of a truck-tractor.

The state department of transportation shall adopt rules to provide for the placement of the motor vehicle registration validation sticker.

3. *Radio operators plates.* The owner of an automobile, light delivery truck, panel delivery truck, motorcycle, trailer, 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, semitrailers, motor trucks, and truck tractors, the department may issue a multiyear registration plate for a three-year period or a permanent registration plate for trailers and semitrailers licensed under chapter 326, and a permanent registration plate for motor trucks and truck tractors licensed under chapter 326, upon payment of the appropriate registration fee. Payment of fees for trailers and semitrailers for a permanent registration plate shall, at the option of the registrant, be made at five-year intervals or on an annual basis. Fees from three-year and five-year payments shall not be reduced or prorated. Payment of fees for motor trucks and truck tractors shall be made on an annual basis.

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. *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 col-

ors 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 "c", 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.

8. *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, motorcycle, trailer, 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 dol-

lars. 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.

The surviving spouse of a person who was issued special plates under this subsection may continue to use the special plates subject to registration of the special plates in the surviving spouse's name and upon payment of the fifteen dollar annual registration fee. If the surviving spouse remarries, the surviving spouse shall return the special plates to the department and the department shall issue regular registration plates to the surviving spouse.

8A. *Ex-prisoner of war special plates.* The owner of a motor vehicle subject to registration under section 321.109, subsection 1, light delivery truck, panel delivery truck, motorcycle, trailer, 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 only one set of special registration plates with an ex-prisoner of war processed emblem. The emblem shall be designed by the department in cooperation with the adjutant general and shall signify that the owner was a prisoner of war as described in this subsection. The application is subject to approval by the department, in consultation with the adjutant general. The special plates shall be issued at no charge and are subject to an annual registration fee of fifteen dollars. The county treasurer shall validate the special plates in the same manner as regular registration plates are validated under this section.

The surviving spouse of a person who was issued special plates under this subsection may continue to use or apply for and use the special plates subject to registration of the special plates in the surviving spouse's name and upon payment of the annual registration fee. If the surviving spouse remarries, the surviving spouse shall return the special plates to the department and the department shall issue regular registration plates to the surviving spouse.

9. *Leased vehicles.* Registration plates under this section, including disabled veteran plates specified in section 321.105, 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.

10. *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, motorcycle, trailer, 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.

10A. *Emergency medical services 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, motorcycle, trailer, or travel trailer who is a current member of a paid or volunteer emergency medical services agency may, upon written application to the department, order special registration plates, designed by the department in cooperation with representatives designated by the Iowa emergency medical services association, which plates signify that the applicant is a current member of a paid or volunteer emergency medical services agency. The application shall be approved by the department, in consultation with representatives designated by the Iowa emergency medical services association, 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.

11. *Natural resources plates.*

a. Upon application and payment of the proper fees, the director may issue natural resources 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, motorcycle, trailer, or travel trailer.

b. Natural resources plates shall be designed by the department in cooperation with the department of natural resources which design shall include on the plate the name of the county where the vehicle is registered.

c. The special natural resources fee for letter number designated natural resources plates is thirty-five dollars. The fee for personalized natural resources plates is forty-five dollars which shall be paid in addition to the special natural resources fee of thirty-five 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 "c", the treasurer of state shall credit monthly from those revenues to the Iowa resources enhancement and protection fund created pursuant to section 455A.18, the amount of the special natural resources fees collected in the previous month for the natural resources 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 natural resources 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 natural resources plates is five dollars which shall be paid in addition to the annual special natural resources fee and the regular annual registration fee. The annual special natural resources fee shall be credited as provided under paragraph "c".

11A. *Love our kids plates.*

a. Upon application and payment of the proper fees, the director may issue "love our kids" 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, motorcycle, trailer, or travel trailer.

b. Love our kids plates shall be designed by the department in cooperation with the Iowa department of public health.

c. The special fee for letter number designated love our kids plates is thirty-five dollars. The fee for personalized love our kids plates is twenty-five dollars, which shall be paid in addition to the special love our kids fee of thirty-five 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 "c", the treasurer of state shall transfer monthly from those revenues to the Iowa department of public health the amount of the special fees collected in the previous month for the love our kids plates. Notwithstanding section 8.33, moneys transferred under this subsection shall not revert to the general fund of the state.

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 love our kids 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 love our kids plates is five dollars, which shall be paid in addition to the annual special love our kids fee and the regular annual registration fee. The annual love our kids fee shall be credited as provided under paragraph “c”.

11B. *Motorcycle rider education plates.*

a. Upon application and payment of the proper fees, the director may issue “motorcycle rider education” 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, motorcycle, trailer, or travel trailer.

b. Motorcycle rider education plates shall be designed by the department.

c. The special fee for letter number designated motorcycle rider education plates is thirty-five dollars. The fee for personalized motorcycle rider education plates is twenty-five dollars, which shall be paid in addition to the special motorcycle rider education fee of thirty-five 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 “c”, the treasurer of state shall transfer monthly from those revenues to the department for use in accordance with section 321.180B, subsection 6, the amount of the special fees collected in the previous month for the motorcycle rider education 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 motorcycle rider education 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 motorcycle rider education plates is five dollars, which shall be paid in addition to the annual special motorcycle rider education fee and the regular annual registration fee. The annual motorcycle rider education fee shall be credited as provided under paragraph “c”.

12. *Special registration plates — general provisions.*

a. 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, motorcycle, trailer, or travel trailer may, upon written application to the department, order special registration plates with a distinguishing processed emblem as authorized by this section or as approved by the department. The fee for the issuance of special registration plates is twenty-five dollars for each vehicle, unless otherwise provided by this section, which fee is in addition to the regular annual registration fee. The county treasurer shall validate special registration plates with a distinguishing processed emblem in the same manner as regular registration plates, upon payment of five dollars in addition to the regular annual registration fee.

b. Upon receipt of a special registration plate with a distinguishing processed emblem as authorized by this section or as approved by the department, the applicant shall surrender the regular registration plates to the county treasurer. An applicant no longer eligible for a special registration plate shall surrender the special vehicle registration plates to the county treasurer for issuance of regular registration plates.

c. An applicant may, upon payment of the additional fee for a personalized plate as provided in subsection 5, obtain a personalized special registration plate with a processed emblem. Personalized plates authorized by this section with the processed emblem shall be limited to no more than five initials, letters, or combinations of numerals and letters.

d. A special registration plate issued for a motorcycle or motorized bicycle under this section shall be designated in the manner provided for personalized registration plates under subsection 5, paragraph “a”.

13. *New special registration plates — department review.*

a. Any person may submit a request to the department to recommend a new special registration plate with a processed emblem. The request shall provide a proposed design for the processed emblem, the purpose of the special registration plate with the processed emblem, any eligibility requirements for purchase or receipt of the special registration plate with the processed emblem, and evidence there is sufficient interest in the special registration plate with the processed emblem to pay implementation costs. The department shall consider the request and make a recommendation based upon criteria established by the department which shall include consideration of the information included in the request, the number of special registration plates with processed emblems currently authorized, and any other relevant factors.

b. If a request for a proposed special registration plate with a processed emblem meets the crite-

ria established by the department, the department shall, in consultation with the persons seeking the special registration plate with the processed emblem, approve a recommended design for the processed emblem, and propose eligibility requirements for the special registration plate with the processed emblem.

c. The department shall adopt rules pursuant to chapter 17A regarding the approval and issuance of special registration plates.

d. A state agency may submit a request to the department recommending a special registration plate. The alternate fee for letter number designated plates is thirty-five dollars with a ten dollar annual special renewal fee. The fee for personalized plates is twenty-five dollars which is in addition to the alternative fee of thirty-five dollars with an annual personalized plate renewal fee of five dollars which is in addition to the special renewal fee of ten dollars. The alternate fees are in addition to the regular annual registration fee. The alternate fees collected under this paragraph 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 the revenues to the road use tax fund under section 423.24, subsection 1, paragraph "c", the treasurer of state shall credit monthly the amount of the alternate fees collected in the previous month to the state agency that recommended the special registration plate.

14. *Persons with disabilities special plates.* An owner referred to in subsection 12 who is a person with a disability, or who is the parent or guardian of a child who resides with the parent or guardian owner and who is a person with a disability, as defined in section 321L.1, may, upon written application to the department, order special registration plates with a persons with disabilities processed emblem designed by the department bearing the international symbol of accessibility. The special registration plates with a persons with disabilities processed emblem shall only be issued if the application is accompanied with a statement from a physician licensed under chapter 148, 149, 150, or 150A, a physician assistant licensed under chapter 148C, an advanced registered nurse practitioner licensed under chapter 152, or a chiropractor licensed under chapter 151, written on the physician's, physician assistant's, nurse practitioner's, or chiropractor's stationery, stating the nature of the applicant's or the applicant's child's disability and such additional information as required by rules adopted by the department, including proof of residency of a child who is a person with a disability. If the application is approved by the department the special registration plates with a persons with disabilities processed emblem shall be issued to the applicant. There shall be no fee in addition to the regular annual registration fee for the special registration plates with a persons with disabilities processed emblem. The authorization for special

registration plates with a persons with disabilities processed emblem 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 person with a disability as defined in section 321L.1. An owner who has a child who is a person with a disability shall provide satisfactory evidence to the department that the child with a disability continues to reside with the owner. The registration plates with a persons with disabilities processed emblem shall be surrendered in exchange for regular registration plates as provided in subsection 12 when the owner of the motor vehicle or the owner's child no longer qualifies as a person with a disability as defined in section 321L.1 or when the owner's child who is a person with a disability no longer resides with the owner.

15. *Legion of merit special 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 legion of merit may, upon written application to the department and presentation of satisfactory proof of the award of the legion of merit as established by the Congress of the United States, order special registration plates with a legion of merit processed emblem. The emblem shall be designed by the department in cooperation with the adjutant general and shall signify that the owner was awarded the legion of merit. The application is subject to approval by the department, in consultation with the adjutant general. The special plates shall be issued at no charge and are subject to an annual registration fee of fifteen dollars. The county treasurer shall validate the special plates in the same manner as regular registration plates are validated under this section.

The surviving spouse of a person who was issued special plates under this subsection may continue to use or apply for and use the special plates subject to registration of the special plates in the surviving spouse's name and upon payment of the annual registration fee. If the surviving spouse remarries, the surviving spouse shall return the special plates to the department and the department shall issue regular registration plates to the surviving spouse.

16. *National guard special plates.* An owner referred to in subsection 12 who is a member of the national guard, as defined in chapter 29A, may, upon written application to the department, order special registration plates with a national guard processed emblem with the emblem designed by the department in cooperation with the adjutant general which emblem signifies that the applicant is a member of the national guard. The application shall be approved by the department in consultation with the adjutant general. Special registration plates with a national guard processed emblem shall be surrendered, as provided in subsection 12, in exchange for regular registration plates upon

termination of the owner's membership in the active national guard.

17. *Pearl Harbor special plates.* An owner referred to in subsection 12 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 with a Pearl Harbor processed emblem. The emblem shall be designed by the department in consultation with service organizations. The application is subject to approval by the department.

18. *Purple heart special plates.* An owner referred to in subsection 12 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 with a purple heart processed emblem. The design of the emblem shall include a representation of a purple heart medal and ribbon. The application is subject to approval by the department in consultation with the adjutant general.

19. *United States armed forces retired special plates.* An owner referred to in subsection 12 who is a retired member of the United States armed forces, may, upon written application to the department and upon presentation of satisfactory proof of membership, order special registration plates with a United States armed forces retired processed emblem. The emblem shall be designed by the department in consultation with service organizations. The application is subject to approval by the department. For purposes of this subsection, a person is considered to be retired if the person served twenty years or longer in the United States armed forces or is a person who served a minimum of ten years and received an honorable discharge from service due to a medical disqualification.

20. *Silver or bronze star plates.* An owner referred to in subsection 12 who was awarded a silver or a bronze star by the United States government, may, upon written application to the department and presentation of satisfactory proof of the award of the silver or bronze star, order special registration plates with a silver or bronze star processed emblem. The emblem shall be designed by the department in consultation with the adjutant general.

21. *Iowa heritage special plates.*

a. An owner referred to in subsection 12 may, upon written application to the department, order special registration plates with an Iowa heritage emblem. The emblem shall contain a picture of the American gothic house and the words "Iowa Heritage" and shall be designed by the department in consultation with the state historical society of Iowa.

b. The special Iowa heritage fee for letter number designated plates is thirty-five dollars. The special fee for personalized Iowa heritage plates is twenty-five dollars which shall be paid in addition to the special fee of thirty-five dollars. The annual special Iowa heritage fee is ten dollars for letter number designated registration plates and is fifteen dollars for personalized registration plates which shall be paid in addition to the regular annual registration fee.

c. The special 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 "c", the treasurer of state shall credit monthly the amount of the special fees collected in the previous month for the Iowa heritage plates from those revenues in the following manner:

(1) Seventy-five percent shall be credited to the Iowa heritage fund, created under section 303.9A.

(2) Twenty-five percent shall be allocated to the department of cultural affairs. The department shall use the moneys to support teacher training in Iowa history, to purchase Iowa history classroom materials, to support student participation in Iowa history and citizenship-building activities, and to create a grant program for school districts to apply for funding to support field trips to museums, historic sites, and heritage attractions.

22. *Education plates.*

a. An owner referred to in subsection 12, upon written application to the department, may order special registration plates with an education emblem. The education emblem shall be designed by the department in cooperation with the department of education.

b. The special school transportation fee for letter number designated education plates is thirty-five dollars. The fee for personalized education plates is twenty-five dollars, which shall be paid in addition to the special school transportation fee of thirty-five dollars. The annual special school transportation fee is ten dollars for letter number designated registration plates and is fifteen dollars for personalized registration plates which shall be paid 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 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 "c", the treasurer of state shall transfer monthly from those revenues to the school budget review committee in accordance with section 257.31, subsection 17, the amount of the special school transportation fees collected in the previous month for the education plates.

99 Acts, ch 7, §1-9; 99 Acts, ch 114, §20; 99 Acts, ch 141, §38; 99 Acts, ch 180, §15

Veterans license fee fund, see §35A.11

Subsection 3 amended

Subsection 8, unnumbered paragraph 1 amended

Subsection 8A, unnumbered paragraph 1 amended

Subsections 10 and 10A amended

Subsection 11, paragraph a amended

Subsection 11A, paragraphs a and c amended

Subsection 11B, paragraphs a and c amended

Subsection 12, paragraph a amended and NEW paragraph d

NEW subsection 15

321.42 Lost or damaged certificates, cards, and plates — replacements.

1. If a registration card, plate, or pair of plates is lost or becomes illegible, the owner shall immediately apply for replacement. The fee for a replacement registration card shall be three dollars. The fee for a replacement plate or pair of plates shall be five dollars. When the owner has furnished information required by the department and paid the proper fee, a duplicate, substitute, or new registration card, plate, or pair of plates may be issued.

2. *a.* If a certificate of title is lost or destroyed, the owner or lienholder shall apply for a certified copy of the original certificate of title. The owner or lienholder of a motor vehicle may also apply for a replacement for the original certificate of title upon surrender of the original certificate of title with the application. The application shall be made to the department or county treasurer who issued the original certificate of title. The application shall be signed by the owner or lienholder and accompanied by a fee of ten dollars.

b. After five days, the department or county treasurer shall issue a certified copy to the applicant at the applicant's most recent address, however, the five-day waiting period does not apply to an applicant who has surrendered the original certificate of title to the department or county treasurer. The certified copy shall be clearly marked "duplicate" and shall be identical to the original, including notation of liens or encumbrances. When a certified copy has been issued, the previous certificate is void.

c. If a security interest noted on the face of an original certificate of title was released by the lienholder on a separate form pursuant to section 321.50, subsection 4, and the signature of the lienholder, or the person executing the release on behalf of the lienholder, is notarized, but the lienholder has not delivered the original certificate to the appropriate party as provided in section 321.50, subsection 4, the owner may apply for and receive a replacement certificate of title without the released security interest noted thereon. The lienholder shall return the original certificate of title to the department or to the treasurer of the county where the title was issued.

d. A new purchaser or transferee is entitled to receive an original title upon presenting the assigned duplicate copy to the treasurer of the county where the new purchaser or transferee resides. At

the time of purchase, a purchaser may require the seller to indemnify the purchaser and all future purchasers of the vehicle against any loss which may be suffered due to claims on the original certificate. A person recovering an original certificate of title for which a duplicate has been issued shall surrender the original certificate to the county treasurer or the department.

3. If a county treasurer mails vehicle registration documents which become lost or are damaged in transit through the United States postal service, the person to whom the documents were being sent may apply for reissuance without cost. The application shall be made with the county treasurer who originally issued the documents not less than twenty days from the date the documents were placed with the United States postal service. If the original documents are received after reissuance of duplicates, the original documents shall be surrendered to the county treasurer within five days of the time they are received.

99 Acts, ch 13, §6
Surcharge imposed; §321.52A
Section amended

321.45 Title must be transferred with vehicle.

1. No manufacturer, importer, dealer or other person shall sell or otherwise dispose of a new vehicle subject to registration under the provisions of this chapter to a dealer to be used by such dealer for purposes of display and lease or resale without delivering to such dealer a manufacturer's or importer's certificate duly executed and with such assignments thereon as may be necessary to show title in the purchaser thereof; nor shall such dealer purchase or acquire a new vehicle that is subject to registration without obtaining from the seller thereof such manufacturer's or importer's certificate. In addition to the assignments stated herein, such manufacturer's or importer's certificate shall contain thereon the identification and description of the vehicle delivered and the name and address of the dealer to whom said vehicle was originally sold over the signature of an authorized official of the manufacturer or importer who made the original delivery.

For each new mobile home, manufactured housing, travel trailer and camping trailer said manufacturer's or importer's certificate shall also contain thereon the exterior length and exterior width of said vehicle not including any area occupied by any hitching device, and the manufacturer's shipping weight.

Completed motor vehicles, other than class "B" motor homes, which are converted, modified or altered shall retain the identity and model year of the original manufacturer of the vehicle. Motor homes and all other motor vehicles manufactured from chassis or incomplete motor vehicles manufactured by another may have the identity and model year assigned by the final manufacturer.

2. No person shall acquire any right, title, claim or interest in or to any vehicle subject to registration under this chapter from the owner thereof except by virtue of a certificate of title issued or assigned to the person for such vehicle or by virtue of a manufacturer's or importer's certificate delivered to the person for such vehicle; nor shall any waiver or estoppel operate in favor of any person claiming title to or interest in any vehicle against a person having possession of the certificate of title or manufacturer's or importer's certificate for such vehicle for a valuable consideration except in case of:

a. The perfection of a lien or security interest by notation on the certificate of title as provided in section 321.50, or

b. The perfection of a security interest in new or used vehicles held as inventory for sale as provided in Uniform Commercial Code, chapter 554, Article 9, or

c. A dispute between a buyer and the selling dealer who has failed to deliver or procure the certificate of title as promised, or

d. Except for the purposes of section 321.493. Except in the above enumerated cases, no court in any case at law or equity shall recognize the right, title, claim or interest of any person in or to any vehicle subject to registration sold or disposed of, or mortgaged or encumbered, unless evidenced by a certificate of title or manufacturer's or importer's certificate duly issued or assigned in accordance with the provisions of this chapter.

3. Upon the transfer of any registered vehicle, the owner, except as otherwise provided in this chapter, shall endorse an assignment and warranty of title upon the certificate of title for such vehicle with a statement of all liens and encumbrances thereon, and the owner shall deliver the certificate of title to the purchaser or transferee at the time of delivering the vehicle except as otherwise provided in this chapter. The owner shall indicate to the transferee the name of the county in which the vehicle was last registered and the registration expiration date.

4. A mobile home dealer, as defined in section 322B.2, shall within thirty days of acquiring a used mobile home or manufactured housing, titled in Iowa, apply for and obtain from the county treasurer of the dealer's county of residence a new certificate of title for the mobile home or manufactured housing.

99 Acts, ch 188, §6, 7
Subsection 1, unnumbered paragraph 2 amended
Subsection 4 amended

321.46 New title and registration upon transfer of ownership — credit.

1. The transferee shall within fifteen calendar days after purchase or transfer apply for and obtain from the county treasurer of the person's residence, or if a nonresident, the county treasurer of the county where the primary users of the vehicle

are located or the county where all other vehicles owned by the nonresident are registered, a new registration and a new certificate of title for the vehicle except as provided in section 321.25 or 321.48. The transferee shall present with the application the certificate of title endorsed and assigned by the previous owner and 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 driver's 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 or manufactured housing, 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 or manufactured housing, 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 or manufactured housing, 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 or manufactured housing 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 vehicle. When the amount of the credit is computed to be an amount of less than ten dollars, the credit shall be disallowed. The credit shall not be sold, transferred, or assigned to any other person.

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.

99 Acts, ch 188, §8

Surcharge imposed; §321.52A

Subsection 2 amended

321.47 Transfers by operation of law.

If ownership of a vehicle is transferred by operation of law upon inheritance, devise or bequest, dissolution decree, 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 the vehicle. A person entitled to ownership of a vehicle under a decree of dissolution shall surrender a reproduction of a certified copy of the dissolution and upon fulfilling the other requirements of this chapter is entitled to a certificate of title and registration receipt issued in the person's name.

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 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.

99 Acts, ch 83, §2
Surcharge imposed; §321.52A
Unnumbered paragraph 1 amended

321.48 Vehicles acquired for resale.

1. When the transferee of a vehicle is a dealer who holds the vehicle for resale and operates the vehicle only for purposes incident to a resale and displays a dealer plate on the vehicle or does not drive such vehicle or permit it to be driven upon the highways, such transferee shall not be required to obtain a new registration or a new certificate of title but upon transferring title or interest to another person shall execute and acknowledge an assignment and warranty of title upon the certificate of title assigned to the person and deliver the same to the person to whom such transfer is made.

A dealer licensed pursuant to chapter 322 or chapter 322C who has acquired a vehicle for resale which is subject to a security interest as provided in section 321.50 and who has forwarded to the secured party the sum necessary to discharge the security interest may offer the vehicle for sale prior to the receipt from the county treasurer of the certificate of title for the vehicle with the lien discharged for a period of not more than thirty days from the date the vehicle was acquired and the provisions of section 321.104, subsection 2, shall not apply.

2. A foreign registered vehicle purchased or otherwise acquired by a dealer for the purpose of resale shall be issued a certificate of title for the vehicle by the county treasurer of the dealer's residence upon proper application as provided in this chapter and upon payment of a fee of five dollars and the dealer is exempt from the payment of any and all registration fees for the vehicle. The application for certificate of title shall be made within fifteen days after the vehicle comes within the border of the state. However, a dealer acquiring a ve-

hicle registered in another state which permits Iowa dealers to reassign that state's certificates of title shall not be required to obtain a new registration or a new certificate of title and upon transferring title or interest to another person shall execute an assignment upon the certificate of title for the vehicle to the person to whom the transfer is made and deliver the assigned certificate of title to the person.

3. In a transaction in which a vehicle is traded to a dealer as defined in chapter 322 or chapter 322C toward the purchase price of another vehicle and each vehicle is owned in whole or in part by the same person, the person acquiring the vehicle from the dealer shall be entitled to a credit under section 321.46.

4. Nothing in this section shall be construed to prohibit a dealer from obtaining a new certificate of title or new registration in the same manner as other purchasers.

99 Acts, ch 13, §7
Surcharge imposed; §321.52A
Subsection 1, unnumbered paragraph 2 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 thirty days of the date of assignment or transfer of title, or within thirty 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, or manufactured housing 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 thirty 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.

99 Acts, ch 13, §8; 99 Acts, ch 188, §9

*Iowa title criteria probably intended to apply to both mobile homes and manufactured housing; corrective legislation is pending
Subsections 1 and 3 amended

321.50 Security interest provisions.

1. A security interest in a vehicle subject to registration under the laws of this state or a mobile home or manufactured housing, except trailers whose empty weight is two thousand pounds or less, and except new or used vehicles held by a deal-

er or manufacturer as inventory for sale, is perfected by the delivery to the county treasurer of the county where the certificate of title was issued or, in the case of a new certificate, to the county treasurer where the certificate will be issued, of an application for certificate of title which lists the security interest, or an application for notation of security interest signed by the owner, or by one owner of a vehicle owned jointly by more than one person, or a certificate of title from another jurisdiction which shows the security interest, and a fee of five dollars for each security interest shown. If the owner or secured party is in possession of the certificate of title, it must also be delivered at this time in order to perfect the security interest. If a vehicle is subject to a security interest when brought into this state, the validity of the security interest and the date of perfection is determined by section 554.9103. Delivery as provided in this subsection is an indication of a security interest on a certificate of title for purposes of chapter 554.

2. Upon receipt of the application and the required fee, the county treasurer shall notify the holder of the certificate of title to deliver to the county treasurer, within five days from the receipt of notice, the certificate of title to permit notation of the security interest. If the holder of the certificate of title shall fail to deliver it within the said five days, the holder shall be liable to anyone harmed by the holder's failure.

3. Upon receipt of the application, the certificate of title, if any, and the required fee, the county treasurer shall note such security interest, and the date thereof, on the certificate over the signature of such officer or deputy and the seal of office. The county treasurer shall also note such security interest and the date thereof in the county records system. The county treasurer shall then mail the certificate of title to the first secured party as shown thereon.

4. When a security interest is discharged, the holder shall note a cancellation of same on the face of the certificate of title over the holder's signature, and deliver the certificate of title to the county treasurer where title was issued. The county treasurer shall immediately note the cancellation of the security interest on the face of the certificate of title and in the county records system. The county treasurer shall on the same day deliver the certificate of title to the then first secured party or, if there is no such person, to the person as directed by the owner, in writing, on a form prescribed by the department or, if there is no person designated, then to the owner. The cancellation of the security interest shall be noted on the certificate of title by the county treasurer without charge. The holder of a security interest discharged by payment who fails to release the security interest within fifteen days after being requested in writing to do so shall forfeit to the person making the payment the sum of twenty-five dollars.

If a title is presented for transfer, and the lien has been released by the lienholder but has not been sent to the county of record for clearance of the lien, the county of transfer shall notify the county of record that the lien has been released as of the specified date, and shall make entry upon the computer system, and shall proceed to transfer the title. Notification to the county of record shall be made by an automated statewide system, or by sending a photocopy of the released title to the county of record.

When a security interest is discharged, the lienholder shall note the cancellation of the security interest on the face of the title and may note the cancellation of the security interest on a form prescribed by the department and deliver a copy of the form in lieu of the title to the department or to the treasurer of the county in which the title was issued. The department or county treasurer shall note the release of the security interest upon the statewide computer system and the county's records. A copy of the form, if used, shall be attached to the title by the lienholder and shall be evidence of the release of the security interest. The lienholder shall deliver the title to the first lienholder, or if there is no such person, to the person as designated by the owner, or if there is no such person designated, to the owner.

5. The Uniform Commercial Code, chapter 554, Article 9, shall apply to all transactions intended to create a security interest in vehicles except as provided in this chapter.

6. Any person obtaining possession of a certificate of title for a vehicle not already subject to a perfected security interest, except new or used vehicles held by a dealer or manufacturer as inventory for sale, who purports to have a security interest in such vehicle shall, within thirty days from the receipt of the certificate of title, deliver such certificate of title to the county treasurer of the county where it was issued to note such security interest and, if such person fails to do so, the person's purported security interest in the vehicle shall be void and unenforceable and such person shall forthwith deliver the certificate of title to the county treasurer of the county where it was issued. If no security interest has been filed for notation on the certificate of title, the certificate shall be mailed by the treasurer to the owner of the vehicle. For purposes of determining the commencement date of the thirty-day period provided by this subsection, it shall be presumed that the purported security interest holder received the certificate of title on the date of the creation of the holder's purported security interest in the vehicle or the date of the issuance of the certificate of title, whichever is the latter. Any person collecting a fee from the owner of the vehicle for the purpose of perfecting a security interest in such vehicle who does not cause such security interest to be noted on the certificate of title by the county treasurer shall remit such fee

to the department of revenue and finance of this state.

7. Upon request of any person, the county treasurer shall issue a certificate showing whether there are, on the date and hour stated therein, any security interests noted on a particular vehicle's certificate of title, and the name and address of each secured party whose security interest is noted thereon. The uniform fee for a written certificate shall be two dollars if the request for the certificate is on a form conforming to standards prescribed by the secretary of state; otherwise, three dollars. Upon request and payment of the appropriate fee, the county treasurer shall furnish a certified copy of any security interest notations for a uniform fee of one dollar per page.

99 Acts, ch 13, §9; 99 Acts, ch 188, §10
Surcharge imposed; §321.52A
Subsection 1 amended
Subsection 4, unnumbered paragraph 3 amended

321.57 Operation under special plates.

A dealer owning any vehicle of a type otherwise required to be registered under this chapter may operate or move the vehicle upon the highways solely for purposes of transporting, testing, demonstrating, or selling the vehicle without registering the vehicle, upon condition that the vehicle display in the manner prescribed in sections 321.37 and 321.38 a special plate issued to the owner as provided in sections 321.58 to 321.62. Additionally, a new car dealer or a used car dealer may operate or move upon the highways a new or used car or trailer owned by the dealer for either private or business purposes without registering it if the new or used car or trailer is in the dealer's inventory and is continuously offered for sale at retail, and there is displayed on it a special plate issued to the dealer as provided in sections 321.58 to 321.62.

In addition, while a service customer is having the customer's own vehicle serviced or repaired by the dealer, the service customer of the dealer may operate upon the highways a motor vehicle owned by the dealer, except a motor truck or truck tractor, upon which there is displayed a special plate issued to the dealer, provided all of the requirements of this section are complied with.

Also a transporter may operate or move any vehicle of like type upon the highways solely for the purpose of delivery upon likewise displaying thereon like plates issued to the transporter as provided in these sections.

The provisions of this section and sections 321.58 to 321.62, shall not apply to any vehicles offered for hire, work or service vehicles owned by a transporter or dealer.

Mobile home dealers licensed under chapter 322B may transport and deliver mobile homes or manufactured housing in their inventory upon the highways of this state with a special plate displayed on the mobile home or manufactured housing as provided in sections 321.58 to 321.62.

A dealer licensed as a wholesaler for a new motor vehicle model under chapter 322 may operate a new motor vehicle of that model, owned by the wholesaler, upon the highway when there is displayed on the vehicle a special plate issued to the wholesaler as provided in sections 321.58 through 321.62 and when operated solely for the purposes of demonstration, show, or exhibition.

99 Acts, ch 188, §11
Unnumbered paragraph 5 amended

321.101 Suspension or revocation of registration or certificate of title.

The department is hereby authorized to suspend or revoke the registration of a vehicle, registration card, registration plate, or any nonresident or other permit in any of the following events:

1. When the department is satisfied that such registration card, plate, or permit was fraudulently or erroneously issued.
2. When the department determines that a registered vehicle is mechanically unfit or unsafe to be operated or moved upon the highways.
3. When a registered vehicle has been dismantled or wrecked.
4. When the department determines that the required fee has not been paid and the same is not paid upon reasonable notice and demand.
5. When a registration card, registration plate, or permit is knowingly displayed upon a vehicle other than the one for which issued.
6. When the department determines that the owner has committed any offense under this chapter involving the registration card, plate, or permit to be suspended or revoked.
7. When the department is so authorized under any other provision of law.
8. The department shall cancel a certificate of title that appears to have been improperly issued or fraudulently obtained or in the case of a mobile home or manufactured housing, if taxes were owing under chapter 435 at the time the certificate was issued and have not been paid. However, before the certificate to a mobile home or manufactured housing where taxes were owing can be canceled, notice and opportunity to pay the taxes must be given to the person to whom the certificate was issued. Upon cancellation of any certificate of title the department shall notify the county treasurer who issued it, who shall enter the cancellation upon the records. The department shall also notify the person to whom the certificate of title was issued, as well as any lienholders appearing thereon, of the cancellation and shall demand the surrender of the certificate of title, but the cancellation shall not affect the validity of any lien noted thereon.
9. If a commercial motor vehicle has been assigned to be operated by a commercial motor carrier whose ability to operate has been terminated or denied by a federal agency.

10. Notice of suspension or revocation of the registration of a vehicle, registration card, registration plate, or any nonresident or other permit under the terms of this section shall be by personal delivery of said notice to the person to be so notified or by certified mail addressed to such person at the person's address as shown on the registration record. No return acknowledgment shall be necessary to prove such latter service.

If a vehicle, for which the registration has been suspended or revoked pursuant to subsection 4 of this section, is transferred to a bona fide purchaser for value without actual knowledge of such suspension or revocation then the vehicle shall be deemed to be registered and the provisions of sections 321.28 and 321.30, subsections 4 and 5, shall not be applicable to such vehicle for the failure of the previous owner to pay the required fees.

99 Acts, ch 188, §12
Subsection 8 amended

321.104 Penal offenses against title law.

It is a misdemeanor, punishable as provided in section 321.482 for any person to commit any of the following acts:

1. To operate any motor vehicle upon the highways upon which the certificate of title has been canceled, or while a certificate of registration of a motor vehicle is suspended or revoked.

2. For a dealer, or a person acting on behalf of a dealer to acquire, purchase, hold or display for sale a motor vehicle without having obtained a manufacturer's or importer's certificate or a certificate of title, or assignments thereof, unless otherwise provided in this chapter.

3. To fail to surrender a certificate of title, registration card, or registration plates upon cancellation, suspension, or revocation of the certificate or registration by the department and notice as prescribed in this chapter.

4. To sell, offer for sale, or transfer a motor vehicle, trailer, or semitrailer, except as provided in section 321.47 or 321.48, without obtaining a certificate of title in the name of the seller or transferor or without delivering to the purchaser or transferee a certificate of title or a manufacturer's or importer's certificate duly assigned to the purchaser or transferee as provided in this chapter.

5. To violate any of the other provisions of this chapter or any lawful rules adopted pursuant to this chapter.

6. For a dealer to sell or transfer a mobile home or manufactured housing without delivering to the purchaser or transferee a certificate of title or a manufacturer's or importer's certificate properly assigned to the purchaser, or to transfer a mobile home or manufactured housing without disclosing to the purchaser the owner of the mobile home or manufactured housing in a manner prescribed by the department pursuant to rules, or to fail to certify within seven days to the proper county treasurer

the information required under section 321.45, subsection 4, or to fail to apply for and obtain a certificate of title for a used mobile home or manufactured housing, titled in Iowa, acquired by the dealer within thirty days from the date of acquisition as required under section 321.45, subsection 4.

99 Acts, ch 188, §13
Subsection 6 amended

321.123 Trailers.

All trailers except farm trailers, mobile homes, and manufactured housing, unless otherwise provided in this section, are subject to a registration fee of ten dollars. Trailers for which the empty weight is two thousand pounds or less are exempt from the certificate of title and lien provisions of this chapter. Fees collected under this section shall not be reduced or prorated under chapter 326.

1. Travel trailers and fifth-wheel travel trailers, except those in manufacturer's or dealer's stock, shall be subject to an annual fee of twenty cents per square foot of floor space computed on the exterior overall measurements, but excluding three feet occupied by any trailer hitch as provided by and certified to by the owner, to the nearest whole dollar, which amount shall not be prorated or refunded; except the annual fee for travel trailers of any type, when registered in Iowa for the first time or when removed from a manufacturer's or dealer's stock, shall be prorated on a monthly basis. It is further provided the annual fee thus computed shall be limited to seventy-five percent of the full fee after the vehicle is more than six model years old.

A travel trailer may be stored under section 321.134, provided the travel trailer is not used for human habitation for any period during storage and is not moved upon the highways of the state. A travel trailer stored under section 321.134 is not subject to a mobile home tax assessed under chapter 435.

2. Trailers and bulk spreaders which are not self-propelled having a gross weight of not more than twelve tons used for the transportation of fertilizers and chemicals used for farm crop production shall be subject to a registration fee of five dollars.

3. Motor trucks or truck tractors pulling trailers or semitrailers shall be registered for the combined gross weight of the motor truck or truck tractor and trailer or semitrailer, except that:

a. Motor trucks registered for six tons or less not used for hire, pulling trailers or semitrailers used by a person engaged in farming to transport commodities produced by the owner, or to transport commodities or livestock purchased by the owner for use in the owner's own farming operation or used by any person to transport horses shall not be subject to registration for the gross weight of such trailer or semitrailer provided the combined gross

weight does not exceed twelve tons, plus the tolerance provided for in section 321.466.

b. Motor trucks registered for six tons or less not used for hire, pulling trailers or semitrailers used by a person in the person's own operations shall not be subject to registration for the gross weight of such trailer or semitrailer provided the combined gross weight does not exceed eight tons, plus the tolerance provided for in section 321.466.

99 Acts, ch 188, §14
Exemptions, see §321.176
Unnumbered paragraph 1 amended

321.166 Vehicle plate specifications.

Vehicle registration plates shall conform to the following specifications:

1. Registration plates shall be of metal and of a size not to exceed six inches by twelve inches, except that the size of plates issued for use on motorized bicycles, motorcycles, motorcycle trailers, and trailers with an empty weight of two thousand pounds or less shall be established by the department.

Trailers with empty weights of two thousand pounds or less may, upon request, be licensed with regular-sized license plates.

2. Every registration plate or pair of plates shall display a registration plate number which shall consist of alphabetical or numerical characters or a combination thereof and the name of this state, which may be abbreviated. Every registration plate issued by the county treasurer shall display the name of the county, including any plate issued pursuant to section 321.34, except Pearl Harbor and purple heart registration plates issued prior to January 1, 1997, and collegiate, fire fighter, and congressional medal of honor registration plates. Special truck registration plates shall display the word "special".

3. The registration plate number shall be displayed in characters which shall not exceed a height of four inches nor a stroke width exceeding five-eighths of an inch. Special plates issued to dealers shall display the alphabetical character "D", which shall be of the same size as the characters in the registration plate. The registration plate number issued for motorized bicycles, motorcycles, trailers with an empty weight of two thousand pounds or less, and motorcycle trailers shall be a size prescribed by the department.

4. The registration plate number, except on motorized bicycle, motorcycle, motorcycle trailer, and trailers with an empty weight of two thousand pounds or less shall be of sufficient size to be readable from a distance of one hundred feet during daylight.

5. There shall be a marked contrast between the color of the registration plates and the data which is required to be displayed on the registration plates. When a new series of registration plates is issued to replace a current series, the new registration plates shall be of a distinctively differ-

ent color from the series which is replaced, except for collegiate registration plates issued under section 321.34, subsection 7.

6. Registration plates issued to a disabled veteran under the provisions of section 321.105 shall display the alphabetical characters "DV" which shall precede the registration plate number. The plates may also display a persons with disabilities parking sticker if issued to the disabled veteran by the department under section 321L.2.

7. The year and month of expiration of registration, which may be abbreviated, shall be displayed on vehicle registration plates issued by the county treasurer. A distinctive emblem or validation sticker may be prescribed by the department to designate the year and month of expiration. The year and month of expiration shall not be required to be displayed on plates issued under section 321.19.

8. The owner of a trailer with an empty weight of two thousand pounds or less shall receive registration plates for the trailer smaller than plates regularly issued for automobiles pursuant to rules adopted by the department in accordance with this section unless the owner requests regular-sized plates.

9. Special registration plates issued pursuant to section 321.34 beginning January 1, 1997, other than congressional medal of honor, collegiate, fire fighter, and natural resources registration plates, shall be consistent with the design and color of regular registration plates but shall provide a space on a portion of the plate for the purpose of allowing the placement of a distinguishing processed emblem. Special registration plates shall also comply with the requirements for regular registration plates as provided in this section to the extent the requirements are consistent with the section authorizing a particular special vehicle registration plate.

10. If the department reissues a new registration plate design for a special registration plate under section 321.34, all persons who have purchased or obtained the special registration plates shall not be required to pay the issuance fee.

99 Acts, ch 13, §10, 29
Subsections 1 and 4 amended

321.178 Driver education — restricted license — reciprocity.

1. *Approved course.* An approved driver education course as programmed by the department of education shall consist of at least thirty clock hours of classroom instruction, and six or more clock hours of laboratory instruction of which at least three clock hours shall consist of street or highway driving. Classroom instruction shall include all of the following:

a. A minimum of four hours of instruction concerning substance abuse.

b. A minimum of twenty minutes of instruction concerning railroad crossing safety.

c. Instruction relating to becoming an organ donor under the uniform anatomical gift Act.

To be qualified as a classroom driver education instructor, a person shall have satisfied the educational requirements for a teaching license at the elementary or secondary level and hold a valid license to teach driver education in the public schools of this state.

Every public school district in Iowa shall offer or make available to all students residing in the school district or Iowa students attending a non-public school in the district an approved course in driver education. The courses may be offered at sites other than at the public school, including non-public school facilities within the public school districts. An approved course offered during the summer months, on Saturdays, after regular school hours during the regular terms or partly in one term or summer vacation period and partly in the succeeding term or summer vacation period, as the case may be, shall satisfy the requirements of this section to the same extent as an approved course offered during the regular school hours of the school term. A student who successfully completes and obtains certification in an approved course in driver education or an approved course in motorcycle education may, upon proof of such fact, be excused from any field test which the student would otherwise be required to take in demonstrating the student's ability to operate a motor vehicle. A student shall not be excused from any field test if a parent, guardian, or instructor requests that a test be administered. Street or highway driving instruction may be provided by a person qualified as a classroom driver education instructor or a person certified by the department of transportation and authorized by the board of educational examiners. A final field test prior to a student's completion of an approved course shall be administered by a person qualified as a classroom driver education instructor. The department of transportation shall adopt rules pursuant to chapter 17A to provide for certification of persons qualified to provide street or highway driving instruction. The board of educational examiners shall adopt rules pursuant to chapter 17A to provide for authorization of persons certified by the department of transportation to provide street or highway driving instruction.

"Student", for purposes of this section, means a person between the ages of fourteen years and twenty-one years who resides in the public school district and who satisfies the preliminary licensing requirements of the department of transportation.

Any person who successfully completes an approved driver education course at a private or commercial driver education school licensed by the department of transportation, shall likewise be eligible for a driver's license as provided in section 321.180B or 321.194.

2. *Restricted license.*

a. A person between sixteen and eighteen years of age who is not in attendance at school or who is in attendance in a public or private school where an approved driver's education course is not offered or available, may be issued a restricted license only for travel to and from work or to transport dependents to and from temporary care facilities, if necessary for the person to maintain the person's present employment, without having completed an approved driver's education course. The restricted license shall be issued by the department only upon confirmation of the person's employment and need for a restricted license to travel to and from work or to transport dependents to and from temporary care facilities if necessary to maintain the person's employment and upon receipt of a written statement from the public or private school that an approved course in driver's education was not offered or available to the person, if applicable. The employer shall notify the department if the employment of the person is terminated before the person attains the age of eighteen. The person shall not have a restricted license revoked or suspended upon reentering school prior to age eighteen if the student enrolls in and completes the classroom portion of an approved driver's education course as soon as a course is available.

b. The department may suspend a restricted license issued under this section upon receiving a record of the person's conviction for one violation and shall revoke the license upon receiving a record of conviction for two or more violations of a law of this state or a city ordinance regulating the operation of motor vehicles on highways, other than parking violations as defined in section 321.210. After revoking a license under this section the department shall not grant an application for a new license or permit until the expiration of one year or until the person attains the age of eighteen whichever is the longer period.

3. *Driver's license reciprocity.*

a. The department may issue a class C or M driver's license to a person who is sixteen or seventeen years of age and who is a current resident of the state, but who has been driving as a resident of another state for at least one year prior to residency within the state.

b. The following criteria must be met prior to issuance of a driver's license pursuant to this subsection:

(1) The minor must reside with a parent or guardian.

(2) The minor must have driven under a valid driver's license for at least one year in the prior state of residence. Six months of the one year computation may include driving with an instruction permit.

(3) The minor must have had no moving traffic violations on the minor's driving record.

(4) The minor must pass the written and driving skills tests as required by the department, but is not required to have taken a driver's education class.

99 Acts, ch 13, §11

Driver education courses to include instruction relating to energy efficiency and safety; 90 Acts, ch 1252, §54

Department of public health to cooperate to provide materials and information relating to becoming an organ donor; 94 Acts, ch 1102, §3

Applicability of 1998 changes to minimum age requirements to issuance of permits and licenses; 98 Acts, ch 1112, §14, 16

Subsection 1, unnumbered paragraphs 2 and 3 amended

321.180B Graduated driver's licenses for persons aged fourteen through seventeen.

Persons under age eighteen shall not be issued a license or permit to operate a motor vehicle except under the provisions of this section. However, the department may issue restricted and special driver's licenses to certain minors as provided in sections 321.178 and 321.194, and driver's licenses restricted to motorized bicycles as provided in section 321.189. A license or permit shall not be issued under this section or section 321.178 or 321.194 without the consent of a parent or guardian. An additional consent is required each time a license or permit is issued under this section or section 321.178 or 321.194. The consent must be signed by at least one parent or guardian on an affidavit form provided by the department.

1. *Instruction permit.* The department may issue an instruction permit to an applicant between the ages of fourteen and eighteen years if the applicant meets the requirements of sections 321.184 and 321.186, other than a driving demonstration, and pays the required fee. An instruction permit issued under this section shall be valid for a period not to exceed two years from the licensee's birthday anniversary in the year of issuance. A motorcycle instruction permit issued under this section is not renewable.

Subject to the limitations in this subsection, an instruction permit entitles the permittee, while having the permit in the permittee's immediate possession, to operate a motor vehicle other than a commercial motor vehicle or as a chauffeur or a motor vehicle with a gross vehicle weight rating of sixteen thousand one or more pounds upon the highways.

Except as otherwise provided, a permittee who is less than eighteen years of age and who is operating a motor vehicle must be accompanied by a person issued a driver's license valid for the vehicle operated who is the parent or guardian of the permittee, member of the permittee's immediate family if the family member is at least twenty-one years of age, an approved driver education instructor, a prospective driver education instructor who is enrolled in a practitioner preparation program with a safety education program approved by the state board of education, or a person at least twenty-five years of age if written permission is granted by the parent or guardian, and who is actually occupying a seat beside the driver. A permittee

shall not operate a motor vehicle if the number of passengers in the motor vehicle exceeds the number of passenger safety belts in the motor vehicle. If the applicant for an instruction permit holds a driver's license issued in this state valid for the operation of a motorized bicycle or a motorcycle, the instruction permit shall be valid for such operation without the requirement of an accompanying person.

However, if the permittee is operating a motorcycle in accordance with this section, the accompanying person must be within audible and visual communications distance from the permittee and be accompanying the permittee on or in a different motor vehicle. Only one permittee shall be under the immediate supervision of an accompanying qualified person.

A permittee shall not be penalized for failing to have the instruction permit in the permittee's immediate possession if the permittee produces in court, within a reasonable time, an instruction permit issued to the permittee and valid at the time of the permittee's arrest or at the time the permittee was charged with failure to have the permit in the permittee's immediate possession.

2. *Intermediate license.* The department may issue an intermediate driver's license to a person sixteen or seventeen years of age who possesses an instruction permit issued under subsection 1 or a comparable instruction permit issued by another state for a minimum of six months immediately preceding application, and who presents an affidavit signed by a parent or guardian on a form to be provided by the department that the permittee has accumulated a total of twenty hours of street or highway driving of which two hours were conducted after sunset and before sunrise and the street or highway driving was with the permittee's parent, guardian, instructor, a person certified by the department, or a person at least twenty-five years of age who had written permission from a parent or guardian to accompany the permittee, and whose driving privileges have not been suspended, revoked, or barred under this chapter or chapter 321J during, and who has been accident and conviction free continuously for, the six-month period immediately preceding the application for an intermediate license. An applicant for an intermediate license must meet the requirements of section 321.186, including satisfactory completion of driver education as required in section 321.178, and payment of the required license fee before an intermediate license will be issued. A person issued an intermediate license must limit the number of passengers in the motor vehicle when the intermediate licensee is operating the motor vehicle to the number of passenger safety belts.

Except as otherwise provided, a person issued an intermediate license under this subsection who is operating a motor vehicle between the hours of twelve-thirty a.m. and five a.m. must be accompa-

nied by a person issued a driver's license valid for the vehicle operated who is the parent or guardian of the permittee, a member of the permittee's immediate family if the family member is at least twenty-one years of age, an approved driver education instructor, a prospective driver education instructor who is enrolled in a practitioner preparation program with a safety education program approved by the state board of education, or a person at least twenty-five years of age if written permission is granted by the parent or guardian, and who is actually occupying a seat beside the driver. However, a licensee may operate a vehicle to and from school-related extracurricular activities and work without an accompanying driver between the hours of twelve-thirty a.m. and five a.m. if such licensee possesses a waiver on a form to be provided by the department. An accompanying driver is not required between the hours of five a.m. and twelve-thirty a.m.

3. *Remedial driver improvement action or suspension of permit or intermediate license.* A person who has been issued an instruction permit or an intermediate license under this section, upon conviction of a moving traffic violation or involvement in a motor vehicle accident which occurred during the term of the instruction permit or intermediate license, shall be subject to remedial driver improvement action or suspension of the permit or license. A person possessing an instruction permit who has been convicted of a moving traffic violation or has been involved in an accident shall not be issued an intermediate license until the person has completed the remedial driver improvement action and has been accident and conviction free continuously for the six-month period immediately preceding the application for the intermediate license. A person possessing an intermediate license who has been convicted of a moving traffic violation or has been involved in an accident shall not be issued a full driver's license until the person has completed the remedial driver improvement action and has been accident and conviction free continuously for the twelve-month period immediately preceding the application for a full driver's license.

4. *Full driver's license.* A full driver's license may be issued to a person seventeen years of age who possesses an intermediate license issued under subsection 2 or a comparable intermediate license issued by another state for a minimum of twelve months immediately preceding application, and who presents an affidavit signed by a parent or guardian on a form to be provided by the department that the intermediate licensee has accumulated a total of ten hours of street or highway driving of which two hours were conducted after sunset and before sunrise and the street or highway driving was with the licensee's parent, guardian, instructor, a person certified by the department, or a person at least twenty-five years of age who had written permission from a parent or guardian to ac-

company the licensee, whose driving privileges have not been suspended, revoked, or barred under this chapter or chapter 321J during, and who has been accident and conviction free continuously for, the twelve-month period immediately preceding the application for a full driver's license, and who has paid the required fee.

5. *Class M license education requirements.* A person under the age of eighteen applying for an intermediate or full 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 transportation or from a private or commercial driver education school licensed by the department of transportation before the class M license will be issued. 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 6.

6. *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 state department of transportation 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. The department shall adopt rules under chapter 17A providing for the distribution of moneys to sponsors of motorcycle rider education courses based upon the cost of providing the education courses.

7. *Rules.* The department may adopt rules pursuant to chapter 17A to administer this section.

99 Acts, ch 13, §12, 13; 99 Acts, ch 128, §1-3

Applicability of 1998 changes to minimum age requirements for permit and license issuance; 98 Acts, ch 1112, §14, 16

See Code editor's note to §10A.202

Subsection 2, unnumbered paragraph 1 amended

Subsection 4 amended

321.186 Examination of new or incompetent operators.

The department may examine every new applicant for a driver's license or any person holding a valid driver's license when the department has reason to believe that the person may be physically or mentally incompetent to operate a motor vehicle, or whose driving record appears to the department to justify the examination. The examinations shall be held in every county within periods not to exceed fifteen days except that the driving skills test for a commercial driver's license shall be given only at locations where required driving skills may be adequately tested, including pretrip and off-road examinations. The department shall make every effort to accommodate a functionally illiterate applicant when the applicant is taking a knowledge test. The department shall make every effort to have an examiner conduct the commercial driver's license driving skills tests at other locations in this

state where skills may be adequately tested when requested by a person representing ten or more drivers requiring driving skills testing.

The department shall make every effort to accommodate a commercial driver's license applicant's need to arrange an appointment for a driving skills test at an established test site other than where the applicant passed the required knowledge test. The department shall report to the governor and the general assembly on any problems, extraordinary costs and recommendations regarding the appointment scheduling process.

The examination shall include a screening of the applicant's eyesight, a test of the applicant's ability to read and understand highway signs regulating, warning, and directing traffic, a test of the applicant's knowledge of the traffic laws of this state, an actual demonstration of ability to exercise ordinary and reasonable control in the operation of a motor vehicle and other physical and mental examinations as the department finds necessary to determine the applicant's fitness to operate a motor vehicle safely upon the highways. However, an applicant for a new driver's license other than a commercial driver's license need not pass a vision test administered by the department if the applicant files with the department 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.

A physician licensed under chapter 148, 150, or 150A, or an optometrist licensed under chapter 154, may report to the department the identity of a person who has been diagnosed as having a physical or mental condition which would render the person physically or mentally incompetent to operate a motor vehicle in a safe manner. The physician or optometrist shall make reasonable efforts to notify the person who is the subject of the report, in writing. The written notification shall state the nature of the disclosure and the reason for the disclosure. A physician or optometrist making a report under this section shall be immune from any liability, civil or criminal, which might otherwise be incurred or imposed as a result of the report. A physician or optometrist has no duty to make a report or to warn third parties with regard to any knowledge concerning a person's mental or physical competency to operate a motor vehicle in a safe manner. Any report received by the department from a physician or optometrist under this section shall be kept confidential. Information regulated by chapter 141A shall be subject to the confidentiality provisions and remedies of that chapter.

99 Acts, ch 181, §16
Unnumbered paragraph 4 amended

321.187 Examiners.

1. The department shall examine applicants for driver's licenses. Examiners of the department shall wear an identifying badge and uniform provided by the department.

2. The department may by rule designate community colleges to administer the driving skills test required for a commercial driver's license provided that all of the following occur:

a. The driving skills test is the same as that which would otherwise be administered by the state.

b. The examiner contractually agrees to comply with the requirements of 49 C.F.R. § 383.75 as adopted by rule by the department.

99 Acts, ch 96, §29
Section amended

321.188 Commercial driver's license requirements.

1. Before the department issues, renews, or upgrades a commercial driver's license and in addition to the requirements of section 321.182, the license applicant shall do all of the following:

a. Certify whether the applicant is subject to and meets applicable driver qualifications of 49 C.F.R. part 391 as adopted by rule by the department.

b. Certify the applicant is not subject to any commercial driver's license disqualification and has committed no offense and has not acted in a manner which either alone or with previous actions or offenses could result in commercial driver's license disqualification.

c. Successfully pass knowledge tests and driving skills tests which the department shall require by rule. The rules adopted shall substantially comply with the federal minimum testing and licensing requirements in 49 C.F.R. part 383, subparts E, G, and H as adopted by rule by the department.

d. Certify the vehicle to be operated in the driving skills tests represents the largest class of vehicle the applicant will operate on the highway.

e. Certify that the applicant is a resident of Iowa or a resident of a foreign jurisdiction.

2. An applicant for a commercial driver's license may substitute for a driving skills test the applicant's operating record and previous passage of a driving skills test or the applicant's operating record and previous driving experience if all of the following conditions exist:

a. The applicant is currently licensed to operate a commercial motor vehicle.

b. The applicant certifies that during the two years immediately preceding application all of the following apply:

(1) The applicant has not held driver's licenses valid for the operation of commercial motor vehicles from more than one state simultaneously.

(2) The applicant has not had any convictions which are federal commercial driver's license disqualifying offenses under 49 C.F.R. § 383.51 as adopted by rule by the department while operating any type of vehicle.

(3) The applicant has not committed a traffic violation, other than a parking violation, arising in connection with a traffic accident.

(4) No record of an accident exists for which the applicant was convicted of a moving traffic violation.

(5) The applicant has not had any driver's license suspended, revoked, or canceled.

c. The applicant provides evidence of and certifies that the applicant is employed in a job requiring operation of a commercial motor vehicle and the applicant has done one of the following:

(1) Has previously passed a driving skills test given by this state or its designee in a motor vehicle representative of the class of motor vehicle the applicant will operate.

(2) Has operated during the two-year period immediately preceding the application a motor vehicle representative of the class of motor vehicle the applicant will operate.

3. An applicant for a hazardous material endorsement must pass a knowledge test as required under 49 C.F.R. § 383.121 as adopted by rule by the department to obtain or retain the endorsement. However, an applicant for license issuance who was previously issued a commercial driver's license from another state may retain the hazardous material endorsement from the previously issued license if the applicant successfully passed the endorsement test within the preceding twenty-four months.

4. The department shall check the applicant's driving record as maintained by the applicant's current licensing state, the national commercial driver's license information system, and the national driver register to determine whether the applicant qualifies to be issued a commercial driver's license. The department shall notify the national commercial driver's license information system of the issuance, renewal, or upgrade of a commercial driver's license.

5. A resident of this state holding a commercial driver's license issued by a former state of residence in conformity with the federal commercial driver testing and licensing standards shall not be required to take a knowledge or driving skills test prior to issuance of a commercial driver's license in this state, except a basic Iowa rules of the road knowledge test and, when applicable, motorcycle operator knowledge and driving skills tests. The commercial driver's license issued by this state shall be valid for operation of the same class of vehicles with the same endorsements and restrictions as in the former state of licensure. However, a person with a hazardous materials endorsement must comply with subsection 3.

99 Acts, ch 96, §30-32
 Subsection 1, paragraphs a and c amended
 Subsection 2, paragraph b, subparagraph (2) amended
 Subsection 3 amended

321.189 Driver's license — content.

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 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 driver's license may request a number other than a social security number as the driver's 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 driver's 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 driver's 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, or a person renewing the person's license by mail, the department shall indicate on the license, or the validation document issued to a person renewing by mail, the presence of a medical condition, that the licensee is a donor under the uniform anatomical gift law, or that the licensee has in effect a medical advance directive. For purposes of this subsection, a medical advance directive includes, but is not limited to, a valid durable power of attorney for health care as defined in section 144B.1. The license may contain such other information as the department may require by rule.

5. *Tamperproofing.* The department shall issue a driver's 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 persons under age twenty-one.* A driver's license issued to a person under eighteen years of age shall be identical in form to any other driver's license except that the words "under eighteen" shall appear prominently on the face of the license. A driver's license issued to a person eighteen years of age or older but less than twenty-one years of age shall be identical in form to any other driver's license except that the words "under twenty-one" shall appear prominently on

the face of the license. Upon attaining the age of eighteen or upon attaining the age of twenty-one, and upon payment of a one dollar fee, the person shall be entitled to a new driver's license or nonoperator's identification card for the unexpired months of the driver's license or card. An instruction permit or intermediate license issued under section 321.180B, subsection 1 or 2, shall include a distinctive color bar. An intermediate license issued under section 321.180B, subsection 2, shall include the words "intermediate license" printed prominently on the face of the license.

7. *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 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.

99 Acts, ch 13, §14

Fee, see §321.191

Applicability of 1998 changes to minimum age requirements for permit and license issuance; 98 Acts, ch 1112, §14, 16
Subsection 2, paragraphs b and c amended

321.208 Commercial driver's license disqualification — replacement driver's license — temporary license.

1. A person is disqualified from operating a commercial motor vehicle for one year upon a conviction or final administrative decision that the person while operating a commercial motor vehicle has committed any of the following acts or offenses in any state or foreign jurisdiction:

a. Operating a commercial motor vehicle while under the influence of an alcoholic beverage or other drug or controlled substance or a combination of such substances.

b. Operating a commercial motor vehicle with an alcohol concentration, as defined in section 321J.1, of 0.04 or more.

c. Refusal to submit to chemical testing required under chapter 321J.

d. Failure to stop and render aid at the scene of an accident involving the person's vehicle.

e. A felony or aggravated misdemeanor involving the use of a commercial motor vehicle other than an offense involving manufacturing, distributing, or dispensing a controlled substance.

However, a person is disqualified for three years if the act or offense occurred while the person was operating a commercial motor vehicle transporting hazardous material of a type or quantity requiring vehicle placarding.

2. A person is disqualified for life if convicted or found to have committed two or more of the above acts or offenses arising out of two or more separate incidents. However, a disqualification for life is subject to a reduction to a ten-year disqualification as provided in 49 C.F.R. § 383.51 as adopted by rule by the department.

3. A person is disqualified from operating a commercial motor vehicle for the person's life upon a conviction that the person used a commercial motor vehicle in the commission of a felony or aggravated misdemeanor involving the manufacturing, distributing, or dispensing of a controlled substance as defined in section 124.101.

4. A person is disqualified from operating a commercial motor vehicle if the person receives convictions for committing within any three-year period two or more of the following offenses while operating a commercial motor vehicle:

a. Speeding fifteen miles per hour or more over the legal speed limit.

b. Reckless driving.

c. Any violation of the traffic laws, except a parking violation or a vehicle weight violation, which arises in connection with a fatal traffic accident.

d. Operating a commercial motor vehicle when not issued a driver's license valid for the vehicle operated.

e. Operating a commercial motor vehicle upon a highway when disqualified.

f. Operating a commercial motor vehicle upon a highway without immediate possession of a driver's license valid for the vehicle operated.

g. Following another motor vehicle too closely.

h. Improper lane changes in violation of section 321.306.

The period of disqualification under this subsection shall be sixty days for two offenses within any three-year period and one hundred twenty days for three offenses within any three-year period.

5. A person is disqualified from operating a commercial motor vehicle when the person's driving privilege is suspended or revoked.

6. A person is disqualified from operating a commercial motor vehicle:

a. For ninety days upon conviction for the first violation of an out-of-service order; for one year, upon conviction for a second violation of an out-of-service order in separate incidents within a ten-year period; and for not less than three and not more than five years upon conviction for a third or subsequent violation of an out-of-service order in separate incidents within a ten-year period.

b. For one year upon conviction for the first violation and for not less than three years and not more than five years upon conviction for a second or subsequent violation of an out-of-service order while transporting hazardous materials required to be placarded, or while operating a commercial motor vehicle designed to transport more than fifteen passengers including the driver.

7. Upon receiving a record of a person's disqualifying conviction, administrative decision, suspension, or revocation, the department shall, by rule, without preliminary hearing and upon thirty days' advance notice, disqualify the person from operating a commercial motor vehicle upon a highway.

8. A person is disqualified from operating a commercial motor vehicle if the person either refuses to submit to chemical testing required under chapter 321J or submits to chemical testing and the results show an alcohol concentration as defined in section 321J.1 of 0.04 or more. The department, upon receipt of the peace officer's certification, subject to penalty for perjury, that the peace officer had reasonable grounds to believe the person to have been operating a commercial motor vehicle with an alcohol concentration of 0.04 or more and that the person refused to submit to the chemical testing or submitted to chemical testing and the results show an alcohol concentration as defined in section 321J.1 of 0.04 or more, shall, without preliminary hearing and upon thirty days' advance no-

tice, disqualify the person from operating a commercial motor vehicle upon a highway.

The effective date of disqualification shall be thirty days after notification. Immediate notice of disqualification may be served on a person operating a commercial motor vehicle who refused to submit to a test or whose test results indicate an alcohol concentration of 0.04 or more by the peace officer administering the chemical test or the department may notify the person by certified mail. If immediate notice is served, the peace officer shall take the commercial driver's license or permit of the driver, if issued within the state, and issue a temporary commercial driver's license effective for only thirty days. The peace officer shall immediately send the person's commercial driver's license to the department in addition to the officer's certification required by this subsection.

9. Upon notice, the disqualified person shall surrender the person's commercial driver's license to the department and the department may issue a driver's license valid only to operate a noncommercial motor vehicle upon payment of a one dollar fee. The department shall notify the commercial driver's license information system of the disqualification if required to do so under section 321.204.

10. Notwithstanding the Iowa administrative procedure Act, the filing of a petition for judicial review shall stay the disqualification pending the determination by the district court.

11. The department may reinstate a qualified person's privilege to operate a commercial motor vehicle after a period of disqualification and after payment of required fees.

12. As used in this section, the terms "acts", "actions", and "offenses" mean acts, actions, or offenses which occur on or after July 1, 1990.

99 Acts, ch 96, §33
Subsection 2 amended

321.218 Operating without valid driver's license or when disqualified — penalties.

1. A person whose driver's license or operating privilege has been denied, canceled, suspended, or revoked as provided in this chapter or as provided in section 252J.8 or section 901.5, subsection 10, 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. In addition to any other penalties, the punishment imposed for a violation of this subsection shall include assessment of a fine of not less than two hundred fifty dollars nor more than one thousand five hundred dollars.

2. The sentence imposed under this section shall not be suspended by the court, notwithstanding section 907.3 or any other statute.

3. 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 252J.8, 321.210, subsection 1, paragraph "c", section 321.210A, 321.210B, or 321.513, extend the period of suspension or revocation for an additional like period, and the department shall not issue a new driver's 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.

4. 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 serious misdemeanor if a commercial driver's license is required for the person to operate the commercial motor vehicle.

5. 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.

99 Acts, ch 153, §2
Subsection 1 amended

321.218A Civil penalty — disposition — reinstatement.

When the department suspends, revokes, or bars a person's driver's license or nonresident operating privilege for a conviction under this chapter, the department shall assess the person a civil penalty of two hundred dollars. However, for persons age nineteen or under, the civil penalty assessed shall be fifty dollars. The civil penalty does not apply to a suspension issued for a violation of section 321.180B. The money collected by the department under this section shall be transmitted to the treasurer of state who shall deposit the money in the general fund of the state. A temporary restricted license shall not be issued or a driver's license or nonresident operating privilege reinstated until the civil penalty has been paid.

1998 amendment by 98 Acts, ch 1112, §11, effective January 1, 1999; 98 Acts, ch 1112, §16

Exception to requirement for deposit in general fund; moneys deposited with department of human services and allocated for juvenile detention homes during fiscal years beginning July 1, 1998, and July 1, 1999; 98 Acts, ch 1218, §33; 99 Acts, ch 203, §35, 36, 53
Section not amended; footnote revised

321.234A All-terrain vehicles — bicycle safety flag required.

All-terrain vehicles shall be operated on a highway only between sunrise and sunset and only when the operation on the highway is incidental to the vehicle's use for agricultural purposes. A person operating an all-terrain vehicle on a highway shall have a valid driver's license and the vehicle shall be operated at speeds of thirty-five miles per hour or less. When operated on a highway, an all-terrain vehicle shall have a bicycle safety flag which extends not less than five feet above the

ground attached to the rear of the vehicle. The bicycle safety flag shall be triangular in shape with an area of not less than thirty square inches, be Day-Glo in color, and shall be in lieu of the reflective equipment required by section 321.383.

99 Acts, ch 108, §4
Section amended

321.260 Interference with devices, signs, or signals — unlawful possession.

1. *a.* A person who willfully and intentionally, without lawful authority, attempts to or in fact alters, defaces, injures, knocks down, or removes an official traffic-control device, an authorized warning sign or signal or barricade, whether temporary or permanent, a railroad sign or signal, an inscription, shield, or insignia on any of such devices, signs, signals, or barricades, or any other part thereof, shall, upon conviction, be guilty of a simple misdemeanor and shall be required to make restitution to the affected jurisdiction. In addition to any other penalties, the punishment imposed for a violation of this subsection shall include assessment of a fine of not less than two hundred fifty dollars.

b. A person who is convicted under paragraph “*a*” of an act relating to a stop sign or a yield sign may be required to complete community service in addition to making restitution to the affected jurisdiction.

2. It shall be unlawful for any person to have in the person’s possession any official traffic-control device except by legal right or authority. Any person convicted of unauthorized possession of any official traffic-control device shall upon conviction be guilty of a simple misdemeanor. In addition to any other penalties, the punishment imposed for a violation of this subsection shall include assessment of a fine of not less than two hundred fifty dollars.

99 Acts, ch 153, §3, 4
Subsection 1, paragraph a amended
Subsection 2 amended

321.279 Eluding or attempting to elude pursuing law enforcement vehicle.

1. The driver of a motor vehicle commits a serious misdemeanor if the driver willfully fails to bring the motor vehicle to a stop or otherwise eludes or attempts to elude a marked official law enforcement vehicle driven by a uniformed peace officer after being given a visual and audible signal to stop. The signal given by the peace officer shall be by flashing red light and siren. For purposes of this section, “*peace officer*” means those officers designated under section 801.4, subsection 11, paragraphs “*a*”, “*b*”, “*c*”, “*g*”, and “*h*”.

2. The driver of a motor vehicle commits an aggravated misdemeanor if the driver willfully fails to bring the motor vehicle to a stop or otherwise eludes or attempts to elude a marked official law enforcement vehicle that is driven by a uniformed peace officer after being given a visual and audible

signal as provided in this section and in doing so exceeds the speed limit by twenty-five miles per hour or more.

3. The driver of a motor vehicle commits a class “*D*” felony if the driver willfully fails to bring the motor vehicle to a stop or otherwise eludes or attempts to elude a marked official law enforcement vehicle that is driven by a uniformed peace officer after being given a visual and audible signal as provided in this section, and in doing so exceeds the speed limit by twenty-five miles per hour or more, and if any of the following occurs:

a. The driver is participating in a public offense, as defined in section 702.13, that is a felony.

b. The driver is in violation of section 321J.2 or 124.401.

c. The offense results in bodily injury to a person other than the driver.

99 Acts, ch 31, §1
Section amended

321.284 Open containers in motor vehicles — drivers.

A driver of a motor vehicle upon a public street or highway shall not possess in the passenger area of the motor vehicle an open or unsealed bottle, can, jar, or other receptacle containing an alcoholic beverage. “*Passenger area*” means the area designed to seat the driver and passengers while the motor vehicle is in operation and any area that is readily accessible to the driver or a passenger while in their seating positions, including the glove compartment. An open or unsealed receptacle containing an alcoholic beverage may be transported in the trunk of the motor vehicle. An unsealed receptacle containing an alcoholic beverage may be transported behind the last upright seat of the motor vehicle if the motor vehicle does not have a trunk. A person convicted of a violation of this section is guilty of a simple misdemeanor punishable as a scheduled violation under section 805.8, subsection 10, paragraph “*b*”.

99 Acts, ch 77, §1
Section amended

321.284A Open containers in motor vehicles — passengers.

1. A passenger in a motor vehicle upon a public street or highway shall not possess in the passenger area of the motor vehicle an open or unsealed bottle, can, jar, or other receptacle containing an alcoholic beverage. “*Passenger area*” means the area of a motor vehicle designed to seat the driver and passengers while the motor vehicle is in operation and any area that is readily accessible to the driver or a passenger while in their seating positions, including the glove compartment. An open or unsealed receptacle containing an alcoholic beverage may be transported in the trunk of the motor vehicle. An unsealed receptacle containing an alcoholic beverage may be transported behind the last upright seat of the motor vehicle if the motor vehicle does not have a trunk.

2. This section does not apply to a passenger being transported in a motor vehicle designed, maintained, or used primarily for the transportation of persons for compensation, or a passenger being transported in the living quarters of a motor home, mobile home, travel trailer, or fifth-wheel travel trailer.

3. A person convicted of a violation of this section is guilty of a simple misdemeanor punishable as a scheduled violation under section 805.8, subsection 10, paragraph "b".

4. The department shall not include a conviction for a violation of this section on the individual driving record of the person committing the violation and the conviction shall not be considered by the department in any proceeding for suspension, revocation, barring, or denying of the person's driver's license or upon any application for renewal of driving privileges.

99 Acts, ch 77, §2
NEW section

321.288 Control of vehicle — reduced speed.

A person operating a motor vehicle shall have the vehicle under control at all times and shall reduce the speed to a reasonable and proper rate:

1. When approaching and passing a person walking in the traveled portion of the public highway.

2. When approaching and passing an animal which is being led, ridden, or driven upon a public highway.

3. When approaching and traversing a crossing or intersection of public highways, or a bridge, sharp turn, curve, or steep descent, in a public highway.

4. When approaching and passing an emergency warning device displayed in accordance with rules adopted under section 321.449, or an emergency vehicle displaying a revolving or flashing light.

5. When approaching and passing a slow moving vehicle displaying a reflective device or alternative reflective device as provided by section 321.383.

6. When approaching and passing through a sign posted road work zone upon the public highway.

99 Acts, ch 102, §1
Subsection 5 amended

321.377 Regional transit system transportation.

A vehicle operated by a regional transit system as defined in section 324A.1 may only provide school transportation services pursuant to rules adopted by the state department of transportation in consultation with the department of education.

99 Acts, ch 13, §15
NEW section

321.383 Exceptions — slow vehicles identified.

1. This chapter with respect to equipment on vehicles does not apply to implements of husbandry, road machinery, or bulk spreaders and other fertilizer and chemical equipment defined as special mobile equipment, except as made applicable in this section. However, the movement of implements of husbandry on a roadway is subject to safety rules adopted by the department. The safety rules shall prohibit the movement of any power unit towing more than one implement of husbandry from the manufacturer to the retail seller, from the retail seller to the farm purchaser, or from the manufacturer to the farm purchaser.

2. When operated on a highway in this state at a speed of thirty-five miles per hour or less, every farm tractor, or tractor with towed equipment, self-propelled implement of husbandry, road construction or maintenance vehicle, road grader, horse-drawn vehicle, or any other vehicle principally designed for use off the highway and any such tractor, implement, vehicle, or grader when manufactured for sale or sold at retail after December 31, 1971, shall be identified with a reflective device in accordance with the standards of the American society of agricultural engineers; however, this provision shall not apply to such vehicles when traveling in an escorted parade. If a person operating a vehicle drawn by a horse or mule objects to using a reflective device that complies with the standards of the American society of agricultural engineers for religious reasons, the vehicle may be identified by an alternative reflective device that is in compliance with rules adopted by the department. The reflective device or alternative reflective device shall be visible from the rear. A vehicle other than those specified in this section shall not display a reflective device or an alternative reflective device. On vehicles operating at speeds above thirty-five miles per hour, the reflective device or alternative reflective device shall be removed or hidden from view.

3. Garbage collection vehicles, when operated on the streets or highways of this state at speeds of thirty-five miles per hour or less, may display a reflective device that complies with the standards of the American society of agricultural engineers. At speeds in excess of thirty-five miles per hour the device shall not be visible.

Any person who violates any provision of this section shall be fined as provided in section 805.8, subsection 2, paragraph "d".

99 Acts, ch 102, §2; 99 Acts, ch 108, §5
See Code editor's note to §10A.202
Section amended

321.404A Light-restricting devices prohibited.

1. A person shall not operate a motor vehicle, motorcycle, or motorized bicycle on the highways of

this state if it is equipped with a device that restricts the light output of a head lamp required under section 321.385 or 321.386, a rear lamp required under section 321.387, a signal lamp or signal device required under section 321.404, or a directional signal device as described in section 321.317.

2. A person who violates this section shall be subject to a scheduled fine under section 805.8, subsection 2, paragraph "d".

99 Acts, ch 13, §16
NEW section

321.440 Restrictions as to tire equipment.

Every solid rubber tire on a vehicle shall have rubber on its entire traction surface at least one inch thick above the edge of the flange of the entire periphery. Any pneumatic tire on a vehicle shall be considered unsafe if it has:

1. Any part of the ply or cord exposed;
2. Any bump, bulge or separation;
3. A tread design depth of less than one-sixteenth of an inch measured in any two or more adjacent tread grooves, exclusive of tie bars or, for those tires with tread wear indicators, worn to the level of the tread wear indicators in any two tread grooves;
4. A marking "not for highway use", "for racing purposes only", "unsafe for highway use";
5. Tread or sidewall cracks, cuts or snags deep enough to expose the body cord;
6. Such other conditions as may be reasonably demonstrated to render it unsafe;
7. Been regrooved or recut below the original tread design depth, excepting special tires which have extra under tread rubber and are identified as such, or if a pneumatic tire was originally designed without grooves or tread.

A vehicle, except an implement of husbandry, equipped with either solid rubber or pneumatic tires shall not be operated where the weight per inch of tire width is greater than five hundred seventy-five pounds per inch of tire width based on the tire width rating, except on a steering axle, in which case six hundred pounds per inch of tire width is permitted based on the tire width rating.

97 Acts, ch 100, §2, 3, 12
NEW unnumbered paragraph 2

321.449 Motor carrier safety rules.

1. 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.

2. Rules adopted under this section concerning driver qualifications, hours of service, and record-keeping 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. Except as otherwise provided in this section, trucks for hire on construction projects are not exempt from this section.

3. 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.

4. Notwithstanding other provisions of this section, rules adopted under this section for drivers of commercial vehicles shall not apply to a driver of a commercial vehicle who is engaged exclusively in intrastate commerce, when the commercial vehicle's gross vehicle weight rating is twenty-six thousand pounds or less, unless the vehicle is used to transport hazardous materials requiring a placard or if the vehicle is designed to transport more than fifteen passengers, including the driver. For the purpose of complying with the hours of service recordkeeping requirements under 49 C.F.R. § 395.1(e)(5), a driver's report of daily beginning and ending on-duty time submitted to the motor carrier at the end of each work week shall be considered acceptable motor carrier time records. In addition, rules adopted under this section shall not apply to a driver for a farm operation as defined in section 352.2, or for an agricultural interest when the commercial vehicle is operated between the farm as defined in section 352.2 and another farm, between the farm and a market for farm products, or between the farm and an agribusiness location. A driver or a driver-salesperson for a private carrier, who is not for hire and who is engaged exclusively in intrastate commerce, may drive twelve hours, be on duty sixteen hours in a twenty-four hour period and be on duty seventy hours in seven consecutive days or eighty hours in eight consecutive days. For-hire drivers who are engaged exclusively in intrastate commerce and who operate trucks and truck-tractors exclusively for the movement of construction materials and equipment to and from construction projects may also drive twelve hours, be on duty sixteen hours in a twenty-four-hour period, and be on duty seventy hours in seven consecutive days or eighty hours in eight consecutive days. A driver-salesperson means as defined in 49 C.F.R. § 395.2, as adopted by the department by rule.

5. *a.* 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

whose physical or medical condition existed prior to July 29, 1996.

b. 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.

c. 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.

6. 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.

7. 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.

8. 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.

99 Acts, ch 13, §17, 29; 99 Acts, ch 96, §34

1999 amendments to unnumbered paragraphs 2 and 4 are effective April 7, 1999; 99 Acts, ch 13, §29

See Code editor's note to §10A.202
Section amended

321.453 Exceptions.

The provisions of this chapter governing size, weight, and load, and the permit requirements of chapter 321E do not apply to fire apparatus; road maintenance equipment owned by, under lease to, or used in the performance of a contract with any state or local authority; or to implements of husbandry moved or moving upon a highway, except for those implements of husbandry moved or moving on any portion of the interstate and except as provided in sections 321.463, 321.471, and 321.474. A vehicle, carrying an implement of husbandry, which is exempted from the permit requirements under this section shall be equipped with an amber flashing light visible from the rear. If the amber flashing light is obstructed by the loaded implement, the loaded implement shall also be equipped

with and display an amber flashing light. The vehicle shall also be equipped with warning flags on that portion of the vehicle which protrudes into oncoming traffic, and shall only operate from thirty minutes prior to sunrise to thirty minutes following sunset.

99 Acts, ch 13, §18; 99 Acts, ch 108, §6
See Code editor's note
Section amended

321.463 Maximum gross weight — exceptions — penalties.

1. An axle may be divided into two or more parts, except that all parts in the same vertical transverse plane shall be considered as one axle.

2. The gross weight on any one axle of a vehicle, or of a combination of vehicles, operated on the highways of this state, shall not exceed twenty thousand pounds on an axle equipped with pneumatic tires, and shall not exceed fourteen thousand pounds on an axle equipped with solid rubber tires. The gross weight on any tandem axle of a vehicle, or any combination of vehicles, shall not exceed thirty-four thousand pounds on an axle equipped with pneumatic tires. This subsection does not apply to implements of husbandry.

3. Notwithstanding other provisions of this chapter to the contrary, indivisible loads operating under the permit requirements of sections 321E.7, 321E.8, 321E.9, and 321E.29A shall be allowed a maximum of twenty thousand pounds per axle.

4. a. Self-propelled implements of husbandry used exclusively for the application of organic or inorganic plant food materials, agricultural limestone, or agricultural chemicals shall be operated in compliance with this section.

b. Fence-line feeders, grain carts, and tank wagons manufactured on or after July 1, 2001, shall be operated in compliance with this section. The year of manufacture of the fence-line feeder, grain cart, or tank wagon shall be permanently made a part of the identification plate on the vehicle. An attempt to fraudulently alter or deface the year of manufacture or other product identification number on a fence-line feeder, grain cart, or tank wagon is a violation of section 321.92. Commencing July 1, 2005, all fence-line feeders, grain carts, and tank wagons shall be operated in compliance with this section. However, the weight on any single axle or any particular group of axles or the overall gross weight of the vehicle may exceed the maximum weight otherwise allowed by this chapter by twenty percent. If the vehicle exceeds the twenty percent tolerance allowed by this paragraph, the fine to be assessed for the violation shall be computed on the difference between the actual weight and the tolerance weight allowed under this chapter.

5. a. The maximum gross weight allowed to be carried on a vehicle or combination of vehicles on highways which are part of the interstate system is as follows:

MAXIMUM GROSS WEIGHT TABLE
INTERSTATE HIGHWAYS

Distance in feet	2 Axles	3 Axles	4 Axles	5 Axles	6 Axles	7 Axles
4	34,000					
5	34,000					
6	34,000					
7	34,000	34,000				
8	34,000	34,000				
8'1"	38,000	42,000				
9	39,000	42,500				
10	40,000	43,500	48,500			
11		44,000	49,500			
12		45,000	50,000			
13		45,500	50,500	56,000		
14		46,500	51,500	57,000		
15		47,000	52,000	57,500		
16		48,000	52,500	58,000		
17		48,500	53,500	58,500	64,000	
18		49,500	54,000	59,000	65,000	
19		50,000	54,500	60,000	65,500	
20		51,000	55,500	60,500	66,000	71,500
21		51,500	56,000	61,000	66,500	72,500
22		52,500	56,500	61,500	67,000	73,000
23		53,000	57,500	62,500	68,000	73,500
24		54,000	58,000	63,000	68,500	74,000
25		54,500	58,500	63,500	69,000	74,500
26		55,500	59,500	64,000	69,500	75,000
27		56,000	60,000	65,000	70,000	76,000
28		57,000	60,500	65,500	71,000	76,500
29		57,500	61,500	66,000	71,500	77,000
30		58,500	62,000	66,500	72,000	77,500
31		59,000	62,500	67,500	72,500	78,000
32		60,000	63,500	68,000	73,000	78,500
33			64,000	68,500	74,000	79,500
34			64,500	69,500	74,500	80,000
35			65,500	70,000	75,000	
36			68,000	70,500	75,500	
37			68,000	71,000	76,000	
38			68,000	72,000	77,000	
39			68,000	72,500	77,500	
40			68,500	73,000	78,000	
41			69,500	73,500	78,500	
42			70,000	74,000	79,000	
43			70,500	75,000	80,000	
44			71,500	75,500		
45			72,000	76,000		
46			72,500	76,500		
47			73,500	77,500		
48			74,000	78,000		
49			74,500	78,500		
50			75,500	79,000		
51			76,000	80,000		
52			76,500			
53			77,500			
54			78,000			
55			78,500			
56			79,500			
57			80,000			

b. The maximum gross weight allowed to be carried on a vehicle or combination of vehicles on noninterstate highways is as follows:

NONINTERSTATE HIGHWAYS
MAXIMUM GROSS WEIGHT TABLE

Distance in feet	2 Axles	3 Axles	4 Axles	5 Axles	6 Axles	7 Axles
4	34,000					
5	34,000					
6	34,000					
7	34,000	34,000				
8	34,000	34,000				
8'1"	38,000	42,000				
9	39,000	42,500				
10	40,000	43,500	45,000			
11		44,000	46,000			
12		45,000	47,000			
13		45,500	48,000	48,500		
14		46,500	49,000	49,500		
15		47,000	50,000	50,500		
16		48,000	51,000	51,500		
17		48,500	52,000	52,500	54,000	
18		49,500	53,000	53,500	55,000	
19		50,000	54,500	54,500	56,000	
20		51,000	55,500	55,500	57,000	
21		51,500	56,000	56,500	58,000	
22		52,500	56,500	57,500	59,000	
23		53,000	57,500	58,500	60,000	
24		54,000	58,000	59,500	61,000	
25		54,500	58,500	60,500	62,000	
26		55,500	59,500	61,500	63,000	
27		56,000	60,000	62,500	64,000	
28		57,000	60,500	63,500	65,000	
29		57,500	61,500	64,500	66,000	
30		58,500	62,000	65,500	67,000	
31		59,000	62,500	66,500	68,000	
32		60,000	63,500	67,500	69,000	
33			64,000	68,500	70,000	
34			64,500	69,500	71,000	
35			65,500	70,000	72,000	
36			68,000	70,500	73,000	
37			68,000	71,000	74,000	
38			68,000	72,000	75,000	
39			68,000	72,500	76,000	
40			68,500	73,000	77,000	
41			69,500	73,500	78,000	78,000
42			70,000	74,000	79,000	79,000
43			70,500	75,000	80,000	80,000
44			71,500	75,500		
45			72,000	76,000		
46			72,500	76,500		
47			73,500	77,500		
48			74,000	78,000		
49			74,500	78,500		
50			75,500	79,000		
51			76,000	80,000		
52			76,500			
53			77,500			
54			78,000			
55			78,500			
56			79,500			
57			80,000			

c. The maximum gross weight allowed to be carried on a livestock or construction vehicle on noninterstate highways is as follows:

**NONINTERSTATE HIGHWAYS
MAXIMUM GROSS WEIGHT TABLE
LIVESTOCK OR CONSTRUCTION VEHICLE**

Distance in feet	6 Axles	7 Axles
44	80,500	80,500
45	81,000	81,500
46	81,500	82,500
47	82,000	83,500
48	83,000	84,000
49	83,500	85,000
50	84,000	86,000
51	84,500	87,000
52	85,000	88,000
53	86,000	88,500
54	86,500	89,500
55	87,000	90,500
56	87,500	91,500
57	88,000	92,000
58	89,000	93,000
59	89,500	94,000
60	90,000	95,000
61		95,500
62		96,000

d. For the purposes of the maximum gross weight tables in paragraphs "a", "b", and "c", distance in feet is the measured distance in feet between the centers of the extreme axles of any group of axles, rounded to the nearest whole foot.

6. The weight on any one axle, including a tandem axle, of a vehicle which is transporting livestock on highways not part of the interstate system may exceed the legal maximum weight given in this chapter providing that the gross weight on any particular group of axles on such vehicle does not exceed the gross weight allowable under this chapter for such groups of axles.

7. The weight on any one axle, including a tandem axle, of a vehicle which is transporting raw materials from a designated borrow site to a construction project or transporting raw materials from a construction project, and which is operating on a highway that is not part of the interstate system and along a route of travel approved by the department or the appropriate local authority, may exceed the legal maximum weight otherwise allowed under this chapter by ten percent if the gross weight on any particular group of axles on the vehicle does not exceed the gross weight allowed under this chapter for that group of axles. If the vehicle exceeds the ten percent tolerance allowed under this subsection, the fine shall be computed on the difference between the actual weight and the ten percent tolerance weight allowed for the axle or tandem axle.

8. A vehicle or combination of vehicles transporting materials to or from a construction project or commercial plant site may operate under the maximum gross weight table for interstate highways in subsection 5, paragraph "a", if the route is approved by the department or appropriate local authority. Route approval is not required if the vehicle or combination of vehicles transporting materials to or from a construction project or commercial plant site complies with the maximum gross weight table for noninterstate highways in subsection 5, paragraph "c".

9. A vehicle designed to tow wrecked or disabled vehicles shall be exempt from the weight limitations in this section while the vehicle is towing a wrecked or disabled vehicle.

10. a. A person who operates a vehicle in violation of the provisions of this section, and an owner, or any other person, employing or otherwise directing the operator of a vehicle, who requires or knowingly permits the operation of a vehicle in violation of the provisions of this section shall be fined according to the following schedule:

**AXLE, TANDEM AXLE,
AND GROUP OF AXLES
WEIGHT VIOLATIONS**

Pounds Overloaded	Amount of Fine
Up to and including 1,000 pounds	\$10 plus one-half cent per pound
Over 1,000 pounds to and including 2,000 pounds	\$15 plus one-half cent per pound
Over 2,000 pounds to and including 3,000 pounds	\$80 plus three cents per pound
Over 3,000 pounds to and including 4,000 pounds	\$100 plus four cents per pound
Over 4,000 pounds to and including 5,000 pounds	\$150 plus five cents per pound
Over 5,000 pounds to and including 6,000 pounds	\$200 plus seven cents per pound
Over 6,000 pounds	\$200 plus ten cents per pound

b. Fines for gross weight violations for vehicles or combinations of vehicles shall be assessed at one-half of the fine rate schedule for axle, tandem axle, and groups of axles weight violations.

c. Except as otherwise provided, the amount of the fine to be assessed shall be computed on the difference between the actual weight and the maximum legal weight specified in this section by applying the appropriate rate in the preceding schedule for the total amount of overload.

d. The schedule of fines may be assessed in addition to any other penalties provided for in this chapter.

11. Overloads on axles and tandem axles and overloads on groups of axles or on an entire vehicle or combination of vehicles shall be considered as separate violations of the provisions of this section.

12. A person who issues or executes, or causes to be issued or executed, a bill of lading, manifest, or shipping document of any kind which states a false weight of the cargo set forth on such bill, manifest, or document, which is less than the actual weight of the cargo, shall, upon conviction, be guilty of a simple misdemeanor.

99 Acts, ch 108, §7
Subsection 4 stricken and rewritten

321.471 Local authorities may restrict.

1. Local authorities with respect to a highway under their jurisdiction may by ordinance or resolution prohibit the operation of vehicles upon the highway or impose restrictions as to the weight of vehicles to be operated upon the highway for a total period of not to exceed ninety days in any one calendar year, whenever the highway by reason of deterioration, rain, snow, or other climatic conditions will be seriously damaged or destroyed unless the use of vehicles on the highway is prohibited or the permissible weights reduced. The ordinance or resolution shall not apply to implements of husbandry as defined in section 321.1, implements of husbandry loaded on hauling units for transporting the implements to locations for repair, or fire apparatus and road maintenance equipment owned by, under lease to, or used in the performance of a contract with a state or local authority.

A person who violates the provisions of the ordinance or resolution shall, upon conviction or a plea of guilty, be subject to a fine determined by dividing the difference between the actual weight and the maximum weight established by the ordinance or resolution by one hundred, and multiplying the quotient by two dollars. Local authorities may issue special permits during periods the restrictions are in effect to permit limited operation of vehicles upon specified routes with loads in excess of any restrictions imposed under this subsection, but not in excess of load restrictions imposed by any other provision of this chapter, and the authorities shall issue the permits upon a showing that there is a need to move to market farm produce of the type subject to rapid spoilage or loss of value or to move to any farm feeds or fuel for home heating purposes.

2. *a.* Upon a finding that a bridge or culvert does not meet established standards set forth by state and federal authorities, local authorities may by ordinance or resolution impose limitations for an indefinite period of time on the weight of vehicles upon bridges or culverts located on highways under their sole jurisdiction. The limitations shall be effective when signs giving notice of the limitations are erected. The ordinance or resolution shall not apply to implements of husbandry loaded on hauling units for transporting the implements to locations for purposes of repair or to fire apparatus or road maintenance equipment owned by, under lease to, or used in the performance of a contract with a state or local authority.

b. A person who violates the ordinance or resolution shall, upon conviction or a guilty plea, be subject to a fine determined by dividing the difference between the actual weight of the vehicle and the maximum weight allowed by the ordinance or resolution by one hundred and multiplying the quotient by two dollars. Local authorities may issue or approve special permits allowing the operation over a bridge or culvert of vehicles with weights in excess of restrictions imposed under the ordinance or resolution, but not in excess of load restrictions imposed by any other provision of this chapter. The local authority shall issue such a permit for not to exceed eight weeks upon a showing of agricultural hardship. The operator of a vehicle which is the subject of a permit issued under this paragraph shall carry the permit while operating the vehicle and shall show the permit to any peace officer upon request.

99 Acts, ch 108, §8; 99 Acts, ch 208, §52, 53
Section amended

321.474 Department may restrict.

The department shall have authority, as granted to local authorities, to determine by resolution and to impose restrictions as to the weight of vehicles, except implements of husbandry as defined in section 321.1, implements of husbandry loaded on hauling units for transporting the implements to locations for repair, and fire apparatus and road maintenance equipment owned by, under lease to, or used in the performance of a contract with a state or local authority, operated upon any highway under the jurisdiction of the department for a definite period of time not to exceed twelve months. The restrictions shall be effective when signs giving notice of the restrictions and the expiration date of the restrictions are erected upon the affected highway or portion of highway.

Upon a finding that a bridge or culvert does not meet established standards set forth by state and federal authorities, the department may impose, by resolution, restrictions for an indefinite period of time on the weight of vehicles operated upon bridges or culverts located on highways under its jurisdiction. The restrictions shall be effective when signs giving notice of the restrictions are erected. The restrictions shall not apply to implements of husbandry loaded on hauling units for transporting the implements to locations for purposes of repair or to fire apparatus or road maintenance equipment owned by, under lease to, or used in the performance of a contract with a state or local authority.

For the purposes of restrictions imposed under this section, a triple axle is any group of three or more consecutive axles where the centers of any consecutive axles are more than forty inches apart and where the centers of the extreme axles are more than eighty-four inches apart but not more than one hundred sixty-eight inches apart. Where triple axle restrictions are imposed, the signs

erected by the department shall give notice of the restrictions.

Any person who violates a restriction imposed by resolution pursuant to this section, upon conviction or a plea of guilty, is subject to a fine determined by dividing the difference between the actual weight of the vehicle and the maximum weight allowed by the restriction by one hundred and multiplying the quotient by two dollars. The department may issue special permits, during periods the restrictions are in effect, to permit limited operation of vehicles upon specified routes with loads in excess of any restrictions imposed under this section, but not in excess of load restrictions imposed by this chapter. The department shall issue a special permit for not to exceed eight weeks upon a showing of agricultural hardship. The department shall issue special permits to trucks moving farm produce, which decays or loses its value if not speedily put to its intended use, to market upon a showing to the department that there is a requirement for trucking the produce, or to trucks moving any farm feeds or fuel necessary for home heating purposes. The operator of a vehicle which is the subject of a permit issued under this paragraph shall carry the permit while operating the vehicle and shall show the permit to any peace officer upon request.

99 Acts, ch 108, §9, 10; 99 Acts, ch 208, §54, 55
 Unnumbered paragraph 1 amended and divided into unnumbered paragraphs 1 and 2
 Unnumbered paragraph 4 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 district court of record in which the conviction occurred or bail was forfeited shall prepare and immediately forward to the department an abstract of the record of the case. The abstract of the record of the case must be certified by the person preparing it to be true and correct. A certified abstract of the record of the case prepared for the department shall only be available to the public from the department. A noncertified record of conviction or forfeiture of bail shall be available to the public from the judicial branch.

The clerk of the district court shall collect a fee of fifty cents for each noncertified copy of any record of conviction or forfeiture of bail furnished to any requestor except the department or other local, state, or federal government entity. Moneys collected under this section shall be transferred to the department as a repayment receipt, as defined in section 8.2, to enhance the efficiency of the department to process records and information between the department and the Iowa court information system. Notwithstanding any other provision in this section or chapter 22, the judicial branch shall be the provider of public electronic access to the clerk's records of convictions and forfeitures of bail through the Iowa court information system and shall, if all such records are provided monthly to a vendor, collect a fee from such vendor for the period beginning on July 1, 1997, and ending on June 30, 1999, which is the greater of three thousand dollars per month or the actual direct cost of providing the records. On and after July 1, 1999, if all such records are provided monthly to a vendor, the judicial branch shall collect a fee from such vendor which is the greater of ten thousand dollars per month or the actual direct cost of providing the records.

The abstract must be made upon a form furnished by the department or by copying a uniform citation and complaint or by using an electronic process which accurately reproduces or forms a durable medium for accurately and legibly reproducing an unaltered image or reproduction of the citation, and must 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 driver's 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.

99 Acts, ch 96, §35; 99 Acts, ch 207, §13
 See Code editor's note to §10A.202
 Unnumbered paragraph 2 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 and fifty cents shall be paid for each abstract except for state, county, or city officials, court officials, 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 and fifty cents 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 a certified operating record in a manner which would result in a fee of less than that provided under subsection 1. Should the department make available certified copies of abstracts of operating records on magnetic tape or on disk or through electronic data transfer, the five dollar and fifty cent fee under subsection 1 applies to each abstract supplied, and an additional access fee may be charged for each abstract supplied through electronic data transfer.

99 Acts, ch 207, §14

Transfer of funds collected in fiscal year beginning July 1, 1999, from fees for certified abstracts of vehicle operating records to lowAccess revolving fund for developing, implementing, maintaining, and expanding electronic access to government records; 99 Acts, ch 207, §16

Subsections 1, 2, and 7 amended

321A.12 Courts to report nonpayment of judgments.

1. Whenever any person fails within sixty days to satisfy any judgment, it shall be the duty of the clerk of the district court, or of the judge of a court which has no clerk, in which any such judgment is rendered within this state, to forward to the department immediately after the expiration of the sixty days and upon written request of the judgment creditor, a certified copy of such judgment.

2. If the defendant named in any certified copy of a judgment reported to the department is a non-resident, the department shall transmit a certified copy of the judgment to the official in charge of the issuance of licenses and registration certificates of the state of which the defendant is a resident.

99 Acts, ch 144, §5

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 person 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 regis-

tration, 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 driver's license following a period of suspension or revocation pursuant to a dispositional order issued under section 232.52, subsection 2, paragraph "a", or under section 321.180B, section 321.210, subsection 1, paragraph "d", or section 321.210A, 321.213A, 321.213B, 321.216B, or 321.513, following a period of suspension under section 321.194, or following a period of revocation pursuant to a court order issued under section 901.5, subsection 10, or under section 321J.2A, 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.

7. This section does not apply to an individual whose administrative license suspension under section 321.210D has been rescinded and who is otherwise under no obligation to furnish proof of financial responsibility.

8. This section does not apply to an individual whose administrative license revocation has been rescinded under section 321J.13, and who is other-

wise under no obligation to furnish proof of financial responsibility.

99 Acts, ch 13, §19, 29

Applicability of minimum age requirements to permit and license issuance; 98 Acts, ch 1112, §14, 16

NEW subsection 8

321A.32 Other violations — penalties.

1. Any person whose license or registration or nonresident's operating privilege has been suspended, denied, or revoked under this chapter or continues to remain suspended or revoked under this chapter, and who, during such suspension, denial, or revocation, or during such continuing suspension or continuing revocation, drives any motor vehicle upon any highway or knowingly permits any motor vehicle owned by such person to be operated by another upon any highway, except as permitted under this chapter, shall be guilty of a simple misdemeanor. In addition to any other penalties, the punishment imposed for a violation of this subsection shall include assessment of a fine of not less than two hundred fifty dollars nor more than one thousand five hundred dollars.

2. Any person willfully failing to return license or registration as required in section 321A.31 shall be guilty of a simple misdemeanor.

3. A person who forges or, without authority, signs a notice provided for under section 321A.5 that a policy or bond is in effect, or any evidence of financial responsibility, or any evidence of financial liability coverage as defined in section 321.1, or who files or offers for filing any such notice or evidence knowing or having reason to believe that it is forged or signed without authority, is guilty of a serious misdemeanor.

4. Any person who shall violate any provision of this chapter for which no penalty is otherwise provided shall be guilty of a serious misdemeanor.

99 Acts, ch 153, §5

Subsection 1 amended

321A.32A Civil penalty — disposition — reinstatement.

When the department suspends, revokes, or bars a person's driver's license or nonresident operating privilege under this chapter, the department shall assess the person a civil penalty of two hundred dollars. However, for persons age nineteen or under, the civil penalty assessed shall be fifty dollars. The money collected by the department under this section shall be transmitted to the treasurer of state who shall deposit the money in the general fund of the state. A temporary restricted license shall not be issued or a driver's license or nonresident operating privilege reinstated until the civil penalty has been paid.

Exception to requirement for deposit in general fund during fiscal years beginning July 1, 1998, and July 1, 1999; moneys deposited with department of human services and allocated for juvenile detention homes; 98 Acts, ch 1218, §33; 99 Acts, ch 203, §35, 36, 53

Section not amended; footnote revised

CHAPTER 321E

VEHICLES OF EXCESSIVE SIZE AND WEIGHT

321E.8 Annual permits.

Subject to the discretion and judgment provided for in section 321E.1, annual permits shall be issued in accordance with the following provisions:

1. Vehicles with indivisible loads having an overall width not to exceed twelve feet five inches or mobile homes including appurtenances not to exceed twelve feet five inches and an overall length not to exceed seventy-five feet zero inches may be moved for unlimited distances. The vehicle and load shall not exceed the height of thirteen feet ten inches and the total gross weight as prescribed in section 321.463.

2. Vehicles with indivisible loads having an overall width not to exceed twelve feet five inches or mobile homes, including appurtenances, having an overall width not to exceed twelve feet five inches and an overall length not to exceed one hundred twenty feet zero inches may be moved on highways specified by the permitting authority for unlimited distances if the height of the vehicle and load does not exceed fifteen feet five inches and the total gross weight of the vehicle does not exceed one hundred thirty-six thousand pounds. The vehicle owner or operator shall verify with the permitting authority prior to movement of the load that highway conditions have not changed so as to prohibit movement of the vehicle. Any cost to repair damage to highways or highway structures shall be borne by the owner or operator of the vehicle causing the damage. Permitted vehicles under this subsection shall not be allowed to travel on any portion of the interstate highway system.

3. Vehicles with indivisible loads, including mobile homes and factory-built structures, having an overall width not to exceed sixteen feet zero inches and an overall length not to exceed one hundred twenty feet zero inches may be moved un-

der an annual or all-systems permit and must have a route specified by the issuing authority prior to the movement. However, vehicles with indivisible loads, including mobile homes and factory-built structures, with an overall width not exceeding fourteen feet six inches may exceed fifty miles under an annual and all-systems permit when prior approval for trip routing is obtained from the issuing authority. A vehicle and load being moved according to this paragraph shall not exceed fifteen feet five inches in height and shall not exceed the total gross weight as prescribed in section 321.463.

4. Vehicles with indivisible loads having an overall length not to exceed one hundred feet zero inches shall be restricted to trip distances not to exceed fifty highway and street miles in total aggregate. The vehicle and load shall not exceed the width as prescribed in section 321.454, the height as prescribed in section 321.456 and the total gross weight as prescribed in section 321.463.

99 Acts, ch 13, §20, 29
Subsections 2 and 3 amended

321E.12 Registration must be consistent.

A vehicle traveling under permit shall be properly registered for the gross weight of the vehicle and load. A person owning special mobile equipment may use a transport vehicle registered for the gross weight of the transport without a load. Vehicles, while being used for the transportation of buildings, except mobile homes and factory-built structures, may be registered for the combined gross weight of the vehicle and load on a single-trip basis. The fee is five cents per ton exceeding the weight registered under section 321.122 per mile of travel. Fees shall not be prorated for fractions of miles. This provision does not exempt these vehicles from any other provision of this chapter.

99 Acts, ch 13, §21, 29
Section amended

CHAPTER 321G

SNOWMOBILES AND ALL-TERRAIN VEHICLES

321G.1 Definitions.

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

1. “*All-terrain vehicle*” means a motorized flotation-tire vehicle with not less than three low pressure tires, but not more than six low pressure tires, or a two-wheeled off-road motorcycle, that is limited in engine displacement to less than eight hundred cubic centimeters and in total dry weight to less than seven hundred fifty pounds and that

has a seat or saddle designed to be straddled by the operator and handlebars for steering control.

Two-wheeled off-road motorcycles shall be considered all-terrain vehicles only for the purpose of titling and registration and not for purposes of regulation.

2. “*A scale*” means the physical scale marked “A” graduated in decibels on a sound level meter which meets the requirements of the American national standards institute, incorporated, publica-

tion S1.4-1961, general purpose sound level meters.

3. “*Commission*” means the natural resource commission of the department.

4. “*Dealer*” means a person engaged in the business of buying, selling, or exchanging all-terrain vehicles or snowmobiles required to be registered under this chapter and who has an established place of business for that purpose in this state.

5. “*Department*” means the department of natural resources.

6. “*Established place of business*” means the place actually occupied either continuously or at regular periods by a dealer or manufacturer where the books and records are kept and the dealer’s or manufacturer’s business is primarily transacted.

7. “*Manufacturer*” means a person engaged in the business of constructing or assembling all-terrain vehicles or snowmobiles required to be registered under this chapter and who has an established place of business for that purpose in this state.

8. “*Measurable snow*” means one-tenth of one inch of snow.

9. “*Nonambulatory person*” means an individual with paralysis of the lower half of the body with the involvement of both legs, usually caused by disease of or injury to the spinal cord, or caused by the loss of both legs or the loss of a part of both legs.

10. “*Operate*” means to ride in or on, other than as a passenger, use, or control the operation of an all-terrain vehicle or snowmobile in any manner, whether or not the all-terrain vehicle or snowmobile is moving.

11. “*Operator*” means a person who operates or is in actual physical control of an all-terrain vehicle or snowmobile.

12. “*Owner*” means a person, other than a lienholder, having the property right in or title to an all-terrain vehicle or snowmobile. The term includes a person entitled to the use or possession of an all-terrain vehicle or snowmobile subject to an interest in another person, reserved or created by agreement and securing payment or performance of an obligation, but the term excludes a lessee under a lease not intended as security.

13. “*Person*” means an individual, partnership, firm, corporation, association, and the state, its agencies, and political subdivisions.

14. “*Public land*” means land owned by the federal government, the state, or political subdivisions of the state and land acquired or developed for public recreation pursuant to section 321G.7.

15. “*Railroad right-of-way*” shall mean the full width of property owned, leased or subject to easement for railroad purposes and shall not be limited to those areas on which tracks are located.

16. “*Roadway*” means that portion of a highway improved, designed, or ordinarily used for vehicular travel.

17. “*Safety certificate*” means an all-terrain vehicle or snowmobile safety certificate issued by the commission to a qualified applicant who is twelve years of age or more.

18. “*Snowmobile*” means a motorized vehicle weighing less than one thousand pounds which uses sled-type runners or skis, endless belt-type tread, or any combination of runners, skis, or tread, and is designed for travel on snow or ice.

19. “*Special event*” means an organized race, exhibition, or demonstration of limited duration which is conducted according to a prearranged schedule and in which general public interest is manifested.

20. “*Street*” or “*highway*” means the entire width between property lines of every way or place of whatever nature when any part thereof is open to the use of the public, as a matter of right, for purposes of vehicular travel, except in public areas in which the boundary shall be thirty-three feet each side of the center line of the roadway.

99 Acts, ch 113, §1
Subsection 1, NEW unnumbered paragraph 2

321G.4 Registration with county recorder — fee.

The owner of each all-terrain vehicle or snowmobile required to be numbered shall register it every two years with the county recorder of the county in which the owner resides or, if the owner is a nonresident, the owner shall register it in the county in which the all-terrain vehicle or snowmobile is principally used. The commission has supervisory responsibility over the registration of all-terrain vehicles and snowmobiles and shall provide each county recorder with registration forms and certificates and shall allocate identification numbers to each county.

The owner of the all-terrain vehicle or snowmobile shall file an application for registration with the appropriate county recorder on forms provided by the commission. The application shall be completed and signed by the owner of the all-terrain vehicle or snowmobile and shall be accompanied by a fee of twenty-five dollars and a writing fee. An all-terrain vehicle or a snowmobile shall not be registered by the county recorder until the county recorder is presented with receipts, bills of sale, or other satisfactory evidence that the sales or use tax has been paid for the purchase of the all-terrain vehicle or snowmobile or that the owner is exempt from paying the tax. However, an owner of an all-terrain vehicle, except an all-terrain vehicle purchased new on or after January 1, 1990, may apply for registration without proof of sales or use tax paid until one year after January 1, 1990. An all-terrain vehicle or snowmobile that has an expired registration certificate from another state may be registered in this state upon proper application, payment of all applicable registration and writing fees, and payment of a penalty of five dollars.

Upon receipt of the application in approved form accompanied by the required fees, the county recorder shall enter it upon the records and shall issue to the applicant a pocket-size registration certificate. The certificate shall be executed in triplicate, one copy to be delivered to the owner, one copy to the commission, and one copy to be retained on file by the county recorder. The registration certificate shall bear the number awarded to the all-terrain vehicle or snowmobile and the name and address of the owner. The registration certificate shall be carried either in the all-terrain vehicle or snowmobile or on the person of the operator of the machine when in use. The operator of an all-terrain vehicle or snowmobile shall exhibit the registration certificate to a peace officer upon request, to a person injured in an accident involving an all-terrain vehicle or snowmobile, or to the owner or operator of another all-terrain vehicle or snowmobile or the owner of personal or real property when the all-terrain vehicle or snowmobile is involved in a collision or accident of any nature with another all-terrain vehicle or snowmobile or the property of another person or to the property owner or tenant when the all-terrain vehicle or snowmobile is being operated on private property without permission from the property owner or tenant.

If an all-terrain vehicle or snowmobile is placed in storage, the owner shall return the current registration certificate to the county recorder with an affidavit stating that the all-terrain vehicle or snowmobile is placed in storage and the effective date of storage. The county recorder shall notify the commission of each all-terrain vehicle or snowmobile placed in storage. When the owner of a stored all-terrain vehicle or snowmobile desires to renew the registration, the owner shall make application to the county recorder and pay the registration and writing fees without penalty. A refund of the registration fee shall not be allowed for a stored all-terrain vehicle or snowmobile.

99 Acts, ch 113, §2; 99 Acts, ch 114, §21
See Code editor's note to §10A.202
Unnumbered paragraph 2 amended

321G.6 Registration — renewal — transfer.

Every all-terrain vehicle or snowmobile registration certificate and number issued expires at midnight December 31, and renewals expire every two years thereafter unless sooner terminated or discontinued in accordance with this chapter. After the first day of September each even-numbered year, an unregistered all-terrain vehicle or snowmobile and renewals may be registered for the subsequent biennium beginning January 1. An all-terrain vehicle or snowmobile registered between January 1 and September 1 of even-numbered years shall be registered for a fee of twelve dollars and fifty cents for the remainder of the registration period.

After the first day of September in even-numbered years an unregistered all-terrain vehicle or snowmobile may be registered for the remainder of the current registration period and for the subsequent registration period in one transaction. The fee shall be five dollars for the remainder of the current period, in addition to the registration fee of twenty-five dollars for an all-terrain vehicle and twenty-five dollars for a snowmobile for the subsequent biennium beginning January 1, and a writing fee. Registration certificates and numbers may be renewed upon application of the owner in the same manner as provided in securing the original registration. The all-terrain vehicle or snowmobile registration fee is in lieu of personal property tax for each year of the registration.

An expired all-terrain vehicle or snowmobile registration may be renewed for the same fee as if the owner is securing the original registration plus a penalty of five dollars and a writing fee.

All all-terrain vehicles used on public land must be registered within six months following January 1, 1990, unless otherwise exempt.

When a person, after registering an all-terrain vehicle or snowmobile, moves from the address shown on the registration certificate, the person shall, within ten days, notify the county recorder in writing of the move and the person's new address.

Upon the transfer of ownership of an all-terrain vehicle or snowmobile, the owner shall complete the form on the back of a current registration certificate and shall deliver it to the purchaser or transferee at the time of delivering the all-terrain vehicle or snowmobile. If an all-terrain vehicle or snowmobile is stored by the transferor pursuant to section 321G.4 at the time of transfer, the transferor shall provide the transferee with a copy of the affidavit filed with the county recorder pursuant to section 321G.4 at the time of delivering the all-terrain vehicle or snowmobile. The purchaser or transferee shall, within five days of transfer, file a new application form with the county recorder with a fee of one dollar and the writing fee, and a transfer of number shall be awarded in the same manner as provided in an original registration. If the purchaser or transferee does not file a new application form within five days of transfer, the transfer of number shall be awarded upon payment of all applicable fees plus a penalty of five dollars.

All registrations must be valid for the current registration period prior to the transfer of any registration, including assignment to a dealer.

Duplicate registrations may be issued upon application therefor and the payment of the same fees collected for the transfer of registrations.

A motorcycle, as defined in section 321.1, subsection 40, paragraph "a", may be registered as an all-terrain vehicle as provided in this section. A motorcycle registered as an all-terrain vehicle may participate in all programs established for all-ter-

rain vehicles under this chapter except for the safety instruction and certification program.

99 Acts, ch 113, §3
Unnumbered paragraph 6 amended

321G.13 Unlawful operation.

A person shall not drive or operate an all-terrain vehicle or snowmobile:

1. At a rate of speed greater than reasonable or proper under all existing circumstances.

2. In a careless, reckless, or negligent manner so as to endanger the person or property of another or to cause injury or damage thereto.

3. While under the influence of intoxicating liquor or narcotics or habit-forming drugs.

4. Without a lighted headlight and taillight from sunset to sunrise and at such other times when conditions provide insufficient lighting to render clearly discernible persons and vehicles at a distance of five hundred feet ahead.

5. In any tree nursery or planting in a manner which damages or destroys growing stock.

6. On any public land, ice, or snow, in violation of official signs of the commission prohibiting such operation in the interest of safety for persons, property, or the environment. Any officer appointed by the commission may post an official sign in an emergency for the protection of persons, property, or the environment.

7. In or on any park or fish and game areas except on designated all-terrain vehicle or snowmobile trails.

8. Upon an operating railroad right-of-way. An all-terrain vehicle or snowmobile may be driven directly across a railroad right-of-way only at an established crossing and, notwithstanding any other provisions of law, may, if necessary, use the improved portion of the established crossing after yielding to all oncoming traffic. This subsection does not apply to a law enforcement officer or railroad employee in the lawful discharge of the officer's or employee's duties or to an employee of a utility with authority to enter upon the railroad right-of-way in the lawful performance of the employee's duties.

9. On any public road or street without a bright colored pennant or flag displayed at least sixty inches above the ground. Said pennant or flag shall be a minimum of six inches by nine inches, shall be orange and shall provide a fluorescent effect.

10. On public land without a measurable snow cover except as provided in section 321.234A or in specific areas permitted by the commission, such as "all-terrain vehicle parks" which are designated and intended for use with or without snow.

11. A person shall not operate or ride in an all-terrain vehicle or snowmobile with a firearm in the person's possession unless it is unloaded and enclosed in a carrying case. However, a nonambulatory person may carry an uncased and unloaded firearm while operating or riding an all-terrain vehicle or a snowmobile.

12. A person shall not operate an all-terrain vehicle while carrying a passenger.

99 Acts, ch 97, §1
Subsection 8 amended

321G.29 Owner's certificate of title — in general.

1. The owner of a snowmobile acquired on or after January 1, 1998, or an all-terrain vehicle acquired on or after January 1, 2000, other than a snowmobile or all-terrain vehicle used exclusively as a farm implement, shall apply to the county recorder of the county in which the owner resides for a certificate of title for the snowmobile or all-terrain vehicle. The owner of a snowmobile or all-terrain vehicle used exclusively as a farm implement may obtain a certificate of title.

2. A certificate of title shall contain the information and shall be issued on a form the department prescribes.

3. An owner of a snowmobile or all-terrain vehicle shall apply to the county recorder for issuance of a certificate of title within thirty days after acquisition. The application shall be on forms the department prescribes and accompanied by the required fee. The application shall be signed and sworn to before a notary public or other person who administers oaths, or shall include a certification signed in writing containing substantially the representation that statements made are true and correct to the best of the applicant's knowledge, information, and belief, under penalty of perjury. The application shall contain the date of sale and gross price of the snowmobile or all-terrain vehicle or the fair market value if no sale immediately preceded the transfer and any additional information the department requires. If the application is made for a snowmobile or all-terrain vehicle last previously registered or titled in another state or foreign country, the application shall contain this information and any other information the department requires.

4. If a dealer buys or acquires a snowmobile or all-terrain vehicle for resale, the dealer shall report the acquisition to the county recorder on forms provided by the department and may apply for and obtain a certificate of title as provided in this chapter. If a dealer buys or acquires a used snowmobile or all-terrain vehicle, the dealer may apply for a certificate of title in the dealer's name within fifteen days. If a dealer buys or acquires a new snowmobile or all-terrain vehicle for resale, the dealer may apply for a certificate of title in the dealer's name.

5. A manufacturer or dealer shall not transfer ownership of a new snowmobile or new all-terrain vehicle without supplying the transferee with the manufacturer's or importer's certificate of origin signed by the manufacturer's or importer's authorized agent. The certificate shall contain information the department requires. The department may adopt rules providing for the issuance of a certificate of origin for a snowmobile or all-terrain vehicle

by the department upon good cause shown by the owner.

6. A dealer transferring ownership of a snowmobile or all-terrain vehicle under this chapter shall assign the title to the new owner, or in the case of a new snowmobile or new all-terrain vehicle, assign the certificate of origin. Within fifteen days the dealer shall forward all moneys and applications to the county recorder.

7. The county recorder shall maintain a record of any certificate of title which the county recorder issues and shall keep each certificate of title on record until the certificate of title has been inactive for five years. When issuing a title for a new snowmobile or new all-terrain vehicle, the county recorder shall obtain and keep on file the certificate of origin.

8. Once titled, a person shall not sell or transfer ownership of a snowmobile or all-terrain vehicle without delivering to the purchaser or transferee a certificate of title with an assignment on it showing title in the purchaser or transferee. A person shall not purchase or otherwise acquire a snowmobile or all-terrain vehicle without obtaining a certificate of title for it in that person's name.

9. The county recorder shall transmit a copy of the certificate of title to the department, which shall be the central repository of title information for snowmobiles and all-terrain vehicles.

99 Acts, ch 113, §4
Subsections 1 and 3-9 amended

321G.31 Transfer or repossession of snowmobile or all-terrain vehicle by operation of law.

1. If ownership of a snowmobile or all-terrain vehicle is transferred by operation of law, such as by inheritance, order in bankruptcy, insolvency, replevin, or execution sale, the transferee, within thirty days after acquiring the right to possession

of the snowmobile or all-terrain vehicle, shall mail or deliver to the county recorder satisfactory proof of ownership as the county recorder requires, together with an application for a new certificate of title, and the required fee.

2. If a lienholder repossesses a snowmobile or all-terrain vehicle by operation of law and holds it for resale, the lienholder shall secure a new certificate of title and shall pay the required fee.

99 Acts, ch 113, §5
Section amended

321G.32 Security interest — perfection and titles — fee.

1. A security interest created in this state in a snowmobile or all-terrain vehicle is not perfected until the security interest is noted on the certificate of title.

a. To perfect the security interest, an application for security interest must be presented along with the original title. The county recorder shall note the security interest on the face of the title and on the copy in the recorder's office.

b. The application fee for a security interest is ten dollars. Five dollars of the fee shall be credited to the special conservation fund created under section 321G.7. The remaining five dollars shall be retained by the county and deposited into the general fund of the county.

2. The certificate of title shall be presented to the county recorder when the application for security interest or for assignment of the security interest is presented and a new or endorsed certificate of title shall be issued to the secured party with the name and address of the secured party upon it.

3. The secured party shall present the certificate of title to the county recorder when a release statement is filed and a new or endorsed certificate shall be issued to the owner.

99 Acts, ch 113, §6
Subsection 1, unnumbered paragraph 1 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 any of the following conditions:

a. While under the influence of an alcoholic beverage or other drug or a combination of such substances.

b. While having an alcohol concentration of .10 or more.

c. While any amount of a controlled substance is present in the person, as measured in the person's blood or urine.

2. A person who violates subsection 1 commits:
a. A serious misdemeanor for the first offense, punishable by all of the following:

(1) Imprisonment 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. However, the court, in ordering service of the sentence and in its discretion, may accommodate the defendant's work schedule.

(2) Assessment of a fine of one thousand dollars. However, in the discretion of the court, if no personal or property injury has resulted from the defendant's actions, up to five hundred dollars of

the fine may be waived. As an alternative to a portion or all of the fine, the court may order the person to perform unpaid community service.

(3) Revocation of the person's driver's license pursuant to section 321J.4, subsection 1, section 321J.9, or section 321J.12, which includes a minimum revocation period of one hundred eighty days, including a minimum period of ineligibility for a temporary restricted license of thirty days, and may involve a revocation period of one year.

(4) Assignment to substance abuse evaluation and treatment, a course for drinking drivers, and, if available and appropriate, a reality education substance abuse prevention program pursuant to subsection 3.

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, and assessed a fine of not less than one thousand five hundred dollars nor more than five thousand 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 two thousand five hundred dollars nor more than seven thousand five hundred dollars. A person convicted of a third or subsequent offense may be committed to the custody of the director of the department of corrections, who 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.

3. *a.* Notwithstanding the provisions of sections 901.5 and 907.3, the court shall not defer judgment or sentencing, or suspend execution of any mandatory minimum sentence of incarceration applicable to the defendant under subsection 2, and shall not suspend execution of any other part of a sentence not involving incarceration imposed pursuant to subsection 2, if any of the following apply:

(1) If the defendant's alcohol concentration established by the results of an analysis of a specimen of the defendant's blood, breath, or urine withdrawn in accordance with this chapter exceeds .15, regardless of whether or not the alcohol concentration indicated by the chemical test minus the established margin of error inherent in the device or method used to conduct the test equals an alcohol concentration of .15 or more.

(2) If the defendant has previously been convicted of a violation of subsection 1 or a statute in another state substantially corresponding to subsection 1.

(3) If the defendant has previously received a deferred judgment or sentence for a violation of subsection 1 or for a violation of a statute in another

state substantially corresponding to subsection 1.

(4) If the defendant refused to consent to testing requested in accordance with section 321J.6.

(5) If the offense under chapter 321J results in bodily injury to a person other than the defendant.

b. All persons convicted of an offense under subsection 2 shall be ordered, at the person's expense, to undergo, prior to sentencing, a substance abuse evaluation.

c. Where the program is available and is appropriate for the convicted person, a person convicted of an offense under subsection 2 shall be ordered to participate in a reality education substance abuse prevention program as provided in section 321J.24.

d. 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 subsection 2 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 the minimum term in segments of at least forty-eight hours and to perform a specified number of hours of unpaid community service as deemed appropriate by the sentencing court.

4. In determining if a violation charged is a second or subsequent offense for purposes of criminal sentencing or license revocation under this chapter:

a. Any conviction or revocation deleted from motor vehicle operating records pursuant to section 321.12 shall not be considered as a previous offense.

b. Deferred judgments entered pursuant to section 907.3 for violations of this section shall be counted as previous offenses.

c. 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.

5. A person shall not be convicted and sentenced for more than one violation of this section for actions arising out of the same event or occurrence, even if the event or occurrence involves more than one of the conditions specified in subsection 1.

6. The clerk of the district court shall immediately certify to the department a true copy of each order entered with respect to deferral of judgment, deferral of sentence, or pronouncement of judgment and sentence for a defendant under this section.

7. *a.* 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 or if the substance was dispensed by a pharmacist without a prescription pursuant to the rules of the board of pharmacy examiners, if there is no evidence of the consumption of alcohol and the medical practitioner or pharmacist had not directed the person to refrain from operating a motor vehicle.

b. When charged with a violation of subsection 1, paragraph "c", a person may assert, as an affirmative defense, that the controlled substance present in the person's blood or urine was prescribed or dispensed for the person and was taken in accordance with the directions of a practitioner and the labeling directions of the pharmacy, as that person and place of business are defined in section 155A.3.

8. In any prosecution under this section, evidence of the results of analysis of a specimen of the defendant's blood, breath, or urine is admissible upon proof of a proper foundation.

a. 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.

b. The presence of a controlled substance or other drug established by the results of analysis of a specimen of the defendant's blood or urine withdrawn within two hours after the defendant was driving or in physical control of a motor vehicle is presumed to show the presence of such controlled substance or other drug in the defendant at the time of driving or being in physical control of the motor vehicle.

c. The department of public safety shall adopt nationally accepted standards for determining detectable levels of controlled substances in the division of criminal investigation's initial laboratory screening test for controlled substances.

9. *a.* In addition to any fine or penalty imposed under this chapter, the court shall order a defendant convicted of or receiving a deferred judgment for a violation of this section to make restitution for damages resulting directly from the violation, to the victim, pursuant to chapter 910. An amount paid pursuant to this restitution order shall be credited toward any adverse judgment in a subsequent civil proceeding arising from the same occurrence. However, other than establishing a credit, a

restitution proceeding pursuant to this section shall not be given evidentiary or preclusive effect in a subsequent civil proceeding arising from the same occurrence.

b. The court may order restitution paid to any public agency for the costs of the emergency response resulting from the actions constituting a violation of this section, not exceeding five hundred dollars per public agency for each such response. For the purposes of this paragraph, "emergency response" means any incident requiring response by fire fighting, law enforcement, ambulance, medical, or other emergency services. A public agency seeking such restitution shall consult with the county attorney regarding the expenses incurred by the public agency, and the county attorney may include the expenses in the statement of pecuniary damages pursuant to section 910.3.

10. In any prosecution under this section, the results of a chemical test may not be used to prove a violation of subsection 1 if the alcohol, controlled substance, or other drug 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 or exceed the level prohibited by subsection 1.

99 Acts, ch 96, 36

For provisions relating to third offense OWI driver's license revocations and restoration of driving privileges, see 99 Acts, ch 153, §25
Subsection 7, paragraph a amended

321J.4 Revocation of license — ignition interlock devices — conditional temporary restricted license.

1. If a defendant is convicted of a violation of section 321J.2 and the defendant's driver's license or nonresident operating privilege has not been revoked under section 321J.9 or 321J.12 for the occurrence from which the arrest arose, the department shall revoke the defendant's driver's license or nonresident operating privilege for one hundred eighty days if the defendant has had no previous conviction or revocation under this chapter. The defendant shall not be eligible for any temporary restricted license for at least thirty days after the effective date of the revocation if a test was obtained, and for at least ninety days if a test was refused. If the defendant is under the age of twenty-one, the defendant shall not be eligible for a temporary restricted license for at least sixty days after the effective date of revocation.

2. If a defendant is convicted of a violation of section 321J.2, and the defendant's driver's license or nonresident operating privilege has not already been revoked under section 321J.9 or 321J.12 for the occurrence from which the arrest arose, the department shall revoke the defendant's driver's license or nonresident operating privilege for two years if the defendant has had a previous conviction or revocation under this chapter. The defendant shall not be eligible for any temporary restricted license for one year after the effective date

of revocation. The defendant shall be ordered to install an ignition interlock device of a type approved by the commissioner of public safety on all vehicles owned by the defendant if the defendant seeks a temporary restricted license at the end of the minimum period of ineligibility. A temporary restricted license shall not be granted by the department until the defendant installs the ignition interlock device.

3. If the court defers judgment pursuant to section 907.3 for a violation of section 321J.2, and if the defendant's driver's license or nonresident operating privilege has not been revoked under section 321J.9 or 321J.12, or has not otherwise been revoked for the occurrence from which the arrest arose, the department shall revoke the defendant's driver's license or nonresident operating privilege for a period of not less than thirty days nor more than ninety days. The defendant shall not be eligible for any temporary restricted license for at least thirty days after the effective date of the revocation if a test was obtained and for at least ninety days if a test was refused. If the defendant is under the age of twenty-one, the defendant shall not be eligible for a temporary restricted license for at least sixty days after the effective date of the revocation.

4. Upon a plea or verdict of guilty of a third or subsequent violation of section 321J.2, the court shall order the department to revoke the defendant's driver's license or nonresident operating privilege for a period of six years. The defendant shall not be eligible for a temporary restricted license for at least one year after the effective date of the revocation. The court shall require the defendant to surrender to it all Iowa licenses or permits held by the defendant, which the court shall forward to the department with a copy of the order for revocation. The defendant shall be ordered to install an ignition interlock device of a type approved by the commissioner of public safety on all vehicles owned by the defendant if the defendant seeks a temporary restricted license at the end of the minimum period of ineligibility. A temporary restricted license shall not be granted by the department until the defendant installs the ignition interlock device.

5. Upon a plea or verdict of guilty of a violation of section 321J.2 which involved a personal injury, the court shall determine in open court, from consideration of the information in the file and any other evidence the parties may submit, whether a serious injury was sustained by any person other than the defendant and, if so, whether the defendant's conduct in violation of section 321J.2 caused the serious injury. If the court so determines, the court shall order the department to revoke the defendant's driver's license or nonresident operating privilege for a period of one year in addition to any other period of suspension or revocation. The defendant shall not be eligible for any temporary restricted license until the minimum period of ineli-

gibility has expired under this section or section 321J.9, 321J.12, or 321J.20. The defendant shall surrender to the court any Iowa license or permit and the court shall forward it to the department with a copy of the order for revocation.

6. Upon a plea or verdict of guilty of a violation of section 321J.2 which involved a death, the court shall determine in open court, from consideration of the information in the file and any other evidence the parties may submit, whether a death occurred and, if so, whether the defendant's conduct in violation of section 321J.2 caused the death. If the court so determines, the court shall order the department to revoke the defendant's driver's license or nonresident operating privilege for a period of six years. The defendant shall not be eligible for any temporary restricted license for at least two years after the revocation. The defendant shall surrender to the court any Iowa license or permit and the court shall forward it to the department with a copy of the order for revocation.

7. If a license or permit to operate a motor vehicle is revoked or denied under this section or section 321J.9 or 321J.12, the period of revocation or denial shall be the period provided for such a revocation or until the defendant reaches the age of eighteen whichever period is longer.

8. *a.* On a conviction for or as a condition of a deferred judgment for a violation of section 321J.2, the court may order the defendant to install ignition interlock devices of a type approved by the commissioner of public safety on all motor vehicles owned or operated by the defendant which, without tampering or the intervention of another person, would prevent the defendant from operating the motor vehicle with an alcohol concentration greater than a level set by rule of the commissioner of public safety.

b. The commissioner of public safety shall adopt rules to approve certain ignition interlock devices and the means of installation of the devices, and shall establish the level of alcohol concentration beyond which an ignition interlock device will not allow operation of the motor vehicle in which it is installed.

c. The order to install ignition interlock devices shall remain in effect for a period of time as determined by the court which shall not exceed the maximum term of imprisonment which the court could have imposed according to the nature of the violation. While the order is in effect, the defendant shall not operate a motor vehicle which does not have an approved ignition interlock device installed.

d. If the defendant's driver's license or nonresident operating privilege has been revoked, the department shall not issue a temporary permit or a driver's license to the person without certification that approved ignition interlock devices have been installed in all motor vehicles owned or operated by the defendant while the order is in effect.

e. A defendant who fails within a reasonable time to comply with an order to install an approved ignition interlock device may be declared in contempt of court and punished accordingly.

f. A person who tampers with or circumvents an ignition interlock device installed under a court order while an order is in effect commits a serious misdemeanor.

9. A person whose driver's license has either been revoked under this chapter, or revoked or suspended under chapter 321 solely for violations of this chapter, or who has been determined to be a habitual offender under chapter 321 based solely on violations of this chapter, and who is not eligible for a temporary restricted license under this chapter may petition the court upon the expiration of the minimum period of ineligibility for a temporary restricted license provided for under this section or section 321J.9, 321J.12, or 321J.20 for an order to the department to require the department to issue a temporary restricted license to the person notwithstanding section 321.560. The petition shall include a current certified copy of the petitioner's official driving record issued by the department. Upon the filing of a petition for a temporary restricted license under this section, the clerk of the district court in the county where the violation that resulted in the revocation occurred shall send notice of the petition to the department and the prosecuting attorney. The department and the prosecuting attorney shall each be given an opportunity to respond to and request a hearing on the petition. The court shall determine if the temporary restricted license is necessary for the person to maintain the person's present employment. However, a temporary restricted license shall not be ordered or issued for a violation of section 321J.2A or to a person under the age of twenty-one whose license is revoked under this section or section 321J.9 or 321J.12. If the court determines that the temporary restricted license is necessary for the person to maintain the person's present employment, and that the minimum period of ineligibility for receipt of a temporary license has expired, the court shall order the department to issue to the person a temporary restricted license conditioned upon the person's certification to the court of the installation of approved ignition interlock devices in all motor vehicles that it is necessary for the person to operate to maintain the person's present employment. Section 321.561 does not apply to a person operating a motor vehicle in the manner permitted under this subsection. If the person operates a motor vehicle which does not have an approved ignition interlock device or if the person tampers with or circumvents an ignition interlock device, in addition to other penalties provided, the person's temporary restricted license shall be revoked. A person holding a temporary restricted license issued under this subsection shall not operate a commercial motor vehicle, as defined in section 321.1, on a highway if

a commercial driver's license is required for the person to operate the commercial motor vehicle.

Notwithstanding any provision of this chapter to the contrary, the court may order the department to issue a temporary restricted license to a person otherwise eligible for a temporary restricted license under this subsection, whose period of revocation under this chapter has expired, but who has not met all requirements for reinstatement of the person's driver's license or nonresident operating privileges.

For provisions relating to third offense OWI driver's license revocations and restoration of driving privileges, see 99 Acts, ch 153, §25
Section not amended; footnote added

321J.13 Hearing on revocation — appeal.

1. Notice of revocation of a person's driver's license or operating privilege served pursuant to section 321J.9 or 321J.12 shall include a form accompanied by a preaddressed envelope on which the person served may indicate by a checkmark if the person only wishes to request a temporary restricted license after the mandatory ineligibility period for issuance of a temporary restricted license has ended, or if the person wishes a hearing to contest the revocation. The form shall clearly state on its face that the form must be completed and returned within ten days of receipt or the person's right to a hearing to contest the revocation is foreclosed. The form shall also be accompanied by a statement of the operation of and the person's rights under this chapter.

2. The department shall grant the person an opportunity to be heard within forty-five days of receipt of a request for a hearing if the request is made not later than ten days after receipt of notice of revocation served pursuant to section 321J.9 or 321J.12. The hearing shall be before the department in the county where the alleged events occurred, unless the director and the person agree that the hearing may be held in some other county, or the hearing may be held by telephone conference at the discretion of the agency conducting the hearing. The hearing may be recorded and its scope shall be limited to the issues of whether a peace officer had reasonable grounds to believe that the person was operating a motor vehicle in violation of section 321J.2 or 321J.2A and one or more of the following:

a. Whether the person refused to submit to the test or tests.

b. Whether a test was administered and the test results indicated an alcohol concentration equal to or in excess of the level prohibited under section 321J.2 or 321J.2A.

c. Whether a test was administered and the test results indicated the presence of alcohol, a controlled substance or other drug, or a combination of alcohol and another drug, in violation of section 321J.2.

3. After the hearing the department shall order that the revocation be either rescinded or sus-

tained. Upon receipt of the decision of the department to sustain a revocation, the person contesting the revocation has ten days to file a request for review of the decision by the director. The director or the director's designee shall review the decision within thirty days and shall either rescind or sustain the revocation or order a new hearing. If the director orders a new hearing, the department shall grant the person a new hearing within twenty days of the director's order.

4. The department shall stay the revocation of a person's driver's license or operating privilege for the period that the person is contesting the revocation under this section or section 321J.14 if it is shown to the satisfaction of the department that the new evidence is material and that there were valid reasons for failure to present it in the contested case proceeding before the department. However, a stay shall not be granted for violations of section 321J.2A.

5. If the department fails to comply with the time limitations of this section regarding granting a hearing, review by the director or the director's designee, or granting a new hearing, and if the request for a hearing or review by the director was properly made under this section, the revocation of the driver's license or operating privilege of the person who made the request for a hearing or review shall be rescinded. This subsection shall not apply in those cases in which a continuance to the hearing has been granted at the request of either the person who requested the hearing or the peace officer who requested or administered the chemical test.

6. *a.* The department shall grant a request for a hearing to rescind the revocation if the person whose motor vehicle license or operating privilege has been or is being revoked under section 321J.9 or 321J.12 submits a petition containing informa-

tion relating to the discovery of new evidence that provides grounds for rescission of the revocation.

b. The person shall prevail at the hearing if, in the criminal action on the charge of violation of section 321J.2 or 321J.2A resulting from the same circumstances that resulted in the administrative revocation being challenged, the court held one of the following:

(1) That the peace officer did not have reasonable grounds to believe that a violation of section 321J.2 or 321J.2A had occurred to support a request for or to administer a chemical test.

(2) That the chemical test was otherwise inadmissible or invalid.

c. Such a holding by the court in the criminal action is binding on the department, and the department shall rescind the revocation.

99 Acts, ch 13, §22, 29
NEW subsection 6

321J.21 Driving while license suspended, denied, revoked, or barred.

1. A person whose driver's license or nonresident operating privilege has been suspended, denied, revoked, or barred due to a violation of this chapter and who drives a motor vehicle while the license or privilege is suspended, denied, revoked, or barred commits a serious misdemeanor. In addition to any other penalties, the punishment imposed for a violation of this subsection shall include assessment of a fine of one thousand dollars.

2. In addition to the fine, the department, upon receiving the record of the conviction of a person under this section upon a charge of driving a motor vehicle while the license of the person was suspended, denied, revoked, or barred shall extend the period of suspension, denial, revocation, or bar for an additional like period, and the department shall not issue a new license during the additional period.

99 Acts, ch 153, §6
Subsection 1 amended

CHAPTER 321M

COUNTY ISSUANCE OF DRIVER'S LICENSES

321M.6 Certification of commercial driver's license issuance.

1. A county shall be authorized to issue commercial driver's licenses if certified to do so by the department.

2. The department shall certify the commercial driver's license issuance in a county authorized to issue licenses pursuant to section 321M.3 if all of the following conditions are met:

a. The driving skills test is the same as that which would otherwise be administered by the state.

b. The county examiner contractually agrees to comply with the requirements of 49 C.F.R. § 383.75, as adopted by rule by the department.

c. The department provides supervision over the issuance of commercial driver's licenses, including the administration of written and driving skills tests by the county treasurer. However, the failure of the department to provide appropriate supervision shall not alone be used as a reason to deny certification.

d. The county otherwise complies with the procedures for issuance of commercial driver's licenses as provided in chapter 321.

3. If a county fails to meet the standards for certification under this section, and fails to correct deficiencies according to the department's operating standards, the county's right to issue commercial driver's licenses shall be terminated, and the county shall cease issuing commercial driver's licenses. Procedures and conditions for recertification shall be addressed in the operating standards for the department.

4. The issuance of commercial driver's licenses for residents of a county whose issuance rights

have been terminated under subsection 3 may be provided by other counties in the relevant cluster, according to the provisions of section 321M.5. The department is not obligated to provide service in a county for issuance of commercial driver's licenses if the county fails to meet certification standards under this section. However, the department shall facilitate appropriate arrangements for availability of such services as it deems necessary.

99 Acts, ch 96, §37
Subsection 2, paragraph b amended

CHAPTER 322

MOTOR VEHICLE MANUFACTURERS, DISTRIBUTORS AND DEALERS

322.3 Prohibited acts.

1. A person shall not engage in this state in the business of selling at retail new motor vehicles of any make or represent or advertise that the person is engaged or intends to engage in such business in this state unless the person is authorized to do so by a contract in writing with the manufacturer or distributor of such make of new motor vehicles and unless the department has licensed the person as a motor vehicle dealer in this state in motor vehicles of such make and has issued to the person a license in writing as provided in this chapter.

2. A person other than a licensed dealer in new motor vehicles shall not engage in this state in the business of selling at retail used motor vehicles or represent or advertise that the person is engaged or intends to engage in such business in this state unless and until the department has licensed the person as a used motor vehicle dealer in the state and has issued to the person a license in writing as provided in this chapter.

3. Subsections 1 and 2 shall not be construed to require the separate licensing of persons employed as salespersons of motor vehicles by a retail motor vehicle dealer. However, the department may promulgate reasonable rules as necessary for the proper identification of persons employed as salespersons.

4. A person who is engaged in the business of selling at retail motor vehicles shall not enter into any contract, agreement, or understanding, express or implied, with any manufacturer or distributor of any such motor vehicles that the person will sell, assign, or transfer any retail installment contracts arising from the retail installment sale of such motor vehicles only to a designated person or class of persons. A condition, agreement, or understanding between any manufacturer or distributor and a motor vehicle dealer in this state of this nature is hereby declared to be against the public policy of this state and to be unlawful and void.

5. A manufacturer or distributor of motor vehicles or any agent or representative of a manufacturer or distributor shall not terminate, threaten to

terminate, or fail to renew any contract, agreement, or understanding for the sale of new motor vehicles to any motor vehicle dealer in this state without just, reasonable, and lawful cause or because the motor vehicle dealer failed to sell, assign, or transfer any retail installment contract arising from the retail sale of such motor vehicles or any one or more of them to a person or a class of persons designated by the manufacturer or distributor.

6. A person who is engaged in the business of selling at retail motor vehicles shall not make and enter into a retail installment contract unless the contract meets the following requirements:

a. Every retail installment contract shall be in writing, shall be signed by both the buyer and the seller, and shall be completed as to all essential provisions prior to the signing of the contract by the buyer except that, if delivery of the motor vehicle is not made at the time of the execution of the contract, the identifying numbers or marks of the motor vehicle or similar information and the due date of the first installment may be inserted in the contract after its execution.

b. The contract shall comply with the Iowa consumer credit code, where applicable.

7. This section shall not be construed to require that a place of business as defined in this chapter shall be maintained by a person selling motor vehicles at retail solely for the purpose of disposing of motor vehicles acquired or repossessed by such person in exercise of powers or rights granted by lien or title-retention instruments or contracts given as security for loans or purchase money obligations.

8. A manufacturer or distributor of motor vehicles or agent or representative of a manufacturer or distributor shall not coerce or attempt to coerce any motor vehicle dealer to accept delivery of any motor vehicle or vehicles, parts, or accessories, or any other commodity or commodities which have not been ordered by the dealer.

9. A person licensed under this chapter shall not, either directly or through an agent, salesperson, or employee, engage in this state, or represent

or advertise that the person is engaged or intends to engage in this state, in the business of buying or selling at retail new or used motor vehicles, other than mobile homes more than eight feet in width or more than thirty-two feet in length as defined in section 321.1, on the first day of the week, commonly known and designated as Sunday.

10. A manufacturer, distributor, or importer of motor vehicles or agent or representative of such manufacturer, distributor, or importer shall not require a motor vehicle dealer to submit to arbitration to resolve a controversy before the controversy arises. The parties may enter into a voluntary agreement to arbitrate a controversy after it arises. Such an agreement shall require that the arbitrator apply Iowa law in resolving the controversy. Either party may appeal a decision of an arbitrator to the district court on the grounds that the arbitrator failed to apply Iowa law.

11. A person who is engaged in the business of selling motor vehicles at retail shall not sell, offer for sale, display, represent, or advertise that the person intends to sell motor vehicles from a location other than the person's place of business, except as provided in section 322.5.

12. A person convicted of a fraudulent practice in connection with selling, bartering, or otherwise dealing in motor vehicles, in this state or any other state, shall not for a period of five years from the date of conviction be an owner, salesperson, officer of a corporation, or dealer representative of a licensed motor vehicle dealer or represent themselves as an owner, salesperson, or dealer representative of a licensed motor vehicle dealer.

13. A manufacturer, distributor, or importer of motor vehicles or agent or representative of such manufacturer, distributor, or importer shall not reduce the amount of compensation for, or disallow a claim for, warranty parts, repairs, or service supplied by a motor vehicle dealer if twelve months or more have passed since the warranty claim was submitted to the manufacturer, distributor, or importer of motor vehicles or agent or representative thereof. The twelve-month limitation shall not apply if a court of competent jurisdiction in this state finds the warranty claim was fraudulent.

99 Acts, ch 69, §1
NEW subsection 13

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.

4. A nonresident motor vehicle dealer, who is authorized by a written contract with a manufacturer or distributor of new motor trucks to sell at retail such new motor trucks, may display motor trucks within this state at qualified events approved by the department. The dealer must obtain a temporary permit from the department. An application for a temporary permit shall be made upon a form provided by the department and shall be accompanied by a ten dollar permit fee. Permits shall be issued for a period not to exceed fourteen

days. The department shall issue a temporary permit under this subsection only if the qualified event for which the permit is issued meets all of the following conditions:

- a. The sale of motor vehicles is not allowed during the qualified event.
- b. The qualified event is conducted in a controlled area and is not open to the public generally.
- c. The qualified event generally promotes the motor truck industry.
- d. The qualified event is conducted within the area of responsibility that is specified in the motor vehicle dealer's contract with the manufacturer or distributor.

A temporary permit shall not be issued under this subsection unless the state in which the non-resident motor vehicle dealer is licensed extends by reciprocity similar privileges to a motor vehicle dealer licensed by this state.

5. A manufacturer, distributor, or dealer may, upon receipt of a temporary permit approved by the department, display new ambulances, new fire vehicles, and new rescue vehicles for educational purposes only at vehicle shows and vehicle exhibitions conducted for the express purpose of educating fire and rescue personnel in new technology and techniques for fire fighting and rescue efforts. 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 a single show or exhibition, not to ex-

ceed five consecutive days.

99 Acts, ch 13, §23
Controlled-access facility, §306A.2
NEW subsection 5

322.14 Penalties.

1. A person who violates any of the provisions of this chapter for which a penalty is not specifically provided is guilty of a simple misdemeanor punishable by a fine of not less than two hundred fifty dollars nor more than one thousand five hundred dollars or by imprisonment not to exceed thirty days.

2. Notwithstanding subsection 1, if a provision of chapter 537 is applicable to a retail installment contract and a violation of that provision is subject to a penalty under chapter 537, that penalty shall apply in lieu of a penalty provided in this chapter.

99 Acts, ch 13, §24
Section stricken and rewritten

322.21 Remaining balance on trade vehicle.

The extension of credit by a retail seller to a retail buyer, pursuant to a retail installment contract, of the amount actually paid or to be paid by the retail seller to discharge a purchase money security interest, as defined in section 554.9107, on a motor vehicle traded in by the retail buyer shall not subject the retail seller to the provisions of chapter 536 or 536A.

99 Acts, ch 13, §25
NEW section

322.22 Repealed by 74 Acts, ch 1250, § 9.117.

CHAPTER 322A

MOTOR VEHICLE FRANCHISERS

322A.1 Definitions.

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

1. "Additional motor vehicle dealership" includes a facility providing manufacturer-authorized or distributor-authorized service or warranty work for motor vehicles, except motor homes, of a line-make in a community in which the same line-make is represented.
2. "Community" means the franchisee's area of responsibility as stipulated in the franchise.
3. "Consumer care" means to perform, for the public, necessary maintenance and repairs to motor vehicles.
4. "Department" means the state department of transportation.
5. "Franchise" means a contract between two or more persons when all of the following conditions are included:
 - a. A commercial relationship of definite dura-

tion or continuing indefinite duration is involved.

b. The franchisee is granted the right to offer and sell motor vehicles manufactured or distributed by the franchiser.

c. The franchisee, as an independent business, constitutes a component of franchiser's distribution system.

d. The operation of franchisee's business is substantially associated with the franchiser's trademark, service mark, trade name, advertising, or other commercial symbol designating the franchiser.

e. The operation of the franchisee's business is substantially reliant on franchiser for the continued supply of motor vehicles, parts, and accessories.

6. "Franchisee" means a person who receives motor vehicles from the franchiser under a franchise and who offers and sells such motor vehicles to the general public.

7. “Franchiser” means a person who manufactures or distributes motor vehicles and who may enter into a franchise as hereinafter defined.

8. “Motor vehicle” means “motor vehicles” as defined in chapter 321 which are subject to registration pursuant to the provisions thereof.

9. “Person” means a sole proprietor, partner-

ship, corporation, or any other form of business organization.

10. “Termination or noncontinuance” includes a reduction of the geographic area of a community.

99 Acts, ch 69, §2

NEW subsection 1 and former subsections 1–9 renumbered as 2–10

CHAPTER 322B

MOBILE HOME DEALERS

322B.2 Definitions.

As used in this chapter unless the context otherwise requires:

1. To sell “at retail” means to sell a mobile home to a person who will devote it to a consumer use.

2. “Department” means the state department of transportation.

3. “Mobile home” means a structure, transportable in one or more sections, which exceeds eight feet in width and thirty-two feet in length, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to one or more utilities. “Mobile home” also includes “manufactured housing” as the term is defined in section 321.1.

4. “Mobile home dealer” means a person who, for a commission or other thing of value, sells, exchanges or offers or attempts to negotiate a sale or exchange of an interest in a mobile home or who is engaged wholly or in part in the business of selling mobile homes, whether or not the mobile homes are owned by the dealer. “Mobile home dealer” does not include any of the following:

a. A receiver, trustee, administrator, executor, guardian, attorney or other person appointed by or acting under the judgment or order of a court to transfer an interest in a mobile home.

b. A person transferring a mobile home registered in the person’s name and used for personal, family or household purposes, if the transfer is an occasional sale and is not part of the business of the transferor.

c. A person who transfers an interest in a mobile home only as an incident to engaging in the business of financing new or used mobile homes.

5. “Mobile home distributor” means a person who sells or distributes mobile homes to mobile home dealers.

6. “Mobile home manufacturer” means a person engaged in the business of fabricating or assembling mobile homes.

7. “New mobile home” means a mobile home that has not been sold at retail.

8. “Used mobile home” means a mobile home that has been sold at retail and previously registered in this or any other state.

99 Acts, ch 188, §15

Subsection 3 amended

322B.3 Mobile home dealer license — procedure.

1. *License application.* A mobile home dealer shall file in the office of the department an application for license as a mobile home dealer in the same manner as a motor vehicle dealer applicant under section 322.4 or as the department may prescribe. A mobile home dealer license may be issued in the same manner as a motor vehicle dealer license pursuant to section 322.7.

2. *License fees.* The license fee for a mobile home dealer is 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. If the application is denied, the department shall refund the fee. Fees and funds accruing from the administration of this chapter shall be accounted for and paid by the department to the treasurer of state monthly for deposit in the road use tax fund of the state.

3. *Surety bond.* Before the issuance of a mobile home dealer’s license, an applicant for a license shall file with the department a surety bond executed by the applicant as principal and executed by a corporate surety company, licensed and qualified to do business within this state, which bond shall run to the state of Iowa, be in the amount of fifty thousand dollars and be conditioned upon the faithful compliance by the applicant as a dealer with all of the statutes of this state regulating the business of the dealer and indemnifying any person dealing or transacting business with the dealer in connection with a mobile home from a loss or damage occasioned by the failure of the dealer to comply with this chapter, including, but not limited to, the furnishing of a proper and valid document of title to the mobile home involved in the transaction.

4. *Permits for fairs, shows, and exhibitions.* Mobile home dealers, in addition to selling mobile homes at their principal place of business and lots, may, upon receipt of a temporary permit approved by the department, display and offer new mobile homes for sale and negotiate sales of new mobile homes at fairs, shows and exhibitions which are approved by the department. Application for temporary permits shall be made upon forms provided by the department and shall be accompanied by a ten

dollar permit fee. Temporary permits shall be issued for a period not to exceed fourteen days.

5. *Mobile home hookups.* A mobile home dealer or an employee of a mobile home dealer may perform water, gas, electrical, and other utility service connections in a mobile home space, or within ten feet of such space, located in a mobile home park, and the dealer or an employee of the dealer may install a tie-down system on a mobile home located in a mobile home park. The connections are subject to inspection and approval by local building code officials and the mobile home dealer shall pay the inspection fee, if any.

99 Acts, ch 114, §22
Subsection 5 amended

322B.6 Revocation, suspension and denial of license.

The department may revoke, suspend, or refuse the license of a mobile home dealer, mobile home manufacturer, or mobile home distributor, as applicable, if the department finds that the mobile home dealer, manufacturer, or distributor is guilty of any of the following acts or offenses:

1. Fraud in procuring a license.
2. Knowingly making misleading, deceptive, untrue or fraudulent representations in the business of a mobile home dealer, manufacturer, or dis-

tributor or engaging in unethical conduct or practice harmful or detrimental to the public.

3. Conviction of a felony related to the business of a mobile home dealer, manufacturer, or distributor. A copy of the record of conviction or plea of guilty shall be sufficient evidence for the purposes of this section.

4. Failing upon the sale or transfer of a mobile home to deliver to the purchaser or transferee of the mobile home sold or transferred, a manufacturer's or importer's certificate, or a certificate of title duly assigned, as provided in chapter 321.

5. Failing upon the purchasing or otherwise acquiring of a mobile home to obtain a manufacturer's or importer's certificate, a new certificate of title or a certificate of title duly assigned as provided in chapter 321.

6. *Failing to apply for and obtain from a county treasurer a certificate of title for a used mobile home, titled in Iowa, acquired by the dealer within thirty days from the date of acquisition, as required under section 321.45, subsection 4.*

In accordance with chapters 10A and 17A, each person whose license or application is revoked, suspended, or refused shall be provided an opportunity for a hearing before the department of inspections and appeals.

99 Acts, ch 188, §16
Subsection 6 amended

CHAPTER 327H

TAX AID FOR RAILROADS

327H.20A Railroad revolving loan fund.

A railroad revolving loan fund is established in the office of the treasurer of state under the control of the department. Moneys in this fund shall be expended for loans to provide assistance for the restoration, conservation, improvement, and construction of railroad main lines, branch lines, switching yards, sidings, rail connections, intermodal yards, highway grade separations, and other railroad-related improvements. The department shall administer a program for the granting and administration of loans under this section. The department

may enter into agreements with railroad corporations, the United States government, cities, counties, and other persons for carrying out the purposes of this section. Moneys received as loan repayments shall be credited to the railroad revolving loan fund. Notwithstanding section 8.33, moneys in the railroad revolving loan fund shall not revert to the general fund of the state but shall remain available indefinitely for expenditure under this section.

Moneys in the railroad revolving loan fund may be used to erect clearance warning devices along railroad rights-of-way; 99 Acts, ch 120, §4
Section not amended; footnote added

CHAPTER 331

COUNTY HOME RULE IMPLEMENTATION

331.301 General powers and limitations.

1. A county may, except as expressly limited by the Constitution, and if not inconsistent with the laws of the general assembly, exercise any power and perform any function it deems appropriate to protect and preserve the rights, privileges, and property of the county or of its residents, and to pre-

serve and improve the peace, safety, health, welfare, comfort, and convenience of its residents. This grant of home rule powers does not include the power to enact private or civil law governing civil relationships, except as incident to an exercise of an independent county power.

2. A power of a county is vested in the board, and a duty of a county shall be performed by or under the direction of the board except as otherwise provided by law.

3. The enumeration of a specific power of a county, the repeal of a grant of power, or the failure to state a specific power does not limit or restrict the general grant of home rule power conferred by the Constitution and this section. A county may exercise its general powers subject only to limitations expressly imposed by a state law.

4. An exercise of a county power is not inconsistent with a state law unless it is irreconcilable with the state law.

5. A county shall substantially comply with a procedure established by a state law for exercising a county power unless a state law provides otherwise. If a procedure is not established by state law, a county may determine its own procedure for exercising the power.

6. A county shall not set standards and requirements which are lower or less stringent than those imposed by state law, but may set standards and requirements which are higher or more stringent than those imposed by state law, unless a state law provides otherwise.

7. A county shall not levy a tax unless specifically authorized by a state statute.

8. A county is a body corporate for civil and political purposes and shall have a seal as provided in section 331.552, subsection 4.

9. Supervisors and other county officers may administer oaths and take affirmations as provided in chapter 63A.

10. A county may enter into leases or lease-purchase contracts for real or personal property in accordance with the following terms and procedures:

a. A county shall lease or lease-purchase property only for a term which does not exceed the economic life of the property, as determined by the board.

b. A lease or lease-purchase contract entered into by a county may contain provisions similar to those sometimes found in leases between private parties, including, but not limited to, the obligation of the lessee to pay any of the costs of operation or ownership of the leased property and the right to purchase the leased property.

c. A provision of a lease or lease-purchase contract which stipulates that a portion of the rent payments be applied as interest is subject to chapter 74A. Other laws relating to interest rates do not apply. Chapter 75 is not applicable. A county enterprise is a separate entity under this subsection, whether it is governed by the board or another governing body.

d. The board must follow substantially the same authorization procedure required for the issuance of general obligation bonds issued for the same purpose to authorize a lease or a lease-pur-

chase contract made payable from the debt service fund.

e. The board may authorize a lease or lease-purchase contract which is payable from the general fund and which would not cause the total of lease and lease-purchase payments of the county due from the general fund of the county in any future year for lease or lease-purchase contracts in force on the date of the authorization, excluding payments to exercise purchase options or to pay the expenses of operation or ownership of the property, to exceed ten percent of the last certified general fund budget amount in accordance with the following procedures:

(1) The board must follow substantially the authorization procedures of section 331.443 to authorize a lease or lease-purchase contract for personal property which is payable from the general fund. The board must follow substantially the authorization procedures of section 331.443 to authorize a lease or lease-purchase contract for real property which is payable from the general fund if the principal amount of the lease-purchase contract 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.

(2) The board must follow the following procedures to authorize a lease or lease-purchase contract for real property which is payable from the general fund if the principal amount of the lease or lease-purchase contract exceeds the limits set forth in subparagraph (1):

(a) The board must institute proceedings for entering into a lease or lease-purchase contract payable from the general fund by causing a notice of the meeting to discuss entering into the lease or lease-purchase contract, including a statement of the principal amount and purpose of the lease or lease-purchase and the right to petition for an election, to be published as provided in section 331.305 at least ten days prior to the discussion meeting. No sooner than thirty days following the discussion meeting shall the board hold a meeting at which it is proposed to take action to enter into the lease or lease-purchase contract.

(b) If at any time before the end of the thirty-day period after which a meeting may be held to take action to enter into the lease or lease-purchase

contract, a petition is filed with the auditor in the manner provided by section 331.306, asking that the question of entering into the lease or lease-purchase contract be submitted to the registered voters of the county, the board shall either by resolution declare the proposal to enter into the lease or lease-purchase contract to have been abandoned or shall direct the county commissioner of elections to call a special election upon the question of entering into the lease or lease-purchase contract. However, for purposes of this subparagraph, the petition shall not require signatures in excess of one thousand persons. The question to be placed on the ballot shall be stated affirmatively in substantially the following manner: Shall the county of enter into a lease or lease-purchase contract in an amount of \$ for the purpose of ? Notice of the election and its conduct shall be in the manner provided in section 331.442, subsections 2 through 4.

(c) If a petition is not filed or if a petition is filed and the proposition of entering into a lease or lease-purchase contract is approved at the election, the board may proceed and enter into the lease or lease-purchase contract.

f. The governing body may authorize a lease or lease-purchase contract payable from the net revenues of a county enterprise or combined county enterprise by following the authorization procedures of section 331.464.

g. A lease or lease-purchase contract to which a county is a party or in which a county has a participatory interest is an obligation of a political subdivision of this state for the purposes of chapters 502 and 636, and is a lawful investment for banks, trust companies, building and loan associations, savings and loan associations, investment companies, insurance companies, insurance associations, executors, guardians, trustees, and any other fiduciaries responsible for the investment of funds.

h. Property that is lease-purchased by a county is exempt under section 427.1, subsection 2.

i. A contract for construction by a private party of property to be leased or lease-purchased by a county is not a contract for a public improvement under section 331.341, subsection 1. However, if a lease-purchase contract is funded in advance by means of the lessor depositing moneys to be administered by a county, with the county's obligation to make rent payments commencing with its receipt of moneys, a contract for construction of the property in question awarded by the county is a public improvement and is subject to section 331.341, subsection 1.

11. A county may enter into insurance agreements obligating the county to make payments beyond its current budget year to procure or provide for a policy of insurance, a self-insurance program, or a local government risk pool to protect the county against tort liability, loss of property, or any other risk associated with the operation of the

county. Such a self-insurance program or local government risk pool is not insurance and is not subject to regulation under chapters 505 through 523C. However, those self-insurance plans regulated pursuant to section 509A.14 shall remain subject to the requirements of section 509A.14 and rules adopted pursuant to that section.

12. The board of supervisors may credit funds to a reserve for the purposes authorized by subsection 11 of this section; section 331.424, subsection 1, paragraph "f"; and section 331.441, subsection 2, paragraph "b". Moneys credited to the reserve, and interest earned on such moneys, shall remain in the reserve until expended for purposes authorized by subsection 11 of this section; section 331.424, subsection 1, paragraph "f"; or section 331.441, subsection 2, paragraph "b".

13. The board of supervisors may waive a tax penalty, interest, or costs related to the collection of a tax if the board finds that a clerical error resulted in the penalty, interest, or cost. This subsection does not apply to bonded special assessments without the approval of the affected taxing jurisdiction.

14. The county may establish a department of public works. The department shall be administered by the county engineer or other person appointed by the board of supervisors. In addition to other duties assigned by the board, the department shall provide technical assistance to political subdivisions in the county including special districts relating to their physical infrastructure and may provide managerial and administrative services for special districts and combined special districts.

15. a. A county may adopt and enforce an ordinance requiring the construction of a storm shelter at a mobile home park which is constructed after July 1, 1999. In lieu of requiring construction of a storm shelter, a county may require a park owner to provide a plan for the evacuation of park residents to a safe place of shelter in times of severe weather including tornadoes and high winds if the county determines that a safe place of shelter is available within a reasonable distance of the mobile home park for use by park residents. Each evacuation plan prepared pursuant to this subsection shall be filed with, and approved by, the local emergency management agency. If construction of a storm shelter is required, an ordinance adopted or enforced pursuant to this subsection shall not include any of the following requirements:

(1) That the size of the storm shelter be larger than the equivalent of seven square feet for each mobile home space in the mobile home park.

(2) That the storm shelter include a restroom if the shelter is used exclusively as a storm shelter.

(3) That the storm shelter exceed the construction specifications approved by a licensed professional engineer and presented by the owner of the mobile home park.

b. For the purposes of this subsection:

(1) “*Mobile home park*” means a mobile home park as defined in section 562B.7.

(2) “*Storm shelter*” means a single structure or multiple structures designed to provide persons with temporary protection from a storm.

99 Acts, ch 186, §1
NEW subsection 15

331.302 County legislation.

1. The board shall exercise a power or perform a duty only by the passage of a motion, a resolution, an amendment, or an ordinance.

2. A county shall not provide a penalty in excess of a two hundred dollar fine or in excess of thirty days imprisonment for the violation of an ordinance. The criminal penalty surcharge required by section 911.2 shall be added to a county fine and is not a part of the county’s penalty.

3. The subject matter of an ordinance or amendment shall be generally described in its title.

4. An amendment to an ordinance or to a code of ordinances shall specifically repeal the ordinance or code, or the section, subsection, paragraph, or subpart to be amended, and shall set forth the ordinance, code, section, subsection, paragraph, or subpart as amended.

4A. *a.* A county may by ordinance adopt by reference any portion of the Code of Iowa in effect at the time of the adoption in the manner provided in section 380.8 for adoption of a proposed code of ordinances containing a proposed new ordinance or amendment, subject to the following limitations:

(1) The ordinance shall describe the subject matter and identify the portion of the Code of Iowa adopted by chapter, section, and subsection or other subpart, as applicable.

(2) A portion of the Code of Iowa may be adopted by reference only if the criminal penalty provided by the law adopted does not exceed thirty days’ imprisonment or a two hundred dollar fine.

(3) Amendments or other changes to those portions of the Code of Iowa which have been adopted by reference shall serve as an automatic modification of the applicable ordinance.

b. An ordinance which adopts by reference any portion of the Code of Iowa may provide that violations of the ordinance are county infractions and subject to the limitations of section 331.307.

5. A proposed ordinance or amendment shall be considered and voted on for passage at two meetings of the board prior to the meeting at which it is to be finally passed, unless this requirement is suspended by a recorded vote of not less than a majority of the supervisors.

However, if a summary of the proposed ordinance or amendment is published as provided in section 331.305 prior to its first consideration and copies are available at the time of publication at the office of the auditor, the ordinance or amendment shall be considered and voted on for passage at one meeting prior to the meeting at which it is to be finally passed, unless this requirement is suspended

by a recorded vote of not less than a majority of the supervisors.

6. Passage of an ordinance, amendment, or resolution requires an affirmative vote of not less than a majority of the supervisors. Each supervisor’s vote on an ordinance, amendment, or resolution shall be recorded.

7. A resolution becomes effective upon passage and an ordinance or amendment becomes a law when a summary of the ordinance or the complete text of the ordinance is published, unless a subsequent effective date is provided within the measure. As used in this subsection, “*summary*” shall mean a narrative description of the terms and conditions of an ordinance setting forth the main points of the ordinance in a manner calculated to inform the public in a clear and understandable manner the meaning of the ordinance and which shall provide the public with sufficient notice to conform to the desired conduct required by the ordinance. The description shall include the title of the ordinance, an accurate and intelligible abstract or synopsis of the essential elements of the ordinance, a statement that the description is a summary, the location and the normal business hours of the office where the ordinance may be inspected, when the ordinance becomes effective, and the full text of any provisions imposing fines, penalties, forfeitures, fees, or taxes. Legal descriptions of property set forth in ordinances shall be described in full, provided that maps or charts may be substituted for legal descriptions when they contain sufficient detail to clearly define the area with which the ordinance is concerned. The narrative description shall be written in a clear and coherent manner and shall, to the extent possible, avoid the use of technical or legal terms not generally familiar to the public. When necessary to use technical or legal terms not generally familiar to the public, the narrative description shall include definitions of those terms.

8. The auditor shall promptly record each measure, publish a summary of all ordinances or a complete text of the ordinances and amendments as provided in section 331.305, authenticate all measures except motions with signature and certification as to time and manner of publication, if any, and maintain for public use copies of all effective ordinances and codes. A copy of the complete text of an ordinance or amendment shall also be available for distribution to the public at the office of the county auditor. The auditor’s certification is presumptive evidence of the facts stated therein.

9. At least once every five years, the board shall compile a code of ordinances containing all of the county ordinances in effect.

If a proposed code of ordinances contains only existing ordinances edited and compiled without change in substance, the board may adopt the code by ordinance.

If a proposed code of ordinances contains a proposed new ordinance or amendment, the board shall hold a public hearing on the proposed code before adoption. The auditor shall publish notice of the hearing as provided in section 331.305. Copies of the proposed code of ordinances shall be available at the auditor's office and the notice shall so state. Within thirty days after the hearing, the board may adopt the proposed code of ordinances which becomes law upon publication of the ordinance adopting it. If the board substantially amends the proposed code of ordinances after a hearing, notice and hearing shall be repeated.

Ordinances and amendments which become effective after adoption of a code of ordinances may be compiled as a supplement to the code, and upon adoption of the supplement by resolution, become part of the code of ordinances.

An adopted code of ordinances is presumptive evidence of the passage, publication, and content of the ordinances therein as of the date of the auditor's certification of the ordinance adopting the code or supplement.

10. The compensation paid to a newspaper for a publication required by this section shall not exceed the fee provided in section 618.11. The compensation paid to a newspaper for publication of the complete text of an ordinance shall not exceed three-fourths of the fee provided in section 618.11.

11. The board may adopt the provisions of a statewide or nationally recognized standard code or portions of any such code by an ordinance which identifies the code by subject matter, source, and date, and incorporates the provisions either by reference or by setting them forth in full. The code or portion shall be adopted only after notice and hearing in the manner provided in subsection 9.

12. Immediately after the effective date of a measure establishing a zoning district, building lines, or fire limits, the auditor shall certify the measure and a plat showing the district, lines, or limits, to the recorder. The recorder shall record the measure and plat in the miscellaneous record or other book provided for special records, and shall index the record.

13. A measure voted upon is not invalid because a supervisor has a conflict of interest, unless the vote of the supervisor was decisive to passage of the measure. If a majority or unanimous vote of the board is required by statute, the majority or vote shall be computed on the basis of the number of supervisors not disqualified by reason of conflict of interest. However, a majority of all supervisors is required for a quorum. For the purposes of this subsection, the statement of a supervisor that the supervisor declines to vote by reason of conflict of interest is conclusive and shall be entered of record.

14. A valid measure adopted by a county prior to July 1, 1981 remains valid unless the measure is irreconcilable with a state law.

15. A county shall not provide a civil penalty in excess of five hundred dollars for the violation of an ordinance which is classified as a county infraction or if the infraction is a repeat offense, a civil penalty not to exceed seven hundred fifty dollars for each repeat offense. A county infraction is not punishable by imprisonment.

99 Acts, ch 153, §7, 8
Subsection 2 amended
Subsection 4A, paragraph a, subparagraph (2) amended

331.303 General duties of the board.

The board shall:

1. Keep record books as follows:

a. A "*minute book*" which records all orders and decisions other than those relating to drainage districts. The minute book or a separate index book must contain an alphabetical index by subject matter categories of the proceedings shown by the minutes.

b. A "*warrant book*" which records each warrant drawn in the order of issuance by number, date, amount, and name of drawee, and refers to the order in the minute book authorizing its drawing.

c. A "*claim register*" which records all claims for money filed against the county. Claims shall be numbered consecutively in order of filing and entered alphabetically by the claimant's name. The claim register shall show the date of filing, the number of the claim and its general nature, and the action of the board on the claim including the fund against which it is allowed if it is allowed. The claims allowed at each meeting shall be listed in the minute book by claim number.

2. Maintain its records in accordance with chapter 22.

3. Act upon applications for cigarette tax permits in accordance with chapter 453A.

4. Act upon applications for liquor control licenses and retail beer permits in accordance with section 123.32.

5. Proceed upon a petition to establish an official county fair and pay tax funds to it in accordance with section 174.10.

6. Select official newspapers and cause official publications to be made in accordance with chapters 349 and 618.

7. Adopt rules relating to the labor of prisoners in the county jail in accordance with sections 356.16 to 356.19, and may establish the cost of board and provide for the transportation of certain prisoners in accordance with section 356.30.

8. Divide the county into townships, and proceed upon a petition to divide, dissolve or change the name of a township in accordance with chapter 359.

9. Approve the written investment policy for the county required under section 12B.10B.

10. Cause on-site inspections of pipeline construction projects as required in section 479.29,

subsection 2, and the board may petition for rules as provided in that section.

11. Defend, save harmless, and indemnify its officers, employees, and agents against tort claims, and may settle the claims, in accordance with sections 670.8 and 670.9.

12. Perform other duties as required by law.

99 Acts, ch 204, §35
Subsection 5 amended

331.304 Procedural limitations on general county powers.

If a county proposes to exercise any of the following powers, it shall do so in accordance with the following limitations:

1. The power to act jointly with other political subdivisions or public or private agencies shall be exercised in accordance with chapter 28E or 28I or other applicable state law.

2. The power to authorize games of skill or chance at amusement concessions shall be exercised in accordance with section 99B.4.

3. The power to adopt, administer and enforce the state building code shall be exercised in accordance with chapter 103A. The power to adopt by ordinance, administer, and enforce a county building code, is subject to the following restrictions:

a. A county building code shall not apply within the incorporated area of a city except at the option of the city, and shall not apply within a city's two-mile limit referred to in section 414.23, to the extent that the city has adopted a building code within the two-mile limit.

b. A county building code shall not apply to farm houses or other farm buildings which are primarily adapted for use for agricultural purposes, while so used or under construction for that use.

4. A county shall not license elevator inspectors or regulate elevator facilities except as provided in section 89A.15.

5. The power to adopt airport zoning regulations applicable to airport hazard areas shall be exercised in accordance with chapter 329.

6. The power to adopt county zoning regulations shall be exercised in accordance with chapter 335.

7. The board may file a petition with the city development board as provided in section 368.11.

8. The power to take private property for public use shall only be exercised by counties for public purposes which are reasonable and necessary as an incident to the powers and duties conferred upon counties, and in accordance with chapters 6A and 6B. Section 306.19 is also applicable to condemnation of right-of-way for secondary roads. Sections 306.27 through 306.37 are applicable to the condemnation of right-of-way that is contiguous to existing road right-of-way and necessary for the maintenance, safety improvement, or upgrade of the existing secondary road.

9. The board, upon application, may grant permits for the display of fireworks as provided in section 727.2.

10. A county shall not adopt or enforce any ordinance imposing any registration or licensing system or registration or license fees for owner-occupied mobile homes including the lots or lands upon which they are located. A county shall not adopt or enforce any ordinance imposing any registration or licensing system, or registration or license fees, or safety or sanitary standards for rental mobile homes unless similar registration or licensing system, or registration or license fees, or safety or sanitary standards are required for other rental properties intended for human habitation. This subsection does not preclude the investigation and abatement of a nuisance or the enforcement of a tiedown system, or the enforcement of any regulations of the state or local board of health if those regulations apply to other rental properties or to owner-occupied housing intended for human habitation.

99 Acts, ch 171, §33, 42

1999 amendment to subsection 8 applies to state highway construction projects approved for commencement by the transportation commission on or after July 1, 1999, and to all other condemnation proceedings in which the application for condemnation is filed on or after July 1, 1999; see 99 Acts, ch 171, §42

Subsection 8 amended

331.401 Duties relating to finances.

1. The board shall:

a. Audit expenses charged to the county for the annual examination by the auditor of state and approve or object to the expenses as provided in section 11.21.

b. Establish budgets for the farm-to-market road fund and the secondary road fund in accordance with sections 309.10 and 309.93 to 309.97.

c. Pay expenses of administration of juvenile justice, attributable to the county under section 232.141.

d. Provide for the expense of persons committed to the county jail or a regional detention facility in accordance with section 356.15.

e. Adopt resolutions authorizing the county assessor to provide forms for homestead exemption claimants as provided in section 425.2 and military service tax exemptions as provided in section 426A.14.

f. Examine and allow or disallow claims for homestead exemption in accordance with section 425.3 and claims for military service tax exemption in accordance with chapter 426A. The board, by a single resolution, may allow or disallow the exemptions recommended by the assessor.

g. Hear appeals relating to the agricultural land tax credit in accordance with section 426.6.

h. Order the suspension of property taxes of certain persons in accordance with section 427.9.

i. Approve or deny an application for a property tax exemption for impoundment structures, as provided in section 427.1, subsection 20.

j. Serve on the conference board as provided in section 441.2.

k. Levy taxes as certified to it by tax-certifying bodies in the county, in accordance with the statutes authorizing the levies and in accordance with chapter 24 and sections 444.1 to 444.8, and levy taxes as required in chapters 430A, 433, 434, 436, 437 and 438.

l. Carry out duties in regard to the collection of taxes as provided in sections 445.16, 445.60, and 445.62.

m. Apportion taxes upon receipt of a petition, in accordance with sections 449.1 to 449.3.

n. Comply with chapters 12B and 12C in the management of public funds.

o. Allocate payments from flood control projects as provided in sections 161E.13 and 161E.14.

p. Examine and settle all accounts of the receipts and expenditures of the county and all claims against the county, except as otherwise provided by state law.

q. Require a local historical society to submit to it a proposed budget including the amount of available funds and estimated expenditures, as a prerequisite to receiving funds. A local historical society receiving funds shall present to the board an annual report describing in detail its use of the funds received.

r. Perform other financial duties as required by state law.

2. The board shall not pay membership dues for a county officers association in this state other than the Iowa state association of counties or an organization affiliated with it. This subsection does not prohibit expenditures for organizations with which the Iowa state association or its affiliates are affiliated.

3. The board shall not pay bounties on crows, rattlesnakes, foxes, or wolves other than coyotes.

Section not amended, internal reference change applied

331.438 County mental health, mental retardation, and developmental disabilities services expenditures — management committee.

1. For the purposes of section 331.424A, this section, section 331.439, and chapter 426B, unless the context otherwise requires:

a. “*Base year expenditures*” means the amount selected by a county and reported to the county finance committee pursuant to this paragraph. The amount selected shall be equal to the amount of net expenditures made by the county for qualified mental health, mental retardation, and developmental disabilities services provided in either of the following fiscal years:

(1) The actual amount reported to the state on October 15, 1994, for the fiscal year beginning July 1, 1993.

(2) The net expenditure amount contained in the county’s final budget certified in accordance with chapter 24 for the fiscal year beginning July 1, 1995, and reported to the county finance committee.

b. “*Per capita expenditure*” means the amount derived from the sum of a county’s expenditures for mental health, mental retardation, and developmental disabilities services for a fiscal year as reported to the department of human services pursuant to section 331.439, plus the state payment to the county and any payments made under section 426B.5 for that fiscal year, divided by the county’s general population for that fiscal year.

c. “*Qualified mental health, mental retardation, and developmental disabilities services*” means the services specified on forms issued by the county finance committee following consultation with the state-county management committee.

d. “*State payment*” means the payment made by the state to a county determined to be eligible for the payment in accordance with section 331.439.

2. *a.* A state payment to a county for a fiscal year shall consist of the sum of the state funding the county is eligible to receive from the property tax relief fund in accordance with section 426B.2 plus the county’s portion of state funds appropriated for the allowed growth factor adjustment established by the general assembly under section 331.439, subsection 3.

b. A county’s portion of the allowed growth factor adjustment appropriation for a fiscal year shall be determined in accordance with the following formula:

(1) Seventy-five percent based upon the county’s proportion of the state’s general population.

(2) Twenty-five percent based upon the county’s proportion of the sum of the following for the fiscal year which commenced two years prior to the beginning date of the fiscal year in which the allowed growth factor adjustment moneys are distributed:

(a) The total net expenditure amount for qualified mental health, mental retardation, and developmental disabilities services for all counties as reported pursuant to section 331.439, subsection 1, paragraph “a”.

(b) The total of property tax relief payments distributed to counties in accordance with section 426B.2.

c. The department of human services shall provide for payment of the amount due a county for the county’s allowed growth factor adjustment determined in accordance with this subsection. The director of human services shall authorize warrants

payable to the county treasurer for the amounts due and the warrants shall be mailed in January of each year. The county treasurer shall credit the amount of the warrant to the county's services fund created under section 331.424A.

3. The state payment shall not include any expenditures for services that were provided but not reported in the county's base year expenditures or for any expenditures which were not included in the county management plan submitted by the county in accordance with section 331.439. A county's eligibility for state payment is subject to the provisions of section 331.439.

4. *a.* A state-county management committee is created in the department of human services to make recommendations for joint state and county planning, implementing, and funding of mental health, mental retardation, and developmental disabilities services, including but not limited to developing and implementing fiscal and accountability controls, establishing management plans, and ensuring that eligible persons have access to appropriate and cost-effective services.

b. The management committee shall consist of fifteen voting members as follows:

(1) Four members shall be appointed by the director of human services. Four members shall be appointed by the Iowa state association of counties. Members appointed by the Iowa state association of counties shall be selected from a pool nominated by the county supervisor affiliate of the association with four members from the affiliate. The affiliate shall select the nominees through a secret ballot process. In addition, two members shall be appointed by the community services affiliate of the Iowa state association of counties.

(2) The committee shall include two members nominated by service providers, one member nominated by service advocates, one member who is a service consumer, and one member nominated by the state's council of the association of federal, state, county, and municipal employees, with these members appointed by the governor.

(3) In addition, the committee shall include four members of the general assembly with one each designated by the majority leader and minority leader of the senate and the speaker and minority leader of the house of representatives. A legislative member serves in an ex officio, nonvoting capacity and is eligible for per diem and expenses as provided in section 2.10.

(4) A member who is not a legislator shall have expenses and other costs paid by the state or the county entity that the member represents. The committee shall elect officers, adopt operating procedures, and meet as deemed necessary by the committee. Terms of office for the appointed voting members of the committee are three years and shall be staggered. A vacancy on the committee shall be filled in the same manner as the original appointment.

c. The management committee shall do all of the following:

(1) Identify characteristics of the service system, including amounts expended, equity of funding among counties, funding sources, provider types, service availability, and equity of service availability among counties and among persons served.

(2) Assess the accuracy and uniformity of record keeping and reporting in the service system.

(3) Identify for each county the factors associated with inflationary growth of the service system.

(4) Identify opportunities for containing service system growth.

(5) Make recommendations for revising service system administrative rules.

(6) Consider provisions for counties to implement a single point of accountability to plan, budget, and monitor county expenditures for the service system. The provisions shall provide options for counties to implement the single point in collaboration with other counties.

(7) Develop criteria for annual county mental health, mental retardation, and developmental disabilities plans.

(8) Make recommendations to the council on human services for administrative rules identifying qualified mental health, mental retardation, and developmental disabilities service expenditures for purposes of state payment pursuant to subsection 1.

(9) Make recommendations to the council on human services for administrative rules for the county single entry point and clinical assessment processes required under section 331.440 and other rules necessary for the implementation of county management plans and expenditure reports required for state payment pursuant to section 331.439.

(10) Make recommendations to improve the programs and cost effectiveness of state and county contracting processes and procedures, including strategies for negotiations relating to managed care. The recommendations developed for the state and county regarding managed care shall include but are not limited to standards for limiting excess costs and profits, and for restricting cost shifting under a managed care system.

(11) Provide input, when appropriate, to the director of human services in any decision involving administrative rules which were initially recommended by the management committee.

(12) Identify the fiscal impact of existing or proposed legislation and administrative rules on state and county expenditures.

(13) No later than January 1, annually, submit a report to the governor, the general assembly, and the department of human services concerning the management committee's activities and findings.

(14) On or before December 1, 1994, submit to the governor and general assembly a methodology for the state and counties to move toward the goal of an equal partnership in the funding of mental health, mental retardation, and developmental disabilities services. The committee consideration of methodology options shall include an expenditure per consumer basis.

(15) Make recommendations to the mental health and developmental disabilities commission for administrative rules providing statewide standards and a monitoring methodology to determine whether cost-effective individualized services are available as required pursuant to section 331.439, subsection 1, paragraph "b".

(16) Make recommendations to the mental health and developmental disabilities commission for administrative rules establishing statewide minimum standards for services and other support required to be available to persons covered by a county management plan under section 331.439.

(17) Make recommendations to the mental health and developmental disabilities commission and counties for measuring and improving the quality of state and county mental health, mental retardation, and developmental disabilities services and other support.

99 Acts, ch 160, §7-10

Establishment and distribution of allowed growth factor adjustment through fiscal year ending June 30, 1999; 97 Acts, ch 198, §1

Establishment and distribution of allowed growth factor for fiscal year beginning July 1, 1999; 98 Acts, ch 1218, §26

County participation in planning for decategorization of funding; 97 Acts, ch 169, §13

See 98 Acts, ch 1213, §10, 11, for future amendment to subsection 2, paragraph b, effective July 1, 2000, and applicable to county budgets prepared and levies certified for the fiscal year beginning July 1, 2000

Staggered terms for voting members of the state-county management committee, effective July 1, 1999, 99 Acts, ch 160, §12

Subsection 4, paragraph b, unnumbered paragraph 1 and subparagraphs (1), (2), and (4) amended

331.439 Eligibility for state payment.

1. The state payment to eligible counties under this section shall be made as provided in sections 331.438 and 426B.2. A county is eligible for the state payment, as defined in section 331.438, for the fiscal year beginning July 1, 1996, and for subsequent fiscal years if the director of human services, in consultation with the state-county management committee, determines for a specific fiscal year that all of the following conditions are met:

a. The county accurately reported by December 1 the county's expenditures for mental health, mental retardation, and developmental disabilities services for the previous fiscal year on forms prescribed by the department of human services.

b. The county developed and implemented a county management plan for the county's mental health, mental retardation, and developmental disabilities services in accordance with the provisions of this paragraph "b". The plan shall comply with the administrative rules adopted for this purpose by the council on human services and is subject to the approval of the director of human services in consultation with the state-county

management committee created in section 331.438. The plan shall include a description of the county's service management provision for mental health, mental retardation, and developmental disabilities services. For mental retardation and developmental disabilities service management, the plan shall describe the county's development and implementation of a managed system of cost-effective individualized services and shall comply with the provisions of paragraph "d". The goal of this part of the plan shall be to assist the individuals served to be as independent, productive, and integrated into the community as possible. The service management provisions for mental health shall comply with the provisions of paragraph "c". A county is subject to all of the following provisions in regard to the county's management plan and planning process:

(1) The county shall have in effect an approved policies and procedures manual for the county's services fund. The county management plan shall be defined in the manual. The manual submitted by the county as part of the county's management plan for the fiscal year beginning July 1, 2000, as approved by the director of human services, shall remain in effect, subject to amendment. An amendment to the manual shall be submitted to the department of human services at least forty-five days prior to the date of implementation. Prior to implementation of any amendment to the manual, the amendment must be approved by the director of human services in consultation with the state-county management committee.

(2) For informational purposes, the county shall submit a management plan review to the department of human services by April 1 of each year. The annual review shall incorporate an analysis of the data associated with the services managed during the preceding fiscal year by the county or by a managed care entity on behalf of the county.

(3) For informational purposes, every three years the county shall submit to the department of human services a three-year strategic plan. The strategic plan shall describe how the county will proceed to attain the goals and objectives contained in the strategic plan for the duration of the plan. The three-year strategic plan shall be submitted by April 1, 2000, and by April 1 of every third year thereafter.

c. (1) For mental health service management, the county may either directly implement a system of service management and contract with service providers, or contract with a private entity to manage the system, provided all requirements of this lettered paragraph are met by the private entity. The mental health service management shall incorporate a single entry point and clinical assessment process developed in accordance with the provisions of section 331.440. The county shall submit this part of the plan to the department of human services for approval by April 1 for the succeeding

year. Initially, this part of the plan shall be submitted to the department by April 1, 1996, and the county shall implement the approved plan by July 1, 1996.

(2) The basis for determining whether a managed care system for mental health proposed by a county is comparable to a mental health managed care contractor approved by the department of human services shall include but is not limited to all of the following elements which shall be specified in administrative rules adopted by the council on human services in consultation with the state-county management committee:

- (a) The enrollment and eligibility process.
- (b) The scope of services included.
- (c) The method of plan administration.
- (d) The process for managing utilization and access to services and other assistance.
- (e) The quality assurance process.
- (f) The risk management provisions and fiscal viability of the provisions, if the county contracts with a private managed care entity.

d. For mental retardation and developmental disabilities services management, the county must either develop and implement a managed system of care which addresses a full array of appropriate services and cost-effective delivery of services or contract with a state-approved managed care contractor or contractors. Any system or contract implemented under this paragraph shall incorporate a single entry point and clinical assessment process developed in accordance with the provisions of section 331.440. The elements of the managed system of care and the state-approved managed care contract or contracts shall be specified in rules developed by the department of human services in consultation with the state-county management committee and adopted by the council on human services. Initially, this part of the plan shall be submitted to the department for approval on or before October 1, 1996, and shall be implemented on or before January 1, 1997. In fiscal years succeeding the fiscal year of initial implementation, this part of the plan shall be submitted to the department of human services for approval by April 1 for the succeeding fiscal year.

e. Changes to the approved plan are submitted at least sixty days prior to the proposed change and are not to be implemented prior to the director of human services' approval.

2. The county management plan shall address the county's criteria for serving persons with chronic mental illness, including any rationale used for decision making regarding this population.

3. a. For the fiscal year beginning July 1, 1996, and succeeding fiscal years, the county's mental health, mental retardation, and developmental disabilities service expenditures for a fiscal year are limited to a fixed budget amount. The fixed budget amount shall be the amount identified

in the county's management plan and budget for the fiscal year. The county shall be authorized an allowed growth factor adjustment as established by statute for services paid from the county's services fund under section 331.424A which is in accordance with the county's management plan and budget, implemented pursuant to this section. The statute establishing the allowed growth factor adjustment shall establish the adjustment for the fiscal year which commences two years from the beginning date of the fiscal year in progress at the time the statute is enacted.

b. Based upon information contained in county management plans and budgets, the state-county management committee shall recommend an allowed growth factor adjustment to the governor by November 15 for the fiscal year which commences two years from the beginning date of the fiscal year in progress at the time the recommendation is made. The allowed growth factor adjustment shall address costs associated with new consumers of service, service cost inflation, and investments for economy and efficiency. In developing the service cost inflation recommendation, the committee shall consider the cost trends indicated by the gross expenditure amount reported in the expenditure reports submitted by counties pursuant to subsection 1, paragraph "a". The governor shall consider the committee's recommendation in developing the governor's recommendation for an allowed growth factor adjustment for such fiscal year. The governor's recommendation shall be submitted at the time the governor's proposed budget for the succeeding fiscal year is submitted in accordance with chapter 8.

c. The amount of the appropriation required to fund the allowed growth factor adjustment for a fiscal year shall be calculated by applying the adjustment established by statute for that fiscal year to the sum of the following:

(1) The total amount of base year expenditures for all counties.

(2) The total amount of the appropriations for allowed growth factor adjustments made to all counties in all of the fiscal years prior to that fiscal year.

4. A county may provide assistance to service populations with disabilities to which the county has historically provided assistance but who are not included in the service management provisions required under subsection 1, subject to the availability of funding.

5. A county shall implement the county's management plan in a manner so as to provide adequate funding for the entire fiscal year by budgeting for ninety-nine percent of the funding anticipated to be available for the plan. A county may expend all of the funding anticipated to be available for the plan.

6. The director's approval of a county's mental health, mental retardation, and developmental

disabilities services management plan shall not be construed to constitute certification of the county's budget.

7. A county shall annually report data concerning the services managed by the county. At a minimum, the data reported shall indicate the number of different individuals who utilized services in a fiscal year and the various types of services. Data reported under this subsection shall be submitted with the county's expenditure report required under subsection 1, paragraph "a".

8. A county's management plans submitted under this section shall provide for services to children from community mental health centers and other mental health service providers accredited under chapter 225C.

99 Acts, ch 160, §13, 16

1999 amendments to subsection 1, paragraph b, regarding county management plans and the planning process are effective May 20, 1999, and apply for purposes of preparation and submission of the management plan by April 1, 2000, for the fiscal year beginning July 1, 2000; 99 Acts, ch 160, §16

For future amendments effective July 1, 2000; see 99 Acts, ch 160, §14–16
Subsection 1, paragraph b amended

331.440A Adult mental health, mental retardation, and developmental disabilities services funding decategorization pilot project.

1. *Definitions.* For the purposes of this section, unless the context requires otherwise:

a. "Department" means the department of human services.

b. "Pilot project areas" means the pilot project created under this section involving the three-county or multicounty single entry point process administrative areas designated in accordance with this section.

c. "Target population" means any person who is a legal resident of a pilot project county and meets both of the following conditions:

(1) The person is eighteen years of age or older. However, a person who is more than sixty-four years of age who requires full-time nursing facility care shall not be included in the target population.

(2) The person is eligible for assistance under the pilot project county management plan approved under section 331.439.

2. *Purpose.* The purpose of the pilot project is to improve outcomes for service consumers by allowing pilot project counties to administer overall projected funding from state and federal sources together with other available funding, and by reducing or eliminating unnecessary barriers associated with funding sources, and thereby to creatively meet the divergent, individual needs of service consumers in the community.

3. *Project established.* The department of human services shall establish a pilot project for decategorizing the public funding for adult mental health, mental retardation, and developmental disabilities services in accordance with this section. The pilot project shall include the three-county single entry point process administrative areas designated for decategorization planning un-

der 1997 Iowa Acts, chapter 169, section 13. Under the pilot project, a projected funding amount for a fiscal year shall be developed for each of the three administrative areas, from the funding sources designated in this section. The projected funding amount for a fiscal year, manner of payment, and other provisions of the pilot project shall be delineated in contracts between the department and the counties involved in the pilot project.

4. *County management plan.* The counties participating in the pilot project shall amend their county management plans approved under section 331.439 to be applicable to the period of the pilot project. Unless a change in federal or state funding provisions reduces the availability of funding, a pilot project county's management plan eligibility provisions shall not be more restrictive than the provisions in effect as of June 30, 1999. The amended county management plans shall address the service needs of the populations served under the funding sources included in the pilot project beginning with the applicable phase.

For purposes of determining the financial responsibility of a pilot project county, a legal resident includes anyone living in the county at the time services or other support are provided who is a member of the target population. A legal resident includes but is not limited to a person who is homeless or living in a homeless shelter. However, if an individual resides in a pilot project county as a result of placement or referral for services or other support by another county or another state, financial responsibility remains with the other county or other state.

5. *County responsibilities.*

a. A county participating in the pilot project is responsible to provide or pay for services and other support to appropriately address the needs of the target population attributable to that county. This responsibility includes accountability for clinical, administrative, and fiscal functions.

b. A pilot project area may choose among alternative approaches in administering services under the pilot project. The alternative approaches include but are not limited to any of the following:

(1) A case rate approach to purchase of services.

(2) A fee-for-service purchasing approach with an emphasis on flexible, creative services.

(3) A mixed model involving both case rate and fee-for-service approaches.

c. A pilot project area shall provide data and other reports as provided in the contract with the department.

d. Moneys received by a county under the pilot project shall be deposited in the county's services fund. Moneys received that remain unencumbered or unobligated at the close of the fiscal year shall remain available to be used to benefit the county's target population in the succeeding fiscal year.

e. Receipt and expenditures of moneys under the pilot project shall be subject to examination during the regular audit of the pilot project area counties performed in accordance with chapter 11.

6. *Funding — phases.* The department shall negotiate with the pilot project areas to identify the projected funding amount to be provided to the areas for a fiscal year. The projected funding amount shall be determined in accordance with a pilot project area's relative share of the statewide expenditures for services and other support paid by the funding sources included in the pilot project plus the related administrative expenses. Unless the commencement dates are delayed due to a determination by the oversight committee, the pilot project funding shall be implemented in two phases with the first phase to commence July 1, 2000, and the second phase to commence July 1, 2001, as provided in paragraph "d". Both phases of the pilot project shall end December 31, 2003. The phases of the pilot project shall be implemented as follows:

a. In the first phase, the department and the pilot project areas shall negotiate the specific projected funding amounts to be provided to each area. The department and the pilot project areas shall provide any data or other information necessary to accurately develop the projected amounts. The funding amount for the first phase shall be determined by December 30, 1999.

b. In the first phase, the mental health services funding sources for the pilot project areas shall include but are not limited to all of the following:

(1) The state share of the costs of care in the state mental health institutes.

(2) The mental health portion of any federal grant funding administered through the United States department of health and human services.

(3) Federal social services block grant funding.

(4) State case funding.

(5) State funding for the purchase of local services for persons with mental illness where the client has no established county of legal settlement.

(6) State supplementary assistance funding.

(7) To the extent allowed by the federal government, the mental health portion of federal funding provided for vocational rehabilitation of individuals with disabilities.

c. In the first phase, the mental retardation and other developmental disabilities services funding sources for the pilot project areas shall include but are not limited to all of the following:

(1) State and federal medical assistance funding for home and community-based waiver services to persons with mental retardation.

(2) The state share of the costs of care in the state hospital-schools.

(3) State and federal medical assistance payments for intermediate care facilities for persons with mental retardation services.

(4) Federal social services block grant funding.

(5) State funding for the purchase of local services for persons with mental retardation and other developmental disabilities where the client has no established county of legal settlement.

(6) State supplementary assistance funding.

(7) To the extent allowed by the federal government, the mental retardation and other developmental disabilities portion of federal funding provided for vocational rehabilitation of persons with disabilities.

d. In the second phase, all other medical assistance funding for mental health services for the pilot project areas shall be incorporated into the annual projected funding amount. Implementation of the second phase shall be subject to enactment by the general assembly of an implementation authorization.

7. *Oversight committee.*

a. An oversight committee shall be established to provide general oversight of the pilot project and the risk pool and to perform the duties outlined in this subsection. The oversight committee shall consist of the following members:

(1) At least one service consumer, one service provider, and one county supervisor from each of the three pilot project areas, designated by the governor.

(2) An individual designated by the governor.

(3) One individual designated by the division of medical services of the department of human services and one individual designated by the division of mental health and developmental disabilities of the department of human services.

(4) An individual designated by the legislative council. If the individual designated by the legislative council is a member of the general assembly, that member shall be a nonvoting member.

b. The oversight committee shall have the following duties and responsibilities:

(1) The oversight committee may make a determination that implementation by the department of human services of a significant funding provision such as the rehabilitation option for persons with chronic mental illness or a waiver under the medical assistance program or another good cause reason justifies delay of the implementation of the pilot project phases as provided in subsection 6. If such a determination is made, the department of human services and pilot project counties shall delay implementation of the pilot project phases until a date identified by the oversight committee.

(2) The oversight committee shall arrange for an independent evaluation of the pilot project in accordance with subsection 9.

(3) The oversight committee shall provide assistance to the pilot project counties, the department of human services, and other interested persons concerning implementation of the pilot project.

(4) The oversight committee shall perform functions for the risk pool in accordance with subsection 8.

8. *Risk pool.* In order to augment assistance from the risk pool of the property tax relief fund for which the pilot project counties may be eligible under section 426B.5, the pilot project administrative areas shall create and commit funding to a pilot project risk pool. The pilot project risk pool shall be used to cover unexpected costs resulting from an unanticipated event such as a legal settlement requirement or need for an exceptionally costly set of services or other support. Funding shall be committed on the basis of a percentage of the pilot project counties' overall budget for services under the counties' management plan with an annual maximum percentage for each area and an overall combined percentage maximum, as determined by the pilot project counties in consultation with the oversight committee. Expenditure of this risk pool funding shall be subject to authorization by the oversight committee.

9. *Outcomes and evaluation.*

a. In consultation with the oversight committee, the pilot project participants and the department shall agree on a set of outcomes and indicators to measure the effect of the pilot project upon the system of care in those counties. The department and pilot project areas shall annually report to the governor and general assembly by December 15 on the implementation status of the pilot project and the performance on the indicators. The report shall include any findings identified by the oversight committee.

b. The oversight committee shall arrange for an independent evaluation of the pilot project. The evaluation shall assess the quality of services as well as the cost-effectiveness of the pilot project. The evaluation shall include a focus on special populations such as persons who are homeless or who have multiple disabilities or service needs.

c. A final report concerning the pilot project shall be submitted by the department and the pilot project areas to the governor and general assembly. It is the intent of the general assembly to use that report to determine whether to continue the pilot project, revise it, terminate it, or implement the pilot project provisions or a similar approach statewide.

10. *Law — rules — implementation.*

a. If a provision of state law or administrative rule is in conflict with a provision of this section, the provision of this section shall prevail. State law and administrative rules governing the funding sources specified in this section are not applicable to use of the funding by the pilot project counties.

b. The department shall amend the medical assistance state plan and apply for federal waivers as necessary to implement the provisions of this section.

c. The department shall amend its contract for managed behavioral health care under medical assistance as necessary to implement the second phase of the pilot project and for the medical assistance-eligible persons covered under that contract to instead be covered by the pilot project counties.

d. The pooling of funding sources and the provision of services under this pilot project and implementation of a risk pool as authorized in this section is not insurance and is not subject to regulation under chapters 505 through 523C.

e. The department of human services shall amend the state medical assistance plan, implement federal waivers, or take other actions as necessary for the pilot project areas to be able to draw federal funding for the start-up and other costs to implement the pilot project.

f. The department shall give consideration to implementing a rehabilitation option under the medical assistance program for persons with chronic mental illness.

g. The requirements of this section may be adapted as necessary to comply with federal law, regulation, or other requirements in order to assure federal financial participation in the pilot project.

99 Acts, ch 160, §1
NEW section

331.461 Definitions.

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

1. "*Combined county enterprise*" means two or more county enterprises combined and operated as a single enterprise.

2. "*County enterprise*" means any of the following:

a. Airports and airport systems.

b. Works and facilities useful and necessary for the collection, treatment, purification, and disposal in a sanitary manner of the liquid and solid waste, sewage, and industrial waste of the county, including sanitary disposal projects as defined in section 455B.301 and sanitary sewage systems, and including the acquisition, establishment, construction, purchase, equipment, improvement, extension, operation, maintenance, reconstruction, and repair of the works and facilities within or without the limits of the county, and including works and facilities to be jointly used by the county and other political subdivisions.

c. Swimming pools and golf courses, including their acquisition, establishment, construction, purchase, equipment, improvement, extension, operation, maintenance, reconstruction, and repair.

d. The equipment, enlargement, and improvement of a county public hospital previously established and operating under chapter 347, including acquisition of the necessary lands, rights-of-way, and other property, subject to approval by the board of hospital trustees. However, notice of the

proposed bond issue shall be published at least once each week for two consecutive weeks and if, within thirty 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. Bonds issued under this paragraph shall mature in not more than thirty years from date of issuance.

e. In a county with a population of less than one hundred fifty thousand, a county hospital established under chapter 37 or 347A, including its acquisition, construction, equipment, enlargement, and improvement, and including necessary lands, rights-of-way, and other property. However, bonds issued under this paragraph shall mature in not more than thirty years from date of issuance, and are subject to the notice and election requirements of bonds issued under paragraph "d".

f. A waterworks or single benefited water district under section 357.35, including land, easements, rights-of-way, fixtures, equipment, accessories, improvements, appurtenances, and other property necessary or useful for the operation of the waterworks or district.

g. Housing for persons who are elderly or persons with physical disabilities.

3. "Gross revenue" means all income and receipts derived from the operation of a county enterprise or combined county enterprise.

4. "Net revenues" means gross revenues less operating expenses.

5. "Operating expense" means salaries, wages, cost of maintenance and operation, materials, supplies, insurance, and all other items normally included under recognized accounting practices, but does not include allowances for depreciation in the value of physical property.

6. "Pledge order" means a promise to pay out of the net revenues of a county enterprise or combined county enterprise, which is delivered to the contractors or other persons in payment of all or part of the cost of the project.

7. "Project" means the acquisition, construction, reconstruction, extending, remodeling, improving, repairing, and equipping of all or part of a county enterprise or combined county enterprise within or without the boundaries of the county.

8. "Rates" means rates, fees, tolls, rentals, and charges for the use of or service provided by a county enterprise or combined county enterprise.

9. "Revenue bond" means a negotiable bond issued by a county and payable from the net revenues of a county enterprise or combined county enterprise.

331.512 Duties relating to taxation.

The auditor shall:

1. Include on the tax list:

a. The levy of county taxes authorized by the board as provided by law.

b. The levy of taxes to pay the principal and interest on bonds as provided in sections 76.2 and 76.3.

c. The levy of a mulct tax against the property of a person maintaining a nuisance as certified by the clerk of the district court as provided in section 99.28.

d. The costs of erecting, rebuilding, or repairing a fence under order of the fence viewers as provided in section 359A.6.

e. A levy against the property of a bee owner sufficient to pay the costs of disinfecting or destroying diseased bees as provided in section 160.8.

f. The levy for taxes for the county brucellosis and tuberculosis eradication fund as provided in section 165.18.

g. The levy of a tax for the operation of a community college as provided in section 260C.17.

h. The levy of a tax to pay the principal and interest under a loan agreement entered into by community college authorities as provided in section 260C.22.

i. The levy of community school taxes as provided by law.

j. The levy of a tax as certified by the board of trustees of a sanitary district as provided in section 358.18.

k. The levy of taxes certified by the board of trustees of a township as provided in chapters 359 and 360.

l. The levy of city taxes and assessments as certified by the city council as provided by law.

m. Other tax levies as provided by law.

2. Carry out duties relating to tax sales of property within special charter cities as provided in sections 420.220 to 420.229.

3. Carry out duties relating to the homestead tax credit and agricultural land tax credit as provided in chapters 425 and 426.

4. Prepare and certify to the county treasurer the total amount of dollars for military service tax credits claimed and allowed as provided under sections 426A.3 and 426A.11 through 426A.14.

5. Carry out duties relating to the preparation of the tax list as provided in sections 428.4, 441.17, 441.21, 443.2 to 443.9, and 443.21.

6. Carry out duties relating to the valuation and taxation of telegraph and telephone companies as provided in sections 433.8 to 433.10 including mapping requirements as provided in sections 433.14 and 433.15.

7. Transmit to other local government officials the order stating the length of the main track and the assessed value of each railway located within the county as provided in section 434.22.

8. Carry out duties relating to the valuation and taxation of express companies as provided in sections 436.9 to 436.11.

9. Transmit to other local government officials the order stating the length of the electric transmission lines and the assessed value of the property of the electric transmission line companies located within the county as provided in section 437.10.

10. Carry out duties relating to the valuation and taxation of pipeline companies as provided in sections 438.14 to 438.16.

11. Furnish the assessor a plat book which is platted with the lands and lots within the assessment district as provided in section 441.29. The auditor, with the approval of the board of supervisors, may establish a permanent real estate index number system as provided in section 441.29.

12. Carry out duties relating to levy of school taxes as provided in chapter 257.

13. Carry out duties relating to the computation of tax rates as provided under chapter 444.

14. When an order of apportionment is made, correct the tax books or records in the auditor's possession as provided in section 449.4.

15. Carry out other duties as provided by law.

Section not amended, internal reference change applied

331.602 General duties.

The recorder shall:

1. Record all instruments presented to the recorder's office for recordation upon payment of the proper fees and compliance with other recording requirements as provided by law. The instruments presented for filing or recordation shall be legible and reproducible, and shall have typed or legibly printed on them the names of all signatories including the names of acknowledging officers and witnesses beneath the original signatures. Except as otherwise authorized by the recorder, the instruments shall be no larger than eight and one-half inches by fourteen inches and shall provide a space at the top of the instrument at least eight and one-half inches across the page by two inches in length, on which space shall be typed or legibly printed across the page on the bottom one-fourth inch of this space, the name, address, and telephone number of the individual who prepared the instrument and, immediately below the two inches of space, the tax statement information required in paragraph "d". The remaining portion of this space shall be reserved for use by the county recorder.

a. However, if an instrument does not contain typed or printed names, the recorder shall accept the instrument for recordation or filing if it is accompanied by an affidavit, to be recorded with the instrument, correctly spelling in legible print or type the signatures appearing on the instrument.

b. The requirement of paragraph "a" does not apply to military discharges, military instruments, wills, court records, or to any other instrument dated before July 4, 1959.

c. Failure to print or type signatures as provided in this subsection does not invalidate the instrument.

d. An instrument conveying an interest in real property shall contain the statement "Address tax statement:" which shall be filled out with a name and complete mailing address. Each instrument conveying an interest in real property shall contain this statement unless otherwise authorized by the county recorder.

2. Rerecord an instrument without fee upon presentation of the original instrument by the owner if an error is made in recording the instrument. The recorder shall also note in the margin of the new record a reference to the original record and in the margin of the original record a reference to the book and page of the new record.

3. If an error is made in indexing an instrument, reindex the instrument without fee.

4. Record the registration of a person registered under the federal Social Security Act who requests recordation, and keep an alphabetical index of the record referring to the name of the person registered.

5. Compile a list of deeds recorded in the recorder's office after July 4, 1951, which are dated or acknowledged more than six months before the date of recording and forward a copy of the list each month to the inheritance tax division of the department of revenue and finance.

6. Carry out duties as a member of a nomination appeals commission as provided in section 44.7.

7. Carry out duties relating to the recordation of oil and gas leases as provided in sections 458A.22 and 458A.24.

8. Endorse on each notice of an unemployment contribution lien the day, hour, and minute that the lien is received from the department of workforce development, index the notice of lien, and record the lien as provided in section 96.14, subsection 3.

9. Carry out duties relating to the registration of vessels as provided in sections 462A.5, 462A.23, 462A.51, 462A.52, 462A.54, and 462A.55.

10. Carry out duties relating to the issuance of hunting, fishing, and fur harvester licenses as provided in sections 483A.10, 483A.12, 483A.13, 483A.14, 483A.15, and 483A.22.

11. Collect migratory game bird fees as provided in chapter 484A.

12. Record the orders and decisions of the fence viewers and index the record in the name of each adjoining owner of land affected by the order or decision as provided in section 359A.10. The recorder shall also note that a judgment has been rendered on an appeal of an order or decision of the fence viewers as provided in section 359A.24.

13. Record the articles of incorporation of farm aid associations as provided in section 176.5 for the fee specified in section 331.604.

14. Reserved.

15. Record without fee a sheriff's deed for land under foreclosure procedures as provided in section 257B.35.

16. Issue snowmobile registrations as provided in sections 321G.4, 321G.6, and 321G.21.

17. Record the measure and plat of a zoning district, building line, or fire limit adopted by a city as provided in section 380.11.

18. Carry out duties relating to the platting of land as provided in chapter 354.

19. Submit monthly to the director of revenue and finance a report of the real property transfer tax received.

20. Carry out duties relating to the endorsement, indexing, and recording of income tax liens as provided in section 422.26.

21. Carry out duties relating to the taxation of real estate transfers as provided in chapter 428A.

22. Carry out duties relating to the recording and indexing of affidavits and claims affecting real estate as provided in section 448.17.

23. Forward to the director of revenue and finance a certified copy of any deed, bill of sale or other transfer which shows that it is made or intended to take effect at or after the death of the person executing the instrument as provided in section 450.81.

24. Record papers, statements, and certificates relating to the condemnation of property as provided in section 6B.38, and carry out duties related to the filing of certain condemnation documents with the office of secretary of state.

25. Carry out duties relating to the recordation of articles of incorporation and other instruments for state banks as provided in chapter 524.

26. Carry out duties relating to the recordation of articles of incorporation and other instruments for credit unions as provided in chapter 533.

27. Carry out duties relating to the recordation of articles of incorporation and other instruments for savings and loan associations as provided in chapter 534.

28. Carry out duties relating to the filing of financing statements or instruments as provided in sections 554.9401 to 554.9408.

29. Register the name and description of a farm as provided in sections 557.22 to 557.26.

30. Record a statement of claim provided in chapter 557C relating to mineral interests in coal.

31. Record conveyances and leases of agricultural land as provided in section 558.44.

32. Collect the recording fee and the auditor's transfer fee for real property being conveyed as provided in section 558.58.

33. Serve as a member of the jury commission to draw jurors as provided in section 607A.9.

34. Record and index a notice of title interest in land as provided in section 614.35.

35. Designate the newspapers in which the notices pertaining to the office of recorder shall be published as provided in section 618.7.

36. Record a conveyance of property presented by a commissioner appointed by the district court as provided in section 624.35.

37. Carry out duties relating to the indexing of name changes, and the recorder shall charge a fee for indexing as provided in section 331.604.

38. Report to the board the fees collected as provided in section 331.902.

39. Accept applications for passports.

40. Carry out other duties as provided by law and duties assigned pursuant to section 331.323.

99 Acts, ch 83, §3, 4, 11; 99 Acts, ch 171, §34, 42

1999 amendments to subsection 1 apply to instruments recorded on or after January 1, 2000; 99 Acts, ch 83, §11

1999 amendment to subsection 24 applies to state highway construction projects approved for commencement by the transportation commission on or after July 1, 1999, and to all other condemnation proceedings in which the application for condemnation is filed on or after July 1, 1999; see 99 Acts, ch 171, §42

Subsection 1, unnumbered paragraph 1 amended and NEW paragraph d Subsection 24 amended

331.605 Other fees.

The recorder shall collect:

1. For the issuance of a registration or transfer for a vessel or boat:

a. A registration fee as provided in section 462A.5.

b. A writing fee as provided in section 462A.53.

c. A transfer and writing fee as provided in section 462A.44.

2. For issuance of hunting, fishing, and fur harvester licenses:

a. The fees specified in section 483A.1.

b. The writing fee as provided in section 483A.12.

3. A state migratory game bird fee as provided in section 483A.1.

4. For the issuance of snowmobile registrations, the fees specified in section 321G.4.

5. A county fee of four dollars for a certified copy of a birth record, death record, or marriage certificate.

6. For filing an application for the license to marry, thirty dollars. For issuing an application for an order of the district court authorizing the validation of a license to marry before the expiration of three days from the date of issuance of the license, five dollars. The district court shall authorize the early validation of a marriage license without the payment of any fees imposed in this subsection upon showing that the applicant is unable to pay the fees.

7. Other fees as provided by law.

However, the county shall not be required to pay the fees required in this section.

99 Acts, ch 96, §38; 99 Acts, ch 141, §39

See Code editor's note to §10A.202

Subsections 3 and 5 amended

331.608 Military personnel records.

1. The recorder shall maintain a special book in which, upon request, the discharge of a veteran shall be recorded without charge. The discharge

book shall be a uniform type, kind, and form approved by the commission of veterans affairs.

2. If an official discharge was not issued or if the veteran was killed in action or died in service, the recorder shall record an official certificate, general or special order, letter, or telegram from a competent authority, including letters from the United States department of defense, the United States veterans administration, or other governmental office, which shows the termination of the veteran's service.

3. The recorder shall record without charge the commissions and warrants of veteran officers and noncommissioned officers, orders citing a veteran for bravery and meritorious action, and citations and bestowals of medals from the state, federal or foreign governments.

4. The recorder shall record without charge the discharge or other records of a deceased veteran which are presented on behalf of the deceased veteran by a veterans organization.

5. The recorder shall keep an alphabetical index referring to the name of the veteran whose discharge paper is recorded.

6. If a certified copy of a public record is required to perfect the claim of a veteran in service or honorably discharged or a claim of a dependent of the veteran, the certified copy shall be furnished by the custodian of the public record without charge.

7. If the recorder periodically publishes notice of the services provided to military persons and veterans under this section, the recorder shall pay the cost of the publication in the same manner as other expenses of the recorder's office.

8. As used in this section, "veteran" means a veteran as defined in section 35.1, who enlisted or was inducted from the county, resided at any time in the county, or is buried in the county.

99 Acts, ch 180, §16
Subsection 8 amended

331.756 Duties of the county attorney.

The county attorney shall:

1. Diligently enforce or cause to be enforced in the county, state laws and county ordinances, violations of which may be commenced or prosecuted in the name of the state, county, or as county attorney, except as otherwise provided.

2. Appear for the state and the county in all cases and proceedings in the courts of the county to which the state or the county is a party, except actions or proceedings resulting from a change of venue from another county, and appear in the appellate courts in all cases in which the county is a party, and appear in all actions or proceedings which are transferred on a change of venue to another county or which require the impaneling of a jury from another county and in which the county or the state is a party.

3. Prosecute all preliminary hearings for charges triable upon indictment.

4. Prosecute misdemeanors under chapter 236. The county attorney shall prosecute other 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, the county or a 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 annually with the clerk of the district court on or before July 1 a notice of full commitment to collect delinquent obligations and must file on the first day of each month a list of the cases in which the county attorney or the person procured or designated by the county attorney is pursuing the collection of delinquent obligations. The annual 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 offi-

cers 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. Cooperate 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 8.

13. Reserved.

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 ethics and campaign disclosure board and proceed to institute the recommended actions or advise the board that prosecution is not merited, as provided in sections 68B.32C and 68B.32D.

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 workforce development 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 author-

ity 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. Reserved.

31. Prosecute violations of the Iowa veterinary practice Act as provided in section 169.19.

32. Assist the department of inspections and appeals in the enforcement of the Iowa food code and the Iowa hotel sanitation code as provided in sections 137F.19 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. Cooperate 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. Cooperate 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 person with mental retardation 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 person with mental retardation from parents or other persons who are legally liable for the support of the person with mental retardation 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 administrator of the division of mental health and developmental disabilities of the department of human services in support of an application to transfer a person with mental illness who becomes incorrigible and dangerous from a state hospital for persons with mental illness 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 persons with mental illness as provided in sections 230.25 and 230.27.

48. Carry out duties relating to the care, guidance, and control of juveniles as provided in chapter 232.

49. Prosecute violations of law relating to the family investment program, medical assistance, and supplemental assistance as provided in sections 239B.15, 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. Reserved.

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.

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. Reserved.

70. Institute legal proceedings against violations of insurance laws as provided in sections 511.7 and 515.93.

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. Reserved.

76. Reserved.

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 department of correctional services of the facts and circumstances surrounding the crime committed and the record and history of the defendant granted probation as provided in section 907.8.

83A. Carry out the duties imposed under sections 915.12 and 915.13.

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.

Section not amended; internal reference change applied

331.802 Deaths — reported and investigated.

1. A person's death which affects the public interest as specified in subsection 3 shall be reported to the county medical examiner or the state medical examiner by the physician in attendance, any law enforcement officer having knowledge of the death, the embalmer, or any other person present. The appropriate medical examiner shall notify the city or state law enforcement agency or sheriff and take charge of the body.

2. If a person's death affects the public interest, the county medical examiner shall conduct a preliminary investigation of the cause and manner of death, prepare a written report of the findings, promptly submit the full report to the state medical examiner on forms prescribed for that purpose, and submit a copy of the report to the county attorney. For each preliminary investigation and the preparation and submission of the required reports, the county medical examiner shall receive from the

county of appointment a fee determined by the board plus the examiner's actual expenses. The fee and expenses paid by the county of appointment shall be reimbursed to the county of appointment by the county of the person's residence. However, if the person's death is caused by a defendant for whom a judgment of conviction and sentence is rendered under section 707.2, 707.3, 707.4, 707.5, or 707.6A, the county of the person's residence may recover from the defendant the fee and expenses. The fee and expenses of the county medical examiner who performs an autopsy or conducts an investigation of a person who dies after being brought into this state for emergency medical treatment by or at the direction of an out-of-state law enforcement officer or public authority shall be paid by the state. A claim for payment shall be filed with the Iowa department of public health. If moneys are not appropriated to the Iowa department of public health for the payment of autopsies under this subsection, claims for payment shall be forwarded to the state appeal board and, if authorized by the board, shall be paid out of moneys in the general fund of the state not otherwise appropriated.

3. A death affecting the public interest includes, but is not limited to, any of the following:

a. Violent death, including homicidal, suicidal, or accidental death.

b. Death caused by thermal, chemical, electrical, or radiation injury.

c. Death caused by criminal abortion including self-induced, or by sexual abuse.

d. Death related to disease thought to be virulent or contagious which may constitute a public hazard.

e. Death that has occurred unexpectedly or from an unexplained cause.

f. Death of a person confined in a prison, jail, or correctional institution.

g. Death of a person if a physician was not in attendance within thirty-six hours preceding death, excluding prediagnosed terminal or bedfast cases for which the time period is extended to thirty days, and excluding a terminally ill patient who was admitted to and had received services from a hospice program, as defined in section 135J.1, if a physician or registered nurse employed by the program was in attendance within thirty days preceding death.

h. Death of a person if the body is not claimed by a relative or friend.

i. Death of a person if the identity of the deceased is unknown.

j. Death of a child under the age of two years if death results from an unknown cause or if the circumstances surrounding the death indicate that sudden infant death syndrome may be the cause of death.

4. The county medical examiner shall conduct the investigation in the manner required by the state medical examiner and shall determine

whether the public interest requires an autopsy or other special investigation. However, if the death occurred in the manner specified in subsection 3, paragraph “j”, the county medical examiner shall order an autopsy, the expense of which shall be reimbursed by the Iowa department of public health. In determining the need for an autopsy, the county medical examiner may consider the request for an autopsy from a public official or private person, but the state medical examiner or the county attorney of the county where the death occurred may require an autopsy.

5. *a.* A person making an autopsy shall promptly file a complete record of the findings in the office of the state medical examiner and the county attorney of the county where death occurred and the county attorney of the county where any injury contributing to or causing the death was sustained.

b. A summary of the findings resulting from an autopsy of a child under the age of two years whose death occurred in the manner specified in subsection 3, paragraph “j”, shall be transmitted immediately by the physician who performed the autopsy to the county medical examiner. The report shall be forwarded to the parent, guardian, or custodian of the child by the county medical examiner or a designee of the county medical examiner, or through the infant’s attending physician. A copy of the autopsy report filed with the county attorney shall be available to the parents, guardian, or custodian upon request.

6. The report of an investigation made by the state medical examiner or a county medical examiner and the record and report of an autopsy made under this section or chapter 691, shall be received as evidence in any court or other proceedings, except that statements by witnesses or other

persons and conclusions on extraneous matters included in the report are not admissible. The person preparing a report or record given in evidence may be subpoenaed as a witness in any civil or criminal case by any party to the cause. A copy of a record, photograph, laboratory finding, or record in the office of the state medical examiner or any medical examiner, when attested to by the state medical examiner or a staff member or the medical examiner in whose office the record, photograph, or finding is filed, shall be received as evidence in any court or other proceedings for any purpose for which the original could be received without proof of the official character of the person whose name is signed to it.

7. In case of a sudden, violent, or suspicious death after which the body is buried without an investigation or autopsy, the county medical examiner, upon being advised of the facts, shall notify the county attorney. The county attorney shall apply for a court order requiring the body to be exhumed in accordance with chapter 144. Upon receipt of the court order, an autopsy shall be performed by a medical examiner or by a pathologist designated by the medical examiner and the facts disclosed by the autopsy shall be communicated to the court ordering the disinterment for appropriate action.

8. Where donation of the remains of the deceased to a medical school or similar institution equipped with facilities to perform autopsies is provided by will or directed by the spouse, parents or children of full age, of the deceased, any autopsy under this section shall be performed at the direction of the school or institution, and in such a manner as to further the purpose of the donation, while serving the public interest.

99 Acts, ch 141, §40
Subsection 2 amended

CHAPTER 335

COUNTY ZONING

335.27 Agricultural land preservation ordinance.

If a county adopts an agricultural land preservation ordinance under this chapter which subjects farmland to the same use restrictions provided in section 352.6 for agricultural areas, section 6B.3,

subsection 1, paragraph f, and sections 352.10 to 352.12 shall apply to farms and farm operations which are subject to the agricultural land preservation ordinance.

Section not amended; internal reference change applied

CHAPTER 347

COUNTY HOSPITALS

347.9 Trustees — appointment — terms of office.

When it has been determined by the voters of a county to establish a county public hospital, the

board shall appoint seven trustees chosen from among the resident citizens of the county with reference to their fitness for office, and not more than four of the trustees shall be residents of the city at

which the hospital is located. The trustees shall hold office until the following general election, at which time their successors shall be elected, two for a term of two years, two for four years, and three for six years, and they shall determine by lot their respective terms, and thereafter their successors shall be elected for regular terms of six years each. A person or spouse of a person with medical or special staff privileges in the county public hospital or who receives direct or indirect compensation in an amount greater than one thousand five hundred dollars in a calendar year from the county public hospital or direct or indirect compensation in an amount greater than one thousand five hundred dollars in a calendar year from a person contracting for services with the hospital shall not be eligible to serve as a trustee for that county public hospital.

99 Acts, ch 36, §3
Section amended

347.12 Officers' duties — purchasing regulations.

The treasurer of the county hospital shall receive and disburse all funds. Warrants shall be drawn by the secretary and countersigned by the chairperson of the board after the claim has been certified by the board. However, the board may adopt purchasing regulations to govern the purchase of specified goods and services without the prior certification by the board. The purchasing regulations shall conform to generally accepted practices followed by public purchasing officers.

The treasurer of the county hospital shall keep an accurate account of all receipts and disbursements and shall register all orders drawn and reported to the treasurer by the secretary, showing the number, date, to whom drawn, the fund upon which drawn, the purpose and amount.

The secretary of the hospital board of trustees shall file monthly on or before the thirtieth day of each month with such board a complete statement of all receipts and disbursements from all funds during the preceding month, and also the balance remaining on hand in such funds at the close of the period covered by said statement.

Before the fifteenth day of each month, the county treasurer shall give notice to the chairperson of the board of hospital trustees of the amount of revenue collected for each fund of the hospital to the first day of that month and the county treasurer shall pay the taxes to the treasurer of the hospital as provided in section 331.552, subsection 29.

99 Acts, ch 36, §4
Unnumbered paragraph 3 amended

347.13 Duties and powers.

Said board of hospital trustees shall:

1. Purchase, condemn, or lease a site for such public hospital, and provide and equip suitable hospital buildings.

2. Cause plans and specifications to be made and adopted for all hospital buildings, and advertise for bids, as required by law for other county buildings, before making a contract for the construction of a building.

3. Procure equipment under bidding and contracting requirements prescribed by the board and procure supplies necessary for the operation of the hospital.

4. Have general supervision and care of such grounds and buildings.

5. Employ an administrator, and necessary assistants and employees, and fix their compensation.

6. Have control and supervision over the physicians, nurses, attendants, and patients in the hospital.

7. Provide a suitable room for detention and examination of persons brought before the commissioners of hospitalization of the county, if such hospital is located at the county seat.

8. Determine whether or not any applicant is indigent or tuberculous and entitled to free treatment therein, and to fix the price to be paid by other patients admitted to such hospital for their care and treatment therein.

9. Fix at its regular February meeting in each year, the amount necessary for the improvement and maintenance of the hospital and for support of ambulance service during the ensuing fiscal year, and cause the president and the secretary to certify the amount to the county auditor before March 1 of each year, subject to any limitation in section 347.7.

10. Make available to the board of supervisors a statement of all receipts and expenditures from the preceding fiscal year.

11. Accept property by gift, devise, bequest, or otherwise; and, if said board deems it advisable, may, at public sale, sell or exchange any property so accepted upon a concurring vote of a majority of all members of the board of hospital trustees, and apply the proceeds thereof, or property received in exchange therefor, to the purposes enumerated in subsection 12 hereof or for equipment.

12. Submit to the voters at any regular or special election a proposition to sell or lease any sites and buildings, excepting those described in subsection 11 hereof, and upon such proposition being carried by a majority of the total number of votes cast at such election, may proceed to sell such property at either public or private sale, and apply the proceeds only for:

a. Retirement of bonds issued and outstanding in connection with the purchase of said property so sold;

b. Repairs or improvements to property owned or for the purchase or lease of equipment as the board of hospital trustees may determine.

13. When it is determined by said board that all or a part of the facilities acquired under the pro-

visions of this chapter and operated as a tuberculosis sanatorium are no longer needed for the uses provided or permitted under this chapter, the board may lease to the county or any political subdivision thereof for any public purpose, such facilities or such part thereof as the board deems proper.

14. There shall be published quarterly in each of the official newspapers of the county as selected by the board of supervisors pursuant to section 349.1 the schedule of bills allowed and there shall be published annually in such newspapers the schedule of salaries paid by job classification and category, but not by listing names of individual employees. The names, addresses, salaries, and job classification of all employees paid in whole or in part from a tax levy shall be a public record and open to inspection at reasonable times as designated by the board of trustees.

99 Acts, ch 36, §5, 6
Subsection 7 stricken and former subsections 8–15 renumbered as 7–14
Subsection 10 stricken and rewritten

347.14 Powers.

The board of hospital trustees may:

1. Adopt bylaws and rules for its own guidance and for the government of the hospital.
2. Establish and maintain in connection with said hospital a training school for nurses.
3. Establish as a department in connection with said hospital a suitable building for the isolation and detention of persons afflicted with contagious diseases subject to quarantine.
4. Determine whether or not, and if so upon what terms, it will extend the privileges of the hospital to nonresidents of the county.
5. Adopt some suitable name other than county public hospital for hospitals either operating now, in process of construction, or to be established hereafter.
6. Operate said hospital as a tuberculosis sanatorium or provide as a department of such hospital suitable accommodation and means for the care of persons afflicted with tuberculosis.
7. Formulate rules and regulations for the government of tuberculous patients and for the protection of other patients, nurses, and attendants from infection.
8. In counties having a population of one hundred thirty-five thousand inhabitants or over, establish a psychiatric department in connection with the hospital to provide for admission of patients for observation, examination, diagnosis and treatment.
9. Procure and pay premiums on any and all insurance policies required for the prudent management of the hospital, including but not limited to public liability, professional malpractice liability, workers' compensation and vehicle liability. Said insurance may include as additional insureds the board of trustees and employees of the hospital. This subsection applies to all county hospitals

whether organized under this chapter, chapter 347A, chapter 37, or otherwise established by law.

10. Certify levies for a tax in excess of any tax levy limit to meet its obligations to pay the premium costs on tort liability insurance, property insurance, workers' compensation insurance, and any other insurance that may be necessary for the prudent management and operation of the county public hospital, the costs of a self-insurance program, the costs of a local government risk pool, and amounts payable under any insurance agreements to provide or procure such insurance, self-insurance program, or local government risk pool.

11. Do all things necessary for the management, control and government of said hospital and exercise all the rights and duties pertaining to hospital trustees generally, including but not limited to authorizing delivery of any health care service, assisted or independent living service, or other ancillary service, unless such rights of hospital trustees generally are specifically denied by this chapter, or unless such duties are expressly charged by this chapter.

12. The said trustees may in their discretion establish a fund for depreciation as a separate fund. Said funds may be invested in United States government bonds and when so invested the accumulation of interest on the bonds so purchased shall be used for the purposes of said depreciation fund; such investment when so made shall remain in said United States government bonds until such time as in the judgment of the board of trustees it is deemed advisable to use said funds for hospital purposes.

13. Operate a health care facility as defined in section 135C.1 in conjunction with the hospital.

14. Purchase, lease, equip, maintain and operate an ambulance or ambulances to provide necessary and sufficient ambulance service or to contract for such vehicles, equipment, maintenance or service when such ambulance service is not otherwise available.

15. Submit to the voters at a regular or special election a proposition to sell or lease a county public hospital for use as a private hospital or as a merged area hospital under chapter 145A or to sell or lease a county hospital in conjunction with the establishment of a merged area hospital. The authorization of the board of hospital trustees submitting the proposition may, but is not required to, contain conditions which provide for maintaining hospital care within the county, for the retention of county public hospital employees and staff, and for the continuation of the board of trustees for the purpose of carrying out provisions of contracts. The property listed in section 347.13, subsection 11, may be included in the proposition, but the proceeds from the property shall be used for the purposes listed in section 347.13, subsection 12, or for the purpose of providing health care for residents of the county.

Proceeds from the sale or lease of the county hospital or other assets of the board of trustees shall not be used for the prepayment of health care services for residents of the county with the purchaser or lessee of the county hospital or to underwrite the sale or lease of the county hospital. The proposition submitted to the voters of the county shall not be set forth at length, but it shall be in substantially the following form:

“Shall the board of hospital trustees of county, state of Iowa, be authorized to (state authorization which may exclude the conditions) in accordance with the terms of authorization approved at the meeting of (cite date) of the board of hospital trustees?”

If the proposition is approved by a majority of the total votes cast for and against the proposition at the election, the board of hospital trustees shall proceed to carry out the authorization granted.

16. Borrow moneys to be secured solely by hospital revenues for the purposes of improvement,

maintenance, or replacement of the hospital or for hospital equipment.

99 Acts, ch 36, §7, 8
Subsection 11 amended
NEW subsection 16

347.30 Notice and hearing.

A county or city hospital shall serve notice and hold a public hearing before selling or leasing any real property pursuant to sections 347.28 and 347.29. The notice shall definitely describe the property, indicate the date and location of the hearing, and shall be published by at least one insertion each week for two consecutive weeks in a newspaper having general circulation in the county where the property is located. The hearing shall not take place prior to two weeks after the second publication.

A county or city hospital shall serve notice before selling or leasing any personal property pursuant to sections 347.28 and 347.29. The notice shall definitely describe the property and shall be published by at least one insertion each week for two consecutive weeks in a newspaper having general circulation in the county where the property is located.

99 Acts, ch 36, §9
Section amended

CHAPTER 347A

COUNTY HOSPITALS PAYABLE FROM REVENUE

347A.1 Revenue bonds — trustees — administration.

A county having a population less than one hundred fifty thousand may issue revenue bonds for a county hospital as provided in section 331.461, subsection 2, paragraph “e”. The administration and management of the hospital shall be vested in a board of hospital trustees consisting of five or seven members. Appointments for a five-member board shall be made by the board of supervisors from among the resident citizens of the county with reference to their fitness for office, and not more than two of the trustees shall be residents of the same township. Expansion from a five-member to a seven-member board of trustees shall occur only on approval of a majority of the five-member board of trustees. The five-member board of trustees shall appoint members to the additional vacancies; one appointee shall serve until the succeeding general election and the other appointee shall serve until the second succeeding general election at which times successors shall be elected.

The trustees shall hold office until the next succeeding election, at which time their successors shall be elected, two for a term of two years, two for a term of four years and one for a term of six years, and thereafter their successors shall be elected for regular terms of six years each. Vacancies in the

board of trustees may be filled in the same manner as original appointments, to hold office until the vacancies are filled pursuant to section 69.12. The trustees shall qualify by taking the usual oath of office as provided in chapter 63, but no bond shall be required of them. The trustees shall receive no compensation but shall be reimbursed for all expenses incurred by them with the approval of the board of trustees in the performance of their duties. The board first appointed shall organize promptly following its appointment, and shall serve until successors are elected and qualified; thereafter no later than December 1 of each year the board shall reorganize by the appointment of a chairperson, secretary, and treasurer. The secretary and treasurer shall each file with the chairperson of the board a surety bond in the amount the board of trustees requires, with sureties to be approved by the board of trustees, for the use and benefit of the county hospital. The reasonable cost of the bonds shall be paid from the operating funds of the hospital. The secretary shall report to the county auditor and the county treasurer the names of the chairperson, secretary, and treasurer of the board as soon as practicable after the appointment of each.

The treasurer of the county hospital shall receive and disburse all funds. Warrants shall be drawn by the secretary and countersigned by the chairper-

son of the board after the claim has been certified by the board. However, the board may adopt purchasing regulations to govern the purchase of specified goods and services without the prior certification of the board. The purchasing regulations shall conform to generally accepted practices followed by purchasing officers. The treasurer of the county hospital shall keep an accurate account of all receipts and disbursements and shall register all orders drawn and reported by the secretary, showing the number, date, to whom drawn, the fund upon which drawn, the purpose, and amount. The secretary of the board of trustees shall file with the board on or before the tenth day of each month, a complete statement of all receipts and disbursements from all funds during the preceding month, and also the balance remaining on hand in all funds at the close of the period covered by the statement. Before the fifteenth day of each month, the county treasurer shall give notice to the chairperson of the board of trustees of the amount of revenue collected for each fund of the hospital to the first day of that month and the county treasurer shall pay the taxes to the treasurer of the hospital as provided in section 331.552, subsection 29.

The board of hospital trustees may employ, fix the compensation of, and remove at pleasure pro-

fessional, technical, and other employees as it deems necessary for the operation and maintenance of the hospital, and disbursement of funds for operation and maintenance shall be made upon order and approval of the board of hospital trustees. A county hospital may include a nurses home and nurses training school. The board of trustees shall make all rules and regulations governing its meetings and the operation of the county hospital and shall fix charges for the services furnished so that the revenues will be at all times sufficient in the aggregate to provide for the payment of the interest on and principal of all revenue bonds issued and outstanding for the hospital, and for the payment of all operating and maintenance expenses of the hospital.

The board of hospital trustees may establish a fund for depreciation as a separate fund. Depreciation fund moneys may be invested in United States government bonds and the accumulation of interest on the bonds shall be used for the purposes of the depreciation fund. The moneys shall remain invested in the bonds until the board of hospital trustees determines the moneys shall be used for hospital purposes.

99 Acts, ch 36, §10
Unnumbered paragraph 1 amended

CHAPTER 350

COUNTY CONSERVATION BOARDS

350.7 Joint operations.

Any county conservation board may cooperate with the federal government or the state government or any department or agency thereof to carry out the purposes and provisions of this chapter. Any county conservation board may also cooperate with a private, not-for-profit organization to carry out public projects and programs authorized under this chapter. Any county conservation board may join with any other county board or boards to carry out this chapter, and to that end may enter into agreement with each other and may do any and all things necessary or convenient to aid and cooperate in carrying out the chapter. Any city, village, or school district may aid and cooperate with any county conservation board or any combination of boards in equipping, operating, and maintaining

museums, parks, preserves, parkways, playgrounds, recreation centers, and conservation areas, and for providing, conducting, and supervising programs of activities, and may appropriate money for such purposes. The natural resource commission, county engineer, county agricultural agent, and other county officials shall render assistance which does not interfere with their regular employment. The board of supervisors may be reimbursed to the credit of the proper fund from county conservation funds for actual expense of operation of county-owned equipment, use of county equipment operators, supplies, and materials of the county, or for the reasonable value for the use of county real estate made available for the use of the county conservation board.

99 Acts, ch 48, §1
Section amended

CHAPTER 357

WATER DISTRICTS

357.20 Due date — bonds.

Assessments of less than one hundred dollars will come due at the first taxing date after the

approval of the final assessment, and assessments of one hundred dollars or more may be paid in ten annual installments with interest on the unpaid

balance at a rate not exceeding that permitted by chapter 74A. The board of supervisors shall issue bonds against the completed assessment in an amount equal to the total cost of the project, so that the amount of the assessment will be approximate-

ly ten percent greater than the amount of the bonds.

99 Acts, ch 83, §5
Section amended

CHAPTER 357A

RURAL WATER DISTRICTS

357A.24 Detachment and attachment of areas between districts.

1. The boards of two or more districts, or the boards of any district and a rural water system organized under chapter 504A, may by concurrent action or agreement join in a petition to detach an area which is not being served by the facilities of one district or system for purposes of being attached to the other district or system. The concurrent action or agreement may include conditions placed on the effectiveness of the concurrent action or agreement as deemed appropriate by the boards of the districts.

2. The petition shall be filed with the auditor of the county in which the area to be detached is located. The petition shall include all of the following regarding the area which is the subject of the petition:

a. A description by section, or fraction thereof, and by township and range of the area, in the same manner as provided in section 357A.16.

b. A verification that the area is not being served by the facilities of any district.

c. A statement asserting that the area can be adequately and economically served by the facilities of the district proposing to attach the area.

3. Upon filing the petition, the auditor shall prepare for a hearing on the petition by following the same procedures as provided in section 357A.3. The notice of the hearing shall include all of the fol-

lowing:

a. The location of the area subject to the petition.

b. The time and place of the hearing as established by the supervisors for the county in which the area to be detached is located.

c. That all owners or tenants of real property within the boundaries of the area may appear and be heard.

4. After the hearing the supervisors shall order that the area subject to the petition be detached from one district and attached to the other district if the supervisors determine that all of the following have been satisfied:

a. The petition meets the requirements of this section.

b. The information included in the petition is accurate.

c. Notice required in this section has been provided.

d. The detachment and attachment is in the best interest of the residents of the area subject to the petition.

The order shall be published in the same newspaper which published the notice of the hearing.

5. This section does not preclude any procedure for detaching an area from or attaching an area to a district as otherwise provided by law, including this chapter.

99 Acts, ch 114, §23
Subsections 3 and 4 amended

CHAPTER 357B

FIRE DISTRICTS

357B.5 Dissolution of district.

1. Upon petition of a number of registered voters residing in a district at least equal to thirty-five percent of the property taxpayers in the district, the board of supervisors may dissolve a benefited fire district and dispose of any remaining property, the proceeds of which shall first be applied against any outstanding obligation of the district. Any remaining balance shall be applied as a tax credit for the property owners of the district. However, except as provided in subsection 2, if all or a part of a

district is annexed, the board of supervisors may transfer the remaining property and balance to the city which annexed the territory. The board of supervisors shall continue to levy an annual tax after the dissolution of a district, not to exceed forty and one-half cents per thousand dollars of assessed value of the taxable property of the district, until all outstanding obligations of the district are paid.

2. If a benefited fire district is dissolved that has been providing fire protection by contract, direct levy, or combination of both, to a city within the

district for at least twenty years and the city's annual payments by contract or levy for the fire protection comprise seventy-five percent or more of the district's annual budget, the board of supervisors, in lieu of the disposal of property as provided in subsection 1, shall transfer to the city all of the district's real and personal property. The city shall assume all of the outstanding obligations of the district. If the district provides fire protection outside of the city's boundaries, the city shall continue to provide fire protection to this area until it is assigned to another fire protection district by the board of supervisors. If the city continues the fire protection outside its boundaries, the city shall certify to the board of supervisors the cost of providing this service, which shall be at the same rate as contained in the budget for property within the city, but not exceeding sixty and three-fourths cents per thousand dollars of assessed value of all taxable property in the area. The board of supervisors shall levy the amount of tax certified as provided in section 357B.3. The tax shall be collected and allocated in the same manner as other property taxes and paid to the city.

99 Acts, ch 154, §1, 3
Subsection 2 amended

357B.8 Fire district including a city — budget payment or separate levy.

1. A city that was part of a benefited fire district prior to the city's incorporation may continue to receive fire protection from the district under a contract or direct levy by the district. The annual

amount paid by the city to the benefited fire district shall be included in the city's annual budget and shall be a part of the city's general fund tax levy.

2. *a.* In lieu of subsection 1, a benefited fire district that includes a city within the boundaries of the fire district may certify an annual tax levy not exceeding forty and one-half cents per thousand dollars of assessed valuation of the taxable property within the city for the purpose of fire protection.

b. If the levy authorized under paragraph "a" is insufficient to provide fire protection services, the benefited fire district may certify an additional annual tax levy not exceeding twenty and one-fourth cents per thousand dollars of assessed valuation of the taxable property within the city to provide fire protection services.

c. The benefited fire district shall certify the tax levy as provided in this subsection only after agreement granted by resolution of the city council. The amount of the tax rate levied under this subsection shall reduce by an equal amount the maximum tax levy authorized for the general fund of that city under section 384.1. If the district levies directly against property within a city to provide fire protection for that city, the city shall not be responsible for providing fire protection as provided in section 364.16, and shall have no liability for the method, manner, or means in which the district provides the fire protection.

99 Acts, ch 154, §2, 3
Subsection 2 amended

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, telephone or telecommunications systems or services offered separately or combined with any system or service specified in this subsection or authorized by other law, 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. "*Recorded vote*" means a record, roll call vote.

20. "*Registered voter*" means the same as it is defined in section 39.3, subsection 11.

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.

99 Acts, ch 63, §2, 8

1999 amendment to subsection 6 applies retroactively to July 1, 1993; validity of city elections after June 30, 1993, regarding offer of communications or telecommunications systems or services and actions of utilities board; city financing measures prior to January 1, 1999, not a violation; 99 Acts, ch 63, §8

Subsection 6 amended

CHAPTER 364

POWERS AND DUTIES OF CITIES

364.3 Limitation of powers.

The following are limitations upon the powers of a city:

1. A city council shall exercise a power only by the passage of a motion, a resolution, an amendment, or an ordinance.

2. A city shall not provide a penalty in excess of a two hundred dollar fine or in excess of thirty days imprisonment for the violation of an ordinance. An amount equal to ten percent of all fines collected by cities shall be deposited in the account established in section 602.8108. However, one hundred percent of all fines collected by a city pursuant to section 321.236, subsection 1, shall be retained by the city. The criminal penalty surcharge required by section 911.2 shall be added to a city fine and is not a part of the city's penalty.

3. A city may not set standards and requirements which are lower or less stringent than those imposed by state law, but may set standards and requirements which are higher or more stringent than those imposed by state law, unless a state law provides otherwise.

4. A city may not levy a tax unless specifically authorized by a state law.

5. A city shall not adopt or enforce any ordinance imposing any registration or licensing system or registration or license fees for owner-occupied mobile homes including the lots or lands upon which they are located. A city shall not adopt or enforce any ordinance imposing any registration or licensing system, or registration or license fees, or safety or sanitary standards for rental mobile

homes unless similar registration or licensing system, or registration or license fees, or safety or sanitary standards are required for other rental properties intended for human habitation. This subsection does not preclude the investigation and abatement of a nuisance or the enforcement of a tiedown system, or the enforcement of any regulations of the state or local board of health if those regulations apply to other rental properties or to owner-occupied housing intended for human habitation.

6. A city shall not provide a civil penalty in excess of five hundred dollars for the violation of an ordinance which is classified as a municipal infraction or if the infraction is a repeat offense, a civil penalty not to exceed seven hundred fifty dollars for each repeat offense. A municipal infraction is not punishable by imprisonment.

7. A city which operates a cable communications system shall manage the right-of-way on a competitively neutral and nondiscriminatory basis. Additionally, a city-operated cable communications system shall be required to pay the same fees and charges and comply with other requirements as may be imposed by the city by ordinance or by the terms of a franchise granted by the city, or as may otherwise be imposed by the city, upon any other cable provider. This subsection does not prohibit a city from making an equitable apportionment of franchise requirements between or among cable television providers, in order to eliminate duplication. This subsection shall not be construed to prohibit a city-operated cable communications sys-

tem from making transfers of surplus as otherwise allowed or from making in-kind contributions as otherwise allowed.

8. *a.* A city may adopt and enforce an ordinance requiring the construction of a storm shelter at a mobile home park which is constructed after July 1, 1999. In lieu of requiring construction of a storm shelter, a city may require a park owner to provide a plan for the evacuation of park residents to a safe place of shelter in times of severe weather including tornadoes and high winds if the city determines that a safe place of shelter is available within a reasonable distance of the mobile home park for use by park residents. Each evacuation plan prepared pursuant to this subsection shall be filed with, and approved by, the local emergency management agency. If construction of a storm shelter is required, an ordinance adopted or enforced pursuant to this subsection shall not include

any of the following requirements:

(1) That the size of the storm shelter be larger than the equivalent of seven square feet for each mobile home space in the mobile home park.

(2) That the storm shelter include a restroom if the shelter is used exclusively as a storm shelter.

(3) That the storm shelter exceed the construction specifications approved by a licensed professional engineer and presented by the owner of the mobile home park.

b. For the purposes of this subsection:

(1) "*Mobile home park*" means a mobile home park as defined in section 562B.7.

(2) "*Storm shelter*" means a single structure or multiple structures designed to provide persons with temporary protection from a storm.

99 Acts, ch 33, §1; 99 Acts, ch 153, §9; 99 Acts, ch 186, §2
Subsection 2 amended
NEW subsections 7 and 8

CHAPTER 368

CITY DEVELOPMENT

368.22 Appeal.

A city, or a resident or property owner in the territory or city involved may appeal a decision of the board or a committee, or the legality of an election, to the district court of a county which contains a portion of any city or territory involved.

Appeal must be filed within thirty days of the filing of a decision or the publication of notice of the result of an election.

Appeal of an approval of a petition or plan does not stay the election.

The judicial review provisions of this section and chapter 17A shall be the exclusive means by which a person or party who is aggrieved or adversely affected by agency action may seek judicial review of that agency action. The court's review on appeal of a decision is limited to questions relating to jurisdiction, regularity of proceedings, and whether the

decision appealed from is arbitrary, unreasonable, or without substantial supporting evidence. The court may reverse and remand a decision of the board or a committee, with appropriate directions. The following portions of section 17A.19 are not applicable to this chapter:

1. The part of subsection 2 which relates to where proceedings for judicial review shall be instituted.

2. Subsection 5.

3. Subsection 8.

4. Subsection 9.

5. Subsection 10.

6. Subsection 11.

98 Acts, ch 1202, §40, 46

1998 amendment adding subsections 4-6 effective July 1, 1999, and applies to agency proceedings commenced, or conducted on remand from a court or other agency, on or after that date; 98 Acts, ch 1202, §40, 46
NEW subsections 4-6

CHAPTER 384

CITY FINANCE

384.65 Installments due.

1. The first installment of each assessment, or the total amount if less than one hundred dollars, is due and payable on July 1 next succeeding the date of the levy, unless the assessment is filed with the county treasurer after May 31 in any year. The first installment shall bear interest on the whole unpaid assessment from the date of acceptance of the work by the council to the first day of December following the due date.

2. The succeeding annual installments, with interest on the whole unpaid amount, to the first day of December following the due date, are respectively due on July 1 annually, and must be paid at the same time and in the same manner as the September semiannual payment of ordinary taxes.

3. All future installments of an assessment may be paid on any date by payment of the then outstanding balance, plus interest to the next December 1, or additional annual installments may

be paid after the current installment has been paid before December 1 without interest. A payment must be for the full amount of the next installment. If installments remain to be paid, the next annual installment with interest added to December 1 will be due as provided in subsection 2.

4. Each installment of an assessment with interest on the unpaid balance is delinquent from October 1 after its due date, including those instances when the last day of September is a Saturday or Sunday, and bears the same delinquent interest as ordinary taxes. When collected, the interest must be credited to the same fund as the special assessment.

5. From the date of filing of a certified copy of the resolution of necessity, the plat, and the schedule of assessments as provided in section 384.51, all special assessments with all interest become and remain a lien on the benefited properties until paid, and have equal precedence with ordinary taxes, and are not divested by any judicial sale.

6. After December 1, if a special assessment is not delinquent, a property owner may pay one-half or all of the next annual installment of principal and interest of a special assessment prior to the delinquency date of the installment. When the next installment has been paid in full, successive principal installments may be prepaid. The county treasurer shall accept the payments of the special assessment, and shall credit the next annual installment or future installments of the special assessment to the extent of the payment or payments, and shall remit the payments to the city. If a property owner elects to pay one or more principal installments in advance, the pay schedule shall be advanced by the number of principal installments prepaid.

7. Each installment of an assessment shall be equal to the amount of the unpaid assessment as computed on the thirty-first day after the certification of the assessment divided by the number of annual installments into which the assessment may be divided as adopted by the council pursuant to section 384.60.

8. Each installment of a special assessment shall be calculated to the nearest whole dollar. Interest on unpaid installments and interest added for delinquencies shall also be calculated to the nearest whole dollar. The minimum interest amount is one dollar.

99 Acts, ch 83, §6
Subsection 1 amended

384.84 Rates and charges — billing and collection — 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 and charges to produce gross revenues at least sufficient to pay the expenses of operation and maintenance of the city utility, combined utility system, city enter-

prise, or combined city enterprise. When revenue bonds or pledge orders are issued and outstanding pursuant to this division, the governing body 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 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.

2. *a.* A city utility or enterprise service to a property or premises, including services of sewer systems, storm water drainage systems, sewage treatment, solid waste collection, water, solid waste disposal, or any of these services, may be discontinued if the account for the service becomes delinquent. Gas or electric service provided by a city utility or enterprise shall be discontinued only as provided by section 476.20, and discontinuance of those services are subject to rules adopted by the utilities board of the department of commerce.

b. If more than one city utility or enterprise service is billed to a property or premises as a combined service account, all of the services may be discontinued if the account becomes delinquent.

c. A city utility or enterprise service to a property or premises shall not be discontinued unless prior written notice is sent to the account holder by ordinary mail, informing the account holder of the nature of the delinquency and affording the account holder the opportunity for a hearing prior to discontinuance of service. If the account holder is a tenant, and if the owner or landlord of the property has made a written request for notice, the notice shall also be given to the owner or landlord.

d. If a delinquent amount is owed by an account holder for a utility service associated with a prior property or premises, a city utility, city enterprise, or combined city enterprise may withhold service from the same account holder at any new property or premises until such time as the account holder pays the delinquent amount owing on the account associated with the prior property or premises.

3. *a.* Except as provided in paragraph "d", 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 services, if not paid as provided by ordinance of the council or resolution of the trustees, are a lien upon the property or premises served by any of these services upon certification to the county treasurer that the rates or charges are due.

b. This lien may be imposed upon a property or premises even if a city utility or enterprise service to the property or premises has been or may be discontinued as provided in this section.

c. A lien for a city utility or enterprise service under paragraph "a" shall not be certified to the county treasurer for collection unless prior written notice of intent to certify a lien is given to the account holder of the delinquent account. If the account holder is a tenant, and if the owner or landlord of the property has made a written request for notice, the notice shall also be given to the owner or landlord. The notice shall be sent to the appropriate persons by ordinary mail not less than ten days prior to certification of the lien to the county treasurer.

d. Residential rental property where a charge for water service is separately metered and paid directly to the city utility or enterprise by the tenant is exempt from a lien for delinquent rates or charges associated with such water service if the landlord gives written notice to the city utility or enterprise that the property is residential rental property and that the tenant is liable for the rates or charges. A city utility or enterprise may require a deposit not exceeding the usual cost of ninety days of water service to be paid to the utility or enterprise. Upon receipt, the utility or enterprise shall acknowledge the notice and deposit. A written notice shall contain the name of the tenant responsible for charges, address of the residential rental property that the tenant is to occupy, and the date that the occupancy begins. A change in tenant shall require a new written notice to be given to the city utility or enterprise within ten business days of the change in tenant. When the tenant moves from the rental property, the city utility or enterprise shall return the deposit if the water service charges are paid in full. A change in the ownership of the residential rental property shall require written notice of such change to be given to the city utility or enterprise within ten business days of the completion of the change of ownership. The lien exemption for rental property does not apply to charges for repairs to a water service if the repair charges become delinquent.

4. A lien shall not be imposed pursuant to this section for a delinquent charge of less than five dollars. The governing body of the city utility or enterprise may charge up to five dollars, and the county treasurer may charge up to five dollars, as an administrative expense of certifying and filing this lien, which amounts shall be added to the amount of the lien to be collected at the time of payment of the assessment from the payor. Administrative expenses collected by the county treasurer on behalf of the city utility or enterprise shall be paid to the governing body of the city utility or enterprise, and those collected by the county treasurer on behalf of the county shall be 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.

5. 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 in this section. 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.

6. a. The governing body of a city utility, combined utility system, city enterprise, or combined city enterprise may:

(1) 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.

(2) 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.

(3) Lease for a period not to exceed fifteen years all or part of a city enterprise or combined city enterprise, if the lease will not reduce the net revenues to be produced by the city enterprise or combined city enterprise.

(4) 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.

(5) 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.

b. Two or more city utilities, combined utility systems, city enterprises, or combined city enterprises, including city utilities established pursuant to chapter 388, may contract pursuant to chapter 28E for joint billing or collection, or both, of combined service accounts for utility or enterprise services, or both. The contracts may provide for the discontinuance of one or more of the city utility or enterprise services if a delinquency occurs in the payment of any charges billed under a combined service account.

c. One or more city utilities or combined utility systems, including city utilities established pursuant to chapter 388, may contract pursuant to chapter 28E with one or more sanitary districts established pursuant to chapter 358 for joint billing or collection, or both, of combined service accounts from utility services and sanitary district services. The contracts may provide for the discontinuance of one or more of the city water utility services or

sanitary district services if a delinquency occurs in the payment of any charges billed under a combined service account.

7. 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.

8. For the purposes of this section, "premises" includes a mobile home, modular home, or manufactured home as defined in section 435.1, when the mobile home, modular home, or manufactured home is taxed as real estate.

99 Acts, ch 149, §1, 2
Subsection 2, NEW paragraph d
Subsection 3, paragraphs a, c, and d amended

384.99 Award of contract.

The contract for the public improvement must be awarded to the lowest responsible bidder, provided, however, that contracts relating to public utilities

or extensions or improvements thereof, as described in division V of this chapter, may be awarded by the governing body as it deems to be in the best interests of the city. This section shall not be construed to prohibit a city in the award of a contract for a public improvement or a governing body of a city utility from providing, in the award of a contract for a public improvement, an enhancement of payments upon early completion of the public improvement if the availability of the enhancement payments is included in the notice to bidders, the enhancement payments are competitively neutral to potential bidders, the enhancement payments are considered as a separate item in the public hearing on the award of contract, and the total value of the enhancement payments does not exceed ten percent of the value of the contract.

99 Acts, ch 137, §1
Section amended

CHAPTER 388

CITY UTILITIES

Legislative intent regarding cable communications or television, telephone, and telecommunications systems or services; 99 Acts, ch 63, §1

388.2 Submission to voters.

The proposal of a city to establish, acquire, lease, or dispose of a city utility, except a sanitary sewage or storm water drainage system, in order to undertake or to discontinue the operation of the city utility, or the proposal to establish or dissolve a combined utility system, or the proposal to establish or discontinue a utility board, is subject to the approval of the voters of the city, except that a board may be discontinued by resolution of the council when the city utility, city utilities, or combined utility system it administers is disposed of or leased for a period of over five years.

The proposal may be submitted to the voters at any city election by the council on its own motion. 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.

A proposal for the establishment of a utility board must specify a board of either three or five members.

If a majority of those voting for and against the proposal approves the proposal, the city may proceed as proposed.

If a majority of those voting for and against the proposal does not approve the proposal, the same or a similar proposal may not be submitted to the voters of the city for at least four years from the date of the election at which the proposal was defeated.

City elections held after June 30, 1993, on issue of offer of communications or telecommunications systems or services and actions of utilities board deemed valid; 99 Acts, ch 63, §8

Section not amended; footnote added

388.9 Competitive information.

1. Notwithstanding section 21.5, subsection 1, the governing body of a city utility or combined utility system, or a city enterprise or combined city enterprise as defined in section 384.80, by a vote of two-thirds of the members of the body or all of the members present at the meeting, may hold a closed session to discuss marketing and pricing strategies or proprietary information if its competitive position would be harmed by public disclosure not required of potential or actual competitors, and if no public purpose would be served by such disclosure. The minutes and a tape recording of a session closed under this subsection shall be available for public examination at that point in time when the public disclosure would no longer harm the utility's competitive position.

2. Notwithstanding section 22.2, subsection 1, public records of a city utility or combined utility system, or a city enterprise or combined city enterprise as defined in section 384.80, which shall not be examined or copied as of right, include proprietary information, records of customer names and accounts, records associated with marketing or pricing strategies, preliminary working papers, spreadsheet scenarios, and cost data, if the competitive position of the city utility, combined utility system, city enterprise, or combined city enterprise would be harmed by public disclosure not required of a potential or actual competitor, and if no public purpose would be served by such disclosure. A public record not subject to examination or copying un-

der this subsection shall be available for public examination and copying at that point in time when public disclosure would no longer harm the competitive position of the city utility, combined utility system, city enterprise, or combined city enterprise.

99 Acts, ch 63, §3, 8
 Legislative intent; 99 Acts, ch 63, §1
 Section applies retroactively to July 1, 1993; 99 Acts, ch 63, §8
 NEW section

388.10 Municipal utility providing local exchange services.

1. a. A city that owns or operates a municipal utility providing local exchange services pursuant to chapter 476 or the municipal utility shall not do, directly or indirectly, any of the following:

(1) Use general fund moneys for the ongoing support or subsidy of a telecommunications system.

(2) Provide any city facilities, equipment, or services to provide telecommunications systems or services at a cost for such facilities, equipment, or services which is less than the reasonable cost of providing such city facilities, equipment, or services.

(3) Provide any other city service, other than a communications service, to a telecommunications customer at a cost which is less than would be paid by the same person receiving such other city service if the person was not a telecommunications customer.

(4) Use funds or revenue generated from electric, gas, water, sewage, or garbage services provided by the city for the ongoing support of that portion of a system or service used to provide local exchange services.

b. For purposes of this section, "telecommunications system" means only that portion of a sys-

tem or facilities which is used to provide local exchange services.

2. A city that owns or operates a municipal utility providing local exchange services pursuant to chapter 476 or the municipal utility shall do the following:

a. Prepare and maintain records which record the full cost accounting of providing local exchange service. The records shall show the amount and source of capital for initial construction or acquisition of the local exchange system or facilities. This section shall not prohibit a municipal utility from utilizing capital from any lawful source, provided that the reasonable cost of such capital is accounted for as a cost of providing the service.

b. Adopt rates for the provision of local exchange services that reflect the actual cost of providing the local exchange service. However, this paragraph shall not prohibit the municipal utility from establishing market-based prices for competitive local exchange services.

c. Be subject to all requirements of the city which would apply to any other provider of local exchange services in the same manner as such requirements would apply to such other provider.

3. This section shall not prohibit the marketing or bundling of other products or services, in addition to local exchange services. However, a city shall include on a billing statement sent to a person receiving services from the city, a separate charge for each service provided to the person. This subsection does not prohibit the city from also including on the billing statement a total amount to be paid by the person.

99 Acts, ch 63, §4, 8
 Legislative intent; 99 Acts, ch 63, §1
 Section applies retroactively to July 1, 1993; validity of city elections after June 30, 1993, on issue of offer of communications or telecommunications systems or services and actions of utilities board; city financing measures prior to January 1, 1999, not a violation; 99 Acts, ch 63, §8
 NEW section

CHAPTER 392

ADMINISTRATIVE AGENCIES

392.6 Hospital trustees.

If a hospital or health care facility is established by a city, the city shall by ordinance provide for the election, at a general, city, or special election, of three trustees, whose terms of office shall be four years. However, at the first election, three shall be elected and hold their office, one for four years and two for two years, and they shall by lot determine their respective terms. A board of trustees elected pursuant to this section shall serve as the sole and only board of trustees for any and all institutions established by a city as provided for in this section.

Cities maintaining an institution as provided for in this section which have a board of trustees consisting of three members may by ordinance in-

crease the number of members to five or seven and provide for the appointment of one additional member in the expansion to a five-member board or two additional members in the expansion to a seven-member board until the next succeeding general or city election, and for the appointment of the one or two other additional members until the second succeeding general or city election. Thereafter, the terms of office of such additional members shall be four years. However, if a city has adopted an ordinance which increases the number of members of the board of trustees to five or seven members and the terms of office of four of the five members or six of the seven members end in the same year, the date of expiration of the term of one of the

four members or two of the six members, to be determined by lot, shall be extended by an additional two years.

Terms of office of trustees elected pursuant to general or city elections shall begin at noon on the first day in January which is not a Sunday or legal holiday. Terms of office of trustees elected pursuant to special elections shall begin at noon on the tenth day after the special election which is not a Sunday or legal holiday. The trustees shall begin their terms of office by taking the oath of office, and organize as a board by the election of one of their number as chairperson and one as secretary, but no bond shall be required of them. Terms of office of trustees shall extend to noon on the first day in January which is not a Sunday or legal holiday or until their successors are elected and qualified. Trustees who are elected at special elections shall serve the unexpired terms of office or until their successors are elected and qualified.

The treasurer of the board of trustees shall receive and disburse all funds under the control of the board as ordered by it. The treasurer shall give bond in a form and amount as determined by the board in its discretion.

No trustee shall receive any compensation for services performed, but a trustee may receive reimbursement for any cash expenses actually made for personal expenses incurred as trustee, but an itemized statement of all expenses and moneys paid out shall be made under oath by each of the trustees and filed with the secretary and allowed only by the affirmative vote of the full board.

The board of trustees shall be vested with authority to provide for the management, control, and government of the city hospital or health care facility established as permitted by this section, and shall provide all needed rules for the economic conduct thereof and shall annually prepare a con-

densed statement of the total receipts and expenditures for the hospital or health care facility and cause the same to be published in a newspaper of general circulation in the city in which the hospital or health care facility is located. In the management of the hospital or health care facility no discrimination shall be made against practitioners of any school of medicine recognized by the laws of the state.

As a part of the board's authority it may accept property by gift, devise, bequest or otherwise; and, if the board deems it advisable, may, at public sale, sell or exchange any property so accepted upon a concurring vote of a majority of all members of the board of trustees, and apply the proceeds thereof, or property received in exchange therefor, to any legitimate hospital or health care facility purpose.

The trustees may in their discretion establish a fund for depreciation as a separate fund. Said funds may be invested in United States government bonds and when so invested the accumulation of interest on the bonds so purchased shall be used for the purposes of the depreciation fund; an investment when so made shall remain in United States government bonds until such time as in the judgment of the board of trustees it is deemed advisable to use the funds for hospital or health care facility purposes.

Boards of trustees of institutions provided for in this section are granted all of the powers and duties necessary for the management, control and government of the institutions, specifically including but not limited to any applicable powers and duties granted boards of trustees under other provisions of the Code relating to hospitals, nursing homes, and custodial homes irrespective of the chapter of the Code under which such institutions are established, organized, operated or maintained.

99 Acts, ch 36, §11
Unnumbered paragraph 2 amended

CHAPTER 400

CIVIL SERVICE

400.10 Preferences.

In all examinations and appointments under this chapter, other than promotions and appointments of chief of the police department and chief of the fire department, veterans as defined in section 35.1, who are citizens and residents of this state, shall have five points added to the veteran's grade or score attained in qualifying examinations for appointment to positions and five additional points added to the grade or score if the veteran has a service-connected disability or is receiving compensa-

tion, disability benefits or pension under laws administered by the veterans administration. An honorably discharged veteran who has been awarded the Purple Heart for disabilities incurred in action shall be considered to have a service-connected disability. However, the points shall be given only upon passing the exam and shall not be the determining factor in passing.

99 Acts, ch 180, §17
Veterans preference law, chapter 35C
Section amended

CHAPTER 403

URBAN RENEWAL

403.5 Urban renewal plan.

1. A municipality shall not approve an urban renewal project for an urban renewal area unless the governing body has, by resolution, determined the area to be a slum area, blighted area, economic development area or a combination of those areas, and designated the area as appropriate for an urban renewal project. The local governing body shall not approve an urban renewal plan until a general plan for the municipality has been prepared. For this purpose and other municipal purposes, authority is vested in every municipality to prepare, to adopt and to revise from time to time, a general plan for the physical development of the municipality as a whole, giving due regard to the environs and metropolitan surroundings. A municipality shall not acquire real property for an urban renewal project unless the local governing body has approved the urban renewal project in accordance with subsection 4.

2. The municipality may itself prepare or cause to be prepared an urban renewal plan; or any person or agency, public or private, may submit such a plan to a municipality. Prior to its approval of an urban renewal plan, the local governing body shall submit such plan to the planning commission of the municipality, if any, for review and recommendations as to its conformity with the general plan for the development of the municipality as a whole. The planning commission shall submit its written recommendations with respect to the proposed urban renewal plan to the local governing body within thirty days after receipt of the plan for review. Upon receipt of the recommendations of the planning commission or, if no recommendations are received within the thirty days, then, without such recommendations, the local governing body may proceed with the hearing on the proposed urban renewal plan prescribed by subsection 3.

Prior to its approval of an urban renewal plan which provides for a division of revenue pursuant to section 403.19, the municipality shall mail the proposed plan by regular mail to the affected taxing entities. The municipality shall include with the proposed plan notification of a consultation to be held between the municipality and affected taxing entities prior to the public hearing on the urban renewal plan. Each affected taxing entity may appoint a representative to attend the consultation. The consultation may include a discussion of the estimated growth in valuation of taxable property included in the proposed urban renewal area, the fiscal impact of the division of revenue on the affected taxing entities, the estimated impact on the provision of services by each of the affected taxing entities in the proposed urban renewal area, and

the duration of any bond issuance included in the plan. The designated representative of the affected taxing entity may make written recommendations for modification to the proposed division of revenue no later than seven days following the date of the consultation. The representative of the municipality shall, no later than seven days prior to the public hearing on the urban renewal plan, submit a written response to the affected taxing entity addressing the recommendations for modification to the proposed division of revenue.

3. The local governing body shall hold a public hearing on an urban renewal plan after public notice thereof by publication in a newspaper having a general circulation in the area of operation of the municipality. The notice shall describe the time, date, place and purpose of the hearing, shall generally identify the urban renewal area covered by the plan, and shall outline the general scope of the urban renewal activities under consideration. A copy of the notice shall be sent by ordinary mail to each affected taxing entity.

4. Following such hearing, the local governing body may approve an urban renewal plan if it finds that:

a. A feasible method exists for the location of families who will be displaced from the urban renewal area into decent, safe and sanitary dwelling accommodations within their means and without undue hardship to such families.

b. The urban renewal plan conforms to the general plan of the municipality as a whole; provided, that if the urban renewal area consists of an area of open land to be acquired by the municipality, such area shall not be so acquired except:

(1) If it is to be developed for residential uses, the local governing body shall determine that a shortage of housing of sound standards and design with decency, safety and sanitation exists in the municipality; that the acquisition of the area for residential uses is an integral part of and essential to the program of the municipality; and that one or more of the following conditions exist:

(a) That the need for housing accommodations has been or will be increased as a result of the clearance of slums in other areas, including other portions of the urban renewal area.

(b) That conditions of blight in the municipality and the shortage of decent, safe and sanitary housing cause or contribute to an increase in and spread of disease and crime, so as to constitute a menace to the public health, safety, morals, or welfare.

(c) That the provision of public improvements related to housing and residential development will encourage housing and residential develop-

ment which is necessary to encourage the retention or relocation of industrial and commercial enterprises in this state and its municipalities.

(d) The acquisition of the area is necessary to provide for the construction of housing for low and moderate income families.

(2) If it is to be developed for nonresidential uses, the local governing body shall determine that such nonresidential uses are necessary and appropriate to facilitate the proper growth and development of the community in accordance with sound planning standards and local community objectives. The acquisition may require the exercise of governmental action, as provided in this chapter, because of defective or unusual conditions of title, diversity of ownership, tax delinquency, improper subdivisions, outmoded street patterns, deterioration of site, economic disuse, unsuitable topography or faulty lot layouts, or because of the need for the correlation of the area with other areas of a municipality by streets and modern traffic requirements, or any combination of such factors or other conditions which retard development of the area.

A municipality shall not condemn agricultural land included within an economic development area unless the owner of the agricultural land consents to condemnation or unless the agricultural land is to be acquired for industry as that term is defined in section 260E.2. This paragraph shall not apply to land necessary or useful for the operation of a city utility as defined in section 362.2, for the operation of a city franchise conferred the authority to condemn private property under section 364.2, or a combined utility system as defined in section 384.80.

5. An urban renewal plan may be modified at any time: Provided, that if modified after the lease or sale by the municipality of real property in the urban renewal project area, such modification may be conditioned upon such approval of the owner, lessee or successor in interest as the municipality may deem advisable, and in any event such modification shall be subject to such rights at law or in equity as a lessee or purchaser, or a lessee's or purchaser's successor or successors in interest, may be entitled to assert. The municipality shall comply with the notification and consultation process provided in this section prior to the approval of any amendment or modification to an adopted urban renewal plan if such amendment or modification provides for refunding bonds or refinancing resulting in an increase in debt service or provides for the issuance of bonds or other indebtedness, to be funded primarily in the manner provided in section 403.19.

6. Upon the approval by a municipality of an urban renewal plan or of any modification thereof, such plan or modification shall be deemed to be in full force and effect for the respective urban renewal area, and the municipality may then cause such

plan or modification to be carried out in accordance with its terms.

7. Notwithstanding any other provisions of this chapter, where the local governing body certifies that an area is in need of redevelopment or rehabilitation as a result of a flood, fire, hurricane, earthquake, storm, or other catastrophe respecting which the governor of the state has certified the need for disaster assistance under Pub. L. No. 875, Eighty-first Congress, 64 Stat. L. 1109; 42 U.S.C. § 1855-1855g or other federal law, the local governing body may approve an urban renewal plan and an urban renewal project with respect to such area without regard to the provisions of subsection 4 and without regard to provisions of this section requiring notification and consultation, a general plan for the municipality, and a public hearing on the urban renewal plan or project.

99 Acts, ch 171, §35, 41, 42

1999 amendment to subsection 4 applies to urban renewal areas established before, on, or after July 1, 1999, and to amendments to such urban renewal areas; see 99 Acts, ch 171, §41

1999 amendment to subsection 4 applies to state highway construction projects approved for commencement by the transportation commission on or after July 1, 1999, and to all other condemnation proceedings in which the application for condemnation is filed on or after July 1, 1999; see 99 Acts, ch 171, §42

Subsection 4, NEW unnumbered paragraph 2

403.7 Condemnation of property.

A municipality shall have the right to acquire by condemnation any interest in real property, including a fee simple title thereto, which it may deem necessary for or in connection with an urban renewal project under this chapter. However, a municipality shall not condemn agricultural land included within an economic development area unless the owner of the agricultural land consents to condemnation or unless the agricultural land is to be acquired for industry as that term is defined in section 260E.2. A municipality may exercise the power of eminent domain in the manner provided in chapter 6B, and Acts amendatory to that chapter or supplementary to that chapter, or it may exercise the power of eminent domain in the manner now or which may be hereafter provided by any other statutory provisions for the exercise of the power of eminent domain. Property already devoted to a public use may be acquired in like manner. However, real property belonging to the state, or any political subdivision of this state, shall not be acquired without its consent, and real property or any right or interest in the property owned by any public utility company, pipeline company, railway or transportation company vested with the right of eminent domain under the laws of this state, shall not be acquired without the consent of the company, or without first securing, after due notice to the company and after hearing, a certificate authorizing condemnation of the property from the board, commission or body having the authority to grant a certificate authorizing condemnation. In a condemnation proceeding, if a mu-

municipality proposes to take a part of a lot or parcel of real property, the municipality shall also take the remaining part of the lot or parcel if requested by the owner.

99 Acts, ch 171, §36, 41, 42

1999 amendment applies to urban renewal areas established before, on, or after July 1, 1999, and to amendments to such urban renewal areas; see 99 Acts, ch 171, §41

1999 amendment applies to state highway construction projects approved for commencement by the transportation commission on or after July 1, 1999, and to all other condemnation proceedings in which the application for condemnation is filed on or after July 1, 1999; see 99 Acts, ch 171, §42
Section amended

403.17 Definitions.

The following terms wherever used or referred to in this chapter, shall have the following meanings, unless a different meaning is clearly indicated by the context:

1. *"Affected taxing entity"* means a city, community college, county, or school district which levied or certified for levy a property tax on any portion of the taxable property located within the urban renewal area in the fiscal year beginning prior to the calendar year in which a proposed urban renewal plan is submitted to the local governing body for approval.

2. *"Agency"* or *"urban renewal agency"* shall mean a public agency created by section 403.15.

3. *"Agricultural land"* means real property owned by a person in tracts of ten acres or more and not laid off into lots of less than ten acres or divided by streets and alleys into parcels of less than ten acres, and that has been used for the production of agricultural commodities during three out of the past five years. Such use of property includes, but is not limited to, the raising, harvesting, handling, drying, or storage of crops used for feed, food, seed, or fiber; the care or feeding of livestock; the handling or transportation of crops or livestock; the storage, treatment, or disposal of livestock manure; and the application of fertilizers, soil conditioners, pesticides, and herbicides on crops. Agricultural land includes land on which is located farm residences or outbuildings used for agricultural purposes and land on which is located facilities, structures, or equipment for agricultural purposes. Agricultural land includes land taken out of agricultural production for purposes of environmental protection or preservation.

4. *"Area of operation"* of a city means the area within the corporate limits of the city and, with the consent of the county, the area within two miles of such limits, except that it does not include any area which lies within the territorial boundaries of another incorporated city, unless a resolution has been adopted by the governing body of the city declaring a need to be included in the area. The *"area of operation"* of a county means an area outside the corporate limits of a city. However, in that area outside a city's boundary but within two miles of the city's boundary, a joint agreement between the city and the county is required allowing the county to proceed with the activities authorized under this

chapter. In addition, a county may proceed with activities authorized under this chapter in an area inside the boundaries of a city, provided a joint agreement is entered into with respect to such activities between a city and a county.

5. *"Blighted area"* means an area of a municipality within which the local governing body of the municipality determines that the presence of a substantial number of slum, deteriorated, or deteriorating structures; defective or inadequate street layout; faulty lot layout in relation to size, adequacy, accessibility, or usefulness; insanitary or unsafe conditions; deterioration of site or other improvements; diversity of ownership, tax or special assessment delinquency exceeding the fair value of the land; defective or unusual conditions of title; or the existence of conditions which endanger life or property by fire and other causes; or any combination of these factors; substantially impairs or arrests the sound growth of a municipality, retards the provision of housing accommodations, or constitutes an economic or social liability and is a menace to the public health, safety, or welfare in its present condition and use. A disaster area referred to in section 403.5, subsection 7, constitutes a *"blighted area"*. *"Blighted area"* does not include real property assessed as agricultural property for purposes of property taxation.

6. *"Board"* or *"commission"* shall mean a board, commission, department, division, office, body, or other unit of the municipality.

7. *"Bonds"* shall mean any bonds, including refunding bonds, notes, interim certificates, certificates of indebtedness, debentures, or other obligations.

8. *"Chairperson of the board"* means the chairperson of the board of supervisors or other legislative body charged with governing a county.

9. *"Clerk"* shall mean the clerk or other official of the municipality who is the custodian of the official records of such municipality.

10. *"Economic development area"* means an area of a municipality designated by the local governing body as appropriate for commercial and industrial enterprises, public improvements related to housing and residential development, or construction of housing and residential development for low and moderate income families, including single or multifamily housing. If an urban renewal plan for an urban renewal area is based upon a finding that the area is an economic development area and that no part contains slum or blighted conditions, then the division of revenue provided in section 403.19 and stated in the plan shall be limited to twenty years from the calendar year following the calendar year in which the city first certifies to the county auditor the amount of any loans, advances, indebtedness, or bonds which qualify for payment from the division of revenue provided in section 403.19. Such designated area shall not include agricultural land, including land which is

part of a century farm, unless the owner of the agricultural land or century farm agrees to include the agricultural land or century farm in the urban renewal area. For the purposes of this subsection, "century farm" means a farm in which at least forty acres of such farm have been held in continuous ownership by the same family for one hundred years or more.

11. "Federal government" shall include the United States or any agency or instrumentality, corporate or otherwise, of the United States.

12. "Housing and residential development" means single or multifamily dwellings to be constructed in an area with respect to which the local governing body of the municipality determines that there is an inadequate supply of affordable, decent, safe, and sanitary housing and that providing such housing is important to meeting any or all of the following objectives: retaining existing industrial or commercial enterprises; attracting and encouraging the location of new industrial or commercial enterprises; meeting the needs of special elements of the population, such as the elderly or persons with disabilities; and providing housing for various income levels of the population which may not be adequately served.

13. "Local governing body" means the council, board of supervisors, or other legislative body charged with governing the municipality.

14. "Low or moderate income families" means those families, including single person households, earning no more than eighty percent of the higher of the median family income of the county or the statewide nonmetropolitan area as determined by the latest United States department of housing and urban development, section 8 income guidelines.

15. "Mayor" shall mean the mayor of a municipality, or other officer or body having the duties customarily imposed upon the executive head of a municipality.

16. "Municipality" means any city or county in the state.

17. "Obligee" shall include any bondholder, agents, or trustees for any bondholders, or any lessor demising to the municipality property used in connection with an urban renewal project, or any assignee or assignees of such lessor's interest or any part thereof, and the federal government, when it is a party to any contract with the municipality.

18. "Person" shall mean any individual, firm, partnership, corporation, company, association, joint stock association; and shall include any trustee, receiver, assignee, or other person acting in a similar representative capacity for an individual or such entities.

19. "Public body" shall mean the state or any political subdivision thereof.

20. "Public officer" shall mean any officer who is in charge of any department or branch of the government of the municipality relating to health, fire,

building regulations, or to other activities concerning dwellings in the municipality.

21. "Real property" shall include all lands, including improvements and fixtures thereon, and property of any nature appurtenant thereto, or used in connection therewith, and every estate, interest, right and use, legal or equitable, therein, including terms for years and liens by way of judgment, mortgage or otherwise.

22. "Slum area" shall mean an area in which there is a predominance of buildings or improvements, whether residential or nonresidential, which: by reason of dilapidation, deterioration, age or obsolescence; by reason of inadequate provision for ventilation, light, air, sanitation, or open spaces; by reason of high density of population and overcrowding; by reason of the existence of conditions which endanger life or property by fire and other causes; or which by any combination of such factors, is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, or crime, and which is detrimental to the public health, safety, morals, or welfare. "Slum area" does not include real property assessed as agricultural property for purposes of property taxation.

23. "Urban renewal area" means a slum area, blighted area, economic development area, or combination of the areas, which the local governing body designates as appropriate for an urban renewal project.

24. "Urban renewal plan" means a plan for the development, redevelopment, improvement, or rehabilitation of a designated urban renewal area, as it exists from time to time. The plan shall meet the following requirements:

a. Conform to the general plan for the municipality as a whole except as provided in section 403.5, subsection 7.

b. Be sufficiently complete to indicate the real property located in the urban renewal area to be acquired for the proposed development, redevelopment, improvement, or rehabilitation, and to indicate any zoning district changes, existing and future land uses, and the local objectives respecting development, redevelopment, improvement, or rehabilitation related to the future land uses plan, and need for improved traffic, public transportation, public utilities, recreational and community facilities, and other public improvements within the urban renewal area.

c. If the plan includes a provision for the division of taxes as provided in section 403.19, the plan shall also include a list of the current general obligation debt of the municipality, the current constitutional debt limit of the municipality, and the proposed amount of indebtedness to be incurred, including loans, advances, indebtedness, or bonds which qualify for payment from the special fund referred to in section 403.19, subsection 2.

25. "Urban renewal project" may include undertakings and activities of a municipality in an ur-

ban renewal area for the elimination and for the prevention of the development or spread of slums and blight, may include the designation and development of an economic development area in an urban renewal area, and may involve slum clearance and redevelopment in an urban renewal area, or rehabilitation or conservation in an urban renewal area, or any combination or part thereof in accordance with an urban renewal program. The undertakings and activities may include:

- a. Acquisition of a slum area, blighted area, economic development area, or portion of the areas;
- b. Demolition and removal of buildings and improvements;
- c. Installation, construction, or reconstruction of streets, utilities, parks, playgrounds, and other improvements necessary for carrying out in the urban renewal area the urban renewal objectives of this chapter in accordance with the urban renewal plan;
- d. Disposition of any property acquired in the urban renewal area, including sale, initial leasing, or retention by the municipality itself, at its fair value for uses in accordance with the urban renewal plan;
- e. Carrying out plans for a program of voluntary or compulsory repair and rehabilitation of buildings or other improvements in accordance with the urban renewal plan;
- f. Acquisition of any other real property in the urban renewal area, where necessary to eliminate unhealthful, insanitary, or unsafe conditions, or to lessen density, eliminate obsolete or other uses detrimental to the public welfare, or otherwise to remove or prevent the spread of blight or deterioration, or to provide land for needed public facilities;
- g. Sale and conveyance of real property in furtherance of an urban renewal project;
- h. Expenditure of proceeds of bonds issued before October 7, 1986, for the construction of parking facilities on city blocks adjacent to an urban renewal area.

99 Acts, ch 171, §37, 38, 41, 42

Subsection 3 applies to urban renewal areas established before, on, or after July 1, 1999, and to amendments to such urban renewal areas; see 99 Acts, ch 171, §41

Subsection 3 and amendments to subsection 10 apply to state highway construction projects approved for commencement by the transportation commission on or after July 1, 1999, and to all other condemnation proceedings in which the application for condemnation is filed on or after July 1, 1999; see 99 Acts, ch 171, §42

1999 amendment to subsection 10 applies to urban renewal areas established on or after July 1, 1999, and to agricultural land included in an urban renewal area established before July 1, 1999, if the land is so included by

amendment to the urban renewal plan adopted on or after that date; see 99 Acts, ch 171, §41
 NEW subsection 3 and former subsections 3-24 renumbered as 4-25
 Subsection 10 amended

403.23 Annual reporting.

1. On or before September 30 of each year, the municipality shall submit an annual financial report containing the information required in section 403.15, subsection 5, to the department of management and to the county auditor of the county in which the municipality is located. In addition to the information contained in the report, the municipality shall provide the following information to the department and to the county auditor:

- a. A listing and description of each project within an urban renewal area.
- b. A description of the original purpose for establishing the urban renewal area.
- c. The establishment date of the urban renewal area and the expiration date of the urban renewal area, if applicable, or otherwise, the term of the indebtedness.
- d. The designation under which the urban renewal area was established.
- e. The base year valuation of the urban renewal area.
- f. The amount of incremental valuation in the urban renewal area.
- g. A description of the use for the incremental funding.
- h. The number of businesses that have located in each urban renewal area.
- i. The number of urban renewal projects that have been completed in each urban renewal area.
- j. The type and term length of financing for urban renewal projects.
- k. The amount of loans, advances, indebtedness, or bonds which qualified for payment from the special fund for each urban renewal project in the preceding fiscal year.
- l. The total of the amount specified in paragraph "k" for each urban renewal area located in the municipality.

2. At the request of the legislative fiscal bureau, the department of management shall provide the reports and additional information to the legislative fiscal bureau. The department of management, in consultation with the legislative fiscal bureau, shall determine reporting criteria for reports filed with the department pursuant to this section.

99 Acts, ch 176, §1
 NEW section

CHAPTER 403A

MUNICIPAL HOUSING PROJECTS

403A.22 Personal interest prohibited.

No public official or employee of a municipality or board or commission thereof and no commission-

er or employee of a municipal housing agency which has been vested with municipal housing project powers under section 403A.5, shall volun-

tarily acquire any personal interest, as hereinafter defined, whether direct or indirect, in any municipal housing project, or in any property included or planned to be included in any municipal housing project of such municipality, or in any contract or proposed contract in connection with such municipal housing project. Where such acquisition is not voluntary, the interest acquired shall be immediately disclosed in writing to the local governing body, and such disclosure shall be entered upon the minutes of the governing body. If any such official, commissioner or employee presently owns or controls, or has owned or controlled within the preceding two years, any interest, as hereinafter defined, whether direct or indirect, in any property which it is known is included or planned to be included in a municipal housing project, the commissioner shall immediately disclose this fact in writing to the local governing body, and such disclosure shall be entered upon the minutes of the governing body; and any such official, commissioner or employee shall not participate in any action by the municipality, or board or commission thereof affecting such property, as the terms of such proscription are hereinafter defined. For the purposes of this section the following definitions and standards of construction shall apply:

1. "Action affecting such property" shall include only that action directly and specifically affecting such property as a separate property but shall not include any action of which any benefits accrue to the public generally, or which affects all or a substantial portion of the properties included or planned to be included in such a project.

2. Employment by a state public body, its agencies, and institutions or by any other person as defined in subsection 18 of section 403.17, having such an interest shall not be deemed an interest by such employee or of any ownership or control by such employee of interests of the employee's employer. Such an employee may participate in a municipal housing project so long as any benefits of such participation accrue to the public generally, such participation affects all or a substantial portion of the properties included or planned to be included in such a project, or such participation pro-

motes the public purposes of such project, and shall limit only that participation by an employee which directly or specifically affects property in which an employer of an employee has an interest.

3. The word "participation" shall be deemed not to include discussion or debate preliminary to a vote by a local governing body or agency upon proposed ordinances or resolutions relating to such a project or any abstention from such a vote.

4. The designation of a bank or trust company as a depository, paying agent, or agent for investment of funds shall not be deemed a matter of interest or personal interest.

5. Stock ownership in a corporation having such an interest shall not be deemed an interest or of ownership or control by the person owning such stocks when less than five percent of the outstanding stock of the corporation is owned or controlled directly or indirectly by such person.

6. The word "action" shall not be deemed to include resolutions advisory to the local governing body or agency by any citizens group, board, body, or commission designated to serve a purely advisory function of approving or recommending under this chapter.

7. The limitations of this section shall be construed to permit action by a public official, commissioner, or employee where any benefits of such action accrue to the public generally, such action affects all or a substantial portion of the properties included or planned to be included in such a project, or such action promotes the public purposes of such project, and shall be construed to limit only that action by a public official, commissioner, or employee which directly or specifically affects property in which such official, commissioner, or employee has an interest or in which an employer of such official, commissioner, or employee has an interest. Any violation of the provisions of this section shall constitute misconduct in office, but no ordinance or resolution of a municipality or agency shall be invalid by reason of a vote or votes cast in violation of the standards of this section unless such vote or votes were decisive in the passage of such ordinance or resolution.

Section not amended; internal reference change applied

CHAPTER 412

MUNICIPAL UTILITY RETIREMENT SYSTEM

412.4 Payments and investments.

The council, board of waterworks trustees, or other board or commission, whichever is authorized by law to manage and operate any such waterworks, or other municipally owned and operated public utility, shall have the right and power to contract with any legal reserve insurance company, authorized to conduct its business in the state, or

any bank located in Iowa having trust powers for the investment of funds contributed to an annuity or pension system, for the payment of the pensions or annuities provided in such pension or annuity retirement system, and may pay the premiums or make the contribution of such contract out of the fund provided in section 412.2. Funds contributed to a bank pursuant to such a contract shall be in-

vested in the manner prescribed in section 633.123 or 633.123A, and may be commingled with and invested as a part of a common or master fund man-

aged for the benefit of more than one public utility.
See 99 Acts, ch 125, §104, 109, for future amendment effective July 1, 2000
 Section not amended; footnote added

CHAPTER 414

CITY ZONING

414.1 Building restrictions — powers granted.

1. For the purpose of promoting the health, safety, morals, or the general welfare of the community or for the purpose of preserving historically significant areas of the community, any city is hereby empowered to regulate and restrict the height, number of stories, and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts, and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade,

industry, residence, or other purposes.

2. The city of Des Moines may, for the purpose of preserving the dominance of the dome of the state capitol building and the view of the state capitol building from prominent public viewing points, regulate and restrict the height and size of buildings and other structures in the city of Des Moines. Any regulations pertaining to such matters shall be made in accordance with a comprehensive plan and in consultation with the capitol planning commission.

99 Acts, ch 204, §36
 Section amended

CHAPTER 420

SPECIAL CHARTER CITIES

420.207 Taxation in general.

Sections 426A.11 through 426A.15, 427.1, 427.8 to 427.11, 428.4, 428.20, 428.22, 428.23, 436.10, 436.11, 437.1, 437.3, 441.21, 443.1 to 443.3, 444.2 to

444.5, and 447.9 to 447.13, so far as applicable, apply to cities acting under special charters.

99 Acts, ch 114, §24
 Section amended

CHAPTER 421

DEPARTMENT OF REVENUE AND FINANCE

421.1 State board of tax review.

There is hereby established within the department of revenue and finance for administrative and budgetary purposes a state board of tax review for the state of Iowa. The state board of tax review, hereinafter called the state board, shall consist of three members.

The members of the state board shall be registered voters of the state and shall hold no other elective or appointive public office.

Members of the state board shall serve for six-year staggered terms beginning and ending as provided by section 69.19. A member who is appointed for a six-year term shall not be permitted a successive term.

Members shall be appointed by the governor subject to confirmation by the senate. Appointments to the board shall be bipartisan.

The members of the state board shall qualify by taking the regular oath of office as prescribed by law for state officers. A vacancy on the board shall be filled by appointment by the governor in the same manner as the original appointment.

The members of the state board shall be allowed their necessary travel and expenses while engaged in their official duties. Each member of the board may also be eligible to receive compensation as provided in section 7E.6. They shall organize the board and select one of their members as chairperson.

The place of office of the state board shall be in the office of the tax department in the capitol of the state.

The state board shall meet as deemed necessary by the chairperson. Special meetings of the state board may be called by the chairperson on five days' notice given to each member. All meetings

shall be held at the office of the tax department unless a different place within the state is designated by the state board or in the notice of the meeting.

It shall be the responsibility of the state board to exercise the following general powers and duties:

1. Determine and adopt such policies as are authorized by law and are necessary for the more efficient operation of any phase of tax review.

2. Perform such duties prescribed by law as it may find necessary for the improvement of the state system of taxation in carrying out the purposes and objectives of the tax laws.

3. Employ, pursuant to the Iowa merit system, adequate clerical help to keep such records as are necessary to set forth clearly all actions and proceedings of the state board.

4. Advise and counsel with the director of revenue and finance concerning the tax laws and the rules adopted pursuant to the law; and, upon its own motion or upon appeal by any affected taxpayer, review the record evidence and the decisions of, and any orders or directive issued by, the director of revenue and finance for the identification of taxable property, classification of property as real or personal, or for assessment and collection of taxes by the department or an order to reassess or to raise assessments to any local assessor, and shall affirm, modify, reverse, or remand them within sixty days from the date the case is submitted to the board for decision. For an appeal to the board to be valid, written notice must be given to the department within thirty days of the rendering of the decision, order, or directive from which the appeal is taken. The director shall certify to the board the record, documents, reports, audits, and all other information pertinent to the decision, order, or directive from which the appeal is taken.

The affected taxpayer and the department shall be given at least fifteen days' written notice by the board of the date the appeal shall be heard and both parties may be present at such hearing if they desire. The board shall adopt and promulgate, pursuant to chapter 17A, rules for the conduct of appeals by the board. The record and all documents, reports, audits and all other information certified to the board by the director, and hearings held by the board pursuant to the appeal and the decision of the board thereon shall be open to the public notwithstanding the provisions of section 422.72, subsection 1, and section 422.20; except that the board upon the application of the affected taxpayer may order the record and all documents, reports, audits, and all other information certified to it by the director, or so much thereof as it deems necessary, held confidential, if the public disclosure of same would reveal trade secrets or any other confidential information that would give the affected taxpayer's competitor a competitive advantage. Any deliberation of the board in reaching a decision on any appeal shall be confidential.

5. Adopt a long-range program for the state system of tax reform based upon special studies, surveys, research, and recommendations submitted by or proposed under the direction of the director of revenue and finance.

The state board shall constitute a continuing research commission as to tax matters in the state and cause to be prepared and submitted to each regular session of the general assembly a report containing such recommendations as to revisions, amendments, and new provisions of the law as the state board has decided should be submitted to the legislature for its consideration.

6. All of the provisions of section 422.70 shall also be applicable to the state board of tax review.

99 Acts, ch 151, §1, 89
Unnumbered paragraph 8 amended

421.16 Expenses.

The director and department employees are entitled to receive from the state their actual necessary expenses while traveling on the business of the department. The expenditures shall be sworn to by the party who incurred the expense, and approved and allowed by the director. However, such expenses shall not be allowed residents of Polk county while in the city of Des Moines or traveling between their homes and the city of Des Moines.

99 Acts, ch 151, §2, 89
Section amended

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 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 on the property 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 cooperate 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 assessing jurisdiction in any year. Such reassessment shall be made by the local assessor according to law under the direction of the director and the cost of making the assessment 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 assessing jurisdictions 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. Employees of the department of revenue and finance shall not during their regular hours of employment engage in the preparation of tax returns, except in connection with a regular audit of a tax return or in connection with assistance requested by the taxpayer.

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 obvious 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 an order of the director affecting any valuation shall not be retroactive as to any reduction or increase in taxes payable prior to January 1 of the year in which that order is issued, or prior to September 1 of the preceding year in cities under special charter which collect their own municipal levies. The director shall not correct errors or injustices under the authority of this paragraph if that correction would involve the exercise of judgment. 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. The director may establish criteria allowing for the use of electronic filing or the use of alternative filing methods of any return, deposit, or document required to be filed for taxes administered by the department. The director may also establish criteria allowing for payment of taxes, penalty, interest, and fees by electronic funds transfer or other alternative methods.

The director shall adopt rules setting forth procedures for use in electronic filing and electronic funds transfer or other alternative methods and standards that provide for acceptance of a signature in a form other than the handwriting of a person. The rules shall also take into consideration any undue hardship electronic filing or electronic funds transfer or other alternative methods create for filers.

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. Reserved.

18. To prepare and issue a state appraisal manual which each county and city assessor shall use in assessing and valuing all classes of property in the state. The appraisal manual shall be continuously revised and the manual and revisions shall be issued to the county and city assessors in such form and manner as prescribed by the director.

19. To issue rules as are necessary, subject to the provisions of chapter 17A, to provide for the uniform application of the exemptions provided in section 427.1 in all assessor jurisdictions in the state.

20. To subpoena from property owners and taxpayers any and all records and documents necessary to assist the department in the determination of the fair market value of industrial real estate. The burden of showing reasonable cause to believe that the documents or records sought by the subpoena are necessary to assist the department under this subsection shall be upon the director.

The provisions of sections 17A.10 to 17A.18A 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, or which the child support recovery unit is otherwise attempting to collect, 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 cooperate 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, constituting a minimum amount determined by rule of the department of revenue and finance, 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 re-

fund 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 a process for the child support recovery unit or collection services center to directly receive the payments. For purposes of crediting the support payments pursuant to sections 252B.14 and 598.22, payments received by the department of revenue and finance and forwarded to the collection services center shall be credited as if received directly by the collection services center.

d. The notice shall provide that, as an alternative to the provisions of paragraph "b", the individ-

ual may contact the child support recovery unit to formalize a repayment plan and obtain an exemption from the quarterly filing requirement when payments are made pursuant to the repayment plan or to contest the balance due listed in the notice.

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 or delinquent accounts, charges, loans, fees or other indebtedness due the state or any state agency, that have formal agreements with the department for central debt collection where the director finds that departmental personnel are unable to collect the delinquent accounts, charges, loans, fees, or other indebtedness because of a debtor'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 or debt actually collected and shall be paid only after the amount of tax, penalty, and interest or debt is collected. All funds collected must be remitted in full to the department within thirty days from the date of collection from a debtor or in a lesser time as the director prescribes. The funds shall be applied toward the debtor's account and handled as are funds received by other means. An amount is appropriated from the amount of tax, penalty, and interest, delinquent accounts, charges, loans, fees, or other indebtedness 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, penalties, and interests, delinquent accounts, charges, loans, fees, or other indebtedness pursuant to this subsection is subject to the requirements and penalties of the confidentiality laws of this state regarding tax or indebtedness information.

22A. To develop, modify, or contract with vendors to create or administer systems or programs which identify nonfilers of returns or nonpayers of taxes administered by the department. Fees for

services, reimbursements, or other remuneration paid under contract may be funded from the amount of tax, penalty, interest, or fees actually collected and shall be paid only after the amount is collected. An amount is appropriated from the amount of tax, penalty, interest, and fees actually collected, not to exceed the amount collected, which is sufficient to pay for services, reimbursement, or other remuneration pursuant to this subsection. Vendors entering into a contract with the department pursuant to this subsection are subject to the requirements and penalties of the confidentiality laws of this state regarding tax information.

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, constituting a minimum amount set by rule of the department of revenue and finance, 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 the minimum amount set by rule of the department 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 constituting a minimum amount set by rule of the department. 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. 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, constituting a minimum amount set by rule of the department.

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, plus a fee established by rule to reflect the cost of processing, against 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 branch 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 dis-

trict 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 or any other state entity reported in the Iowa comprehensive annual financial report. 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 and any other state agency that maintains a separate accounting system and elects to establish a debt collection setoff procedure for collection of debts owed to the state or its agencies.

(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 constitute a minimum amount set by rule of the department.

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.

However, upon submission of an allegation of the liability of a person which is owing and payable to the clerk of the district court and upon the determination by the department that the person allegedly liable is entitled to payment from a state agency, the department shall send written notification to the person which states the assertion by the clerk of the district court of rights to all or a portion of the payment, the clerk's entitlement to recover the liability through the setoff procedure, the basis of the assertions, the person's opportunity to request within fifteen days of the mailing of the notice that the department divide a jointly or commonly owned right to payment between owners, the opportunity to contest the liability to the clerk by written application to the clerk within fifteen days of the mailing of the notice, and the person's opportunity to contest the department's setoff procedure.

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 or, if the liability is owing and payable to the clerk of the district court, the department 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 setoff, a state agency shall notify in writing the person who was liable or, if the liability is owing and payable to the clerk of the district court, shall comply with the procedures as provided in paragraph "*k*".

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.

k. If the alleged liability is owing and payable to the clerk of the district court and setoff as provided in this subsection is sought, all of the following shall apply:

(1) The judicial branch shall prescribe procedures to permit a person to contest the amount of the person's liability to the clerk of the district court.

(2) The department shall, except for the procedures described in subparagraph (1), prescribe any other applicable procedures concerning setoff as provided in this subsection.

(3) Upon completion of the setoff, the department shall file, at least monthly, with the clerk of the district court a notice of 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 and no separate written notice is required.

30. Under substantive rules established by the director, the department shall seek reimbursement from other state agencies to recover its costs for setting off liabilities.

31. At the director's discretion, accept payment of taxes, penalties, interest, and fees, or any portion thereof, by credit card. The director may adjust the payable amount to reflect the costs of processing the payment as determined by the treasurer of state and the payment by credit card shall include, in addition to all other charges, any discount charged by the credit card issuer.

32. To ensure that persons employed under contract, other than officers or employees of the state, who provide assistance in administration of tax laws and who are directly under contract or who are involved in any way with work under the contract and who have access to confidential information are subject to applicable requirements and penalties of tax information confidentiality laws of

the state regarding all tax return, return information, or investigative or audit information that may be required to be divulged in order to carry out the duties specified under the contract.

33. *a.* To develop and administer an indirect cost allocation system for state agencies. The system shall be based upon standard cost accounting methodologies and shall be used to allocate both direct and indirect costs of state agencies or state agency functions in providing centralized services to other state agencies. A cost that is allocated to a state agency pursuant to this system shall be billed to the state agency and the cost is payable to the general fund of the state. The source of payment for the billed cost shall be any revenue source except for the general fund of the state. If a state agency is authorized by law to bill and recover direct expenses, the state agency shall recover indirect costs in the same manner.

b. For the purposes of this subsection, “state agency” means a board, commission, department, including the department of revenue and finance, or other administrative office, institution, bureau, or unit of the state of Iowa. The term “state agency” does not include the general assembly, the governor, the courts, or any political subdivision of the state, or its offices and units.

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, taxes, or other indebtedness owed to or being collected by 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 may use a participating agency’s statutory collection authority to collect the participating agency’s delinquent accounts, charges, fees, loans, taxes, or other indebtedness owed to or being collected by the state. 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 computer data bank and, notwithstanding any other provision of law to the contrary, may deny, revoke, or suspend any license or deny any renewal authorized by the laws of this state to any person who has defaulted on an obligation owed to or collected by 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.

i. The director may distribute to credit reporting entities and for publication the names, addresses, and amounts of indebtedness owed to or being collected by the state if the indebtedness is subject to the centralized debt collection procedure established in this subsection. The director shall adopt rules to administer this paragraph, and the rules shall provide guidelines by which the director shall determine which names, addresses, and amounts of indebtedness may be distributed for publication. The director may distribute information for publi-

cation pursuant to this paragraph, notwithstanding sections 422.20, 422.72, and 423.23, or any other provision of state law to the contrary pertaining to confidentiality of information.

98 Acts, ch 1202, §41, 46; 99 Acts, ch 152, §1, 40
 1998 amendment to subsection 20 is effective July 1, 1999, and applies to agency proceedings commenced, or conducted on remand from a court or other agency, on or after that date; 98 Acts, ch 1202, §41, 46
 Subsection 20, unnumbered paragraph 2 amended
 Subsection 34, paragraph c amended

421.18 Duties of public officers and employees.

It shall be the duty of all public officers and employees of the state and local governments to give to the director of revenue and finance information in their possession relating to taxation when required by the director, and to cooperate with and aid the director's efforts to secure a fair, equitable, and just enforcement of the taxation and revenue laws.

99 Acts, ch 151, §3, 89
 Section 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, 1999, whichever is applicable.

5. The word "taxpayer" includes any person, corporation, or fiduciary who is subject to a tax imposed by this chapter.

99 Acts, ch 95, §3, 12, 13
 Internal Revenue Code definition is updated regularly; for applicable definition in a prior tax year, refer to Code for that year
 1999 amendment to subsection 4 applies retroactively to tax years beginning on or after January 1, 1998; 99 Acts, ch 95, §12, 13
 Subsection 4 amended

422.4 Definitions controlling division.

For the purpose of this division and unless otherwise required by the context:

1. a. "Annual inflation factor" means an index, expressed as a percentage, determined by the department by October 15 of the calendar year preceding the calendar year for which the factor is determined, which reflects the purchasing power of the dollar as a result of inflation during the fiscal year ending in the calendar year preceding the cal-

endar year for which the factor is determined. In determining the annual inflation factor, the department shall use the annual percent change, but not less than zero percent, in the gross domestic product price deflator computed for the second quarter of the calendar year by the bureau of economic analysis of the United States department of commerce and shall add all of that percent change to one hundred percent. The annual inflation factor and the cumulative inflation factor shall each be expressed as a percentage rounded to the nearest one-tenth of one percent. The annual inflation factor shall not be less than one hundred percent.

b. "Cumulative inflation factor" means the product of the annual inflation factor for the 1988 calendar year and all annual inflation factors for subsequent calendar years as determined pursuant to this subsection. The cumulative inflation factor applies to all tax years beginning on or after January 1 of the calendar year for which the latest annual inflation factor has been determined.

c. The annual inflation factor for the 1988 calendar year is one hundred percent.

2. a. "Annual standard deduction factor" means an index, expressed as a percentage, determined by the department by October 15 of the calendar year preceding the calendar year for which the factor is determined, which reflects the purchasing power of the dollar as a result of inflation during the fiscal year ending in the calendar year preceding the calendar year for which the factor is determined. In determining the annual standard deduction factor, the department shall use the

annual percent change, but not less than zero percent, in the gross domestic product price deflator computed for the second quarter of the calendar year by the bureau of economic analysis of the United States department of commerce and shall add all of that percent change to one hundred percent. The annual standard deduction factor and the cumulative standard deduction factor shall each be expressed as a percentage rounded to the nearest one-tenth of one percent. The annual standard deduction factor shall not be less than one hundred percent.

b. “*Cumulative standard deduction factor*” means the product of the annual standard deduction factor for the 1989 calendar year and all annual standard deduction factors for subsequent calendar years as determined pursuant to this subsection. The cumulative standard deduction factor applies to all tax years beginning on or after January 1 of the calendar year for which the latest annual standard deduction factor has been determined.

c. The annual standard deduction factor for the 1989 calendar year is one hundred percent.

3. The term “*employer*” shall mean and include those who have a right to exercise control as to how, when, and where services are to be performed.

4. The word “*fiduciary*” means a guardian, trustee, executor, administrator, receiver, conservator, or any person, whether individual or corporate, acting in any fiduciary capacity for any person, trust, or estate.

5. The words “*fiscal year*” mean an accounting period of twelve months, ending on the last day of any month other than December.

6. The words “*foreign country*” mean any jurisdiction other than one embraced within the United States. The words “*United States*”, when used in a geographical sense, include the states, the District of Columbia, and the possessions of the United States.

7. The words “*head of household*” have the same meaning as provided by the Internal Revenue Code.

8. The words “*income year*” mean the calendar year or the fiscal year upon the basis of which the net income is computed under this division.

9. The word “*individual*” means a natural person; and if an individual is permitted to file as a corporation, under the Internal Revenue Code, that fictional status is not recognized for purposes of this chapter, and the individual’s taxable income shall be computed as required under the Internal Revenue Code relating to individuals not filing as a corporation, with the adjustments allowed by this chapter.

10. The word “*nonresident*” applies only to individuals, and includes all individuals who are not “*residents*” within the meaning of subsection 15 hereof.

11. “*Notice of assessment*” means a notice by the department to a taxpayer advising the taxpayer of an assessment of tax due.

12. The term “*other person*” shall mean that person or entity properly empowered to act in behalf of an individual payee and shall include authorized agents of such payees whether they be individuals or married couples.

13. The word “*paid*”, for the purposes of the deductions under this division, means “*paid or accrued*” or “*paid or incurred*”, and the terms “*paid or incurred*” and “*paid or accrued*” shall be construed according to the method of accounting upon the basis of which the net income is computed under this division. The term “*received*”, for the purpose of the computation of net income under this division, means “*received or accrued*”, and the term “*received or accrued*” shall be construed according to the method of accounting upon the basis of which the net income is computed under this division.

14. The word “*person*” includes individuals and fiduciaries.

15. The word “*resident*” applies only to individuals and includes, for the purpose of determining liability to the tax imposed by this division upon or with reference to the income of any tax year, any individual domiciled in the state, and any other individual who maintains a permanent place of abode within the state.

16. The words “*taxable income*” mean the net income as defined in section 422.7 minus the deductions allowed by section 422.9, in the case of individuals; in the case of estates or trusts, the words “*taxable income*” mean the taxable income (without a deduction for personal exemption) as computed for federal income tax purposes under the Internal Revenue Code, but with the adjustments specified in section 422.7 plus the Iowa income tax deducted in computing the federal taxable income and minus federal income taxes as provided in section 422.9.

17. The words “*tax year*” mean the calendar year, or the fiscal year ending during such calendar year, upon the basis of which the net income is computed under this division.

a. If a taxpayer has made the election provided by section 441, subsection “*f*”, of the Internal Revenue Code, “*tax year*” means the annual period so elected, varying from fifty-two to fifty-three weeks.

b. If the effective date or the applicability of a provision of this division is expressed in terms of a tax year beginning, including, or ending with reference to a specified date which is the first or last day of a month, a tax year described in paragraph “*a*” of this subsection shall be treated as beginning with the first day of the calendar month beginning nearest to the first day of the tax year or as ending with the last day of the calendar month ending nearest to the last day of the tax year.

18. The word “*wages*” has the same meaning as provided by the Internal Revenue Code.

19. The term “withholding agent” means any individual, fiduciary, estate, trust, corporation, partnership or association in whatever capacity acting and including all officers and employees of the state of Iowa, or any municipal corporation of the state of Iowa and of any school district or school board of the state, or of any political subdivision of the state of Iowa, or any tax-supported unit of government that is obligated to pay or has control of paying or does pay to any resident or nonresident of the state of Iowa or the resident’s or nonresident’s agent any wages that are subject to the Iowa income tax in the hands of such resident or nonresident, or any of the above-designated entities making payment or having control of making such payment of any taxable Iowa income to any nonresident. The term “withholding agent” shall also include an officer or employee of a corporation or association, or a member or employee of a partnership, who as such officer, employee, or member has the responsibility to perform an act under section 422.16 and who subsequently knowingly violates the provisions of section 422.16.

99 Acts, ch 152, §2, 40
Subsection 17, paragraph c stricken

422.5 Tax imposed — exclusions — alternative minimum tax.

1. A tax is imposed upon every resident and nonresident of the state which tax shall be levied, collected, and paid annually upon and with respect to the entire taxable income as defined in this division at rates as follows:

a. On all taxable income from zero through one thousand dollars, thirty-six hundredths of one percent.

b. On all taxable income exceeding one thousand dollars but not exceeding two thousand dollars, seventy-two hundredths of one percent.

c. On all taxable income exceeding two thousand dollars but not exceeding four thousand dollars, two and forty-three hundredths percent.

d. On all taxable income exceeding four thousand dollars but not exceeding nine thousand dollars, four and one-half percent.

e. On all taxable income exceeding nine thousand dollars but not exceeding fifteen thousand dollars, six and twelve hundredths percent.

f. On all taxable income exceeding fifteen thousand dollars but not exceeding twenty thousand dollars, six and forty-eight hundredths percent.

g. On all taxable income exceeding twenty thousand dollars but not exceeding thirty thousand dollars, six and eight-tenths percent.

h. On all taxable income exceeding thirty thousand dollars but not exceeding forty-five thousand dollars, seven and ninety-two hundredths percent.

i. On all taxable income exceeding forty-five thousand dollars, eight and ninety-eight hundredths percent.

j. (1) The tax imposed upon the taxable income of a nonresident shall be computed by reduc-

ing the amount determined pursuant to paragraphs “a” through “i” by the amounts of nonrefundable credits under this division and by multiplying this resulting amount by a fraction of which the nonresident’s net income allocated to Iowa, as determined in section 422.8, subsection 2, paragraph “a”, is the numerator and the nonresident’s total net income computed under section 422.7 is the denominator. This provision also applies to individuals who are residents of Iowa for less than the entire tax year.

(2) The tax imposed upon the taxable income of a resident shareholder in an S corporation which has in effect for the tax year an election under subchapter S of the Internal Revenue Code and carries on business within and without the state may be computed by reducing the amount determined pursuant to paragraphs “a” through “i” by the amounts of nonrefundable credits under this division and by multiplying this resulting amount by a fraction of which the resident’s net income allocated to Iowa, as determined in section 422.8, subsection 2, paragraph “b”, is the numerator and the resident’s total net income computed under section 422.7 is the denominator. If a resident shareholder has elected to take advantage of this subparagraph, and for the next tax year elects not to take advantage of this subparagraph, the resident shareholder shall not reelect to take advantage of this subparagraph for the three tax years immediately following the first tax year for which the shareholder elected not to take advantage of this subparagraph, unless the director consents to the reelection. This subparagraph also applies to individuals who are residents of Iowa for less than the entire tax year.

This subparagraph shall not affect the amount of the taxpayer’s checkoff to the Iowa election campaign fund under section 56.18, the checkoff for the fish and game fund in section 456A.16, the credits from tax provided in sections 422.10, 422.11A, and 422.12 and the allocation of these credits between spouses if the taxpayers filed separate returns or separately on combined returns.

k. There is imposed upon every resident and nonresident of this state, including estates and trusts, the greater of the tax determined in paragraphs “a” through “j” or the state alternative minimum tax equal to seventy-five percent of the maximum state individual income tax rate for the tax year, rounded to the nearest one-tenth of one percent, of the state alternative minimum taxable income of the taxpayer as computed under this paragraph.

The state alternative minimum taxable income of a taxpayer is equal to the taxpayer’s state taxable income, as computed with the deductions in section 422.9, with the following adjustments:

(1) Add items of tax preference included in federal alternative minimum taxable income under section 57, except subsections (a)(1), (a)(2), and (a)(5), of the Internal Revenue Code, make the ad-

justments included in federal alternative minimum taxable income under section 56, except subsections (a)(4), (b)(1)(C)(iii), and (d), of the Internal Revenue Code, and add losses as required by section 58 of the Internal Revenue Code. In the case of an estate or trust, the items of tax preference, adjustments, and losses shall be apportioned between the estate or trust and the beneficiaries in accordance with rules prescribed by the director.

(2) Subtract the applicable exemption amount as follows:

(a) Seventeen thousand five hundred dollars for a married person who files separately or for an estate or trust.

(b) Twenty-six thousand dollars for a single person or an unmarried head of household.

(c) Thirty-five thousand dollars for a married couple which files a joint return.

(d) The exemption amount shall be reduced, but not below zero, by an amount equal to twenty-five percent of the amount by which the alternative minimum taxable income of the taxpayer, computed without regard to the exemption amount in this subparagraph, exceeds the following:

(i) Seventy-five thousand dollars in the case of a taxpayer described in subparagraph subdivision (a).

(ii) One hundred twelve thousand five hundred dollars in the case of a taxpayer described in subparagraph subdivision (b).

(iii) One hundred fifty thousand dollars in the case of a taxpayer described in subparagraph subdivision (c).

(3) In the case of a net operating loss computed for a tax year beginning after December 31, 1982, which is carried back or carried forward to the current taxable year, the net operating loss shall be reduced by the amount of the items of tax preference arising in such year which was taken into account in computing the net operating loss in section 422.9, subsection 3. The deduction for a net operating loss for a tax year beginning after December 31, 1986, which is carried back or carried forward to the current taxable year shall not exceed ninety percent of the alternative minimum taxable income determined without regard for the net operating loss deduction.

The state alternative minimum tax of a taxpayer whose net capital gain deduction includes the gain or loss from the forfeiture of an installment real estate contract, the transfer of real or personal property securing a debt to a creditor in cancellation of that debt, or from the sale or exchange of property as a result of actual notice of foreclosure, where the fair market value of the taxpayer's assets exceeds the taxpayer's liabilities immediately before such forfeiture, transfer, or sale or exchange, shall not be greater than such excess, including any asset transferred within one hundred twenty days prior to such forfeiture, transfer, or sale or exchange.

In the case of a resident, including a resident estate or trust, the state's apportioned share of the state alternative minimum tax is one hundred percent of the state alternative minimum tax computed in this subsection. In the case of a resident or part-year resident shareholder in an S corporation which has in effect for the tax year an election under subchapter S of the Internal Revenue Code and carries on business within and without the state, a nonresident, including a nonresident estate or trust, or an individual, estate, or trust that is domiciled in the state for less than the entire tax year, the state's apportioned share of the state alternative minimum tax is the amount of tax computed under this subsection, reduced by the applicable credits in sections 422.10 through 422.12 and this result multiplied by a fraction with a numerator of the sum of state net income allocated to Iowa as determined in section 422.8, subsection 2, paragraph "a" or "b" as applicable, plus tax preference items, adjustments, and losses under subparagraph (1) attributable to Iowa and with a denominator of the sum of total net income computed under section 422.7 plus all tax preference items, adjustments, and losses under subparagraph (1). In computing this fraction, those items excludable under subparagraph (1) shall not be used in computing the tax preference items. Married taxpayers electing to file separate returns or separately on a combined return must allocate the minimum tax computed in this subsection in the proportion that each spouse's respective preference items, adjustments, and losses under subparagraph (1) bear to the combined preference items, adjustments, and losses under subparagraph (1) of both spouses.

2. However, the tax shall not be imposed on a resident or nonresident whose net income, as defined in section 422.7, is thirteen thousand five hundred dollars or less in the case of married persons filing jointly or filing separately on a combined return, unmarried heads of household, and surviving spouses or nine thousand dollars or less in the case of all other persons; but in the event that the payment of tax under this division would reduce the net income to less than thirteen thousand five hundred dollars or nine thousand dollars as applicable, then the tax shall be reduced to that amount which would result in allowing the taxpayer to retain a net income of thirteen thousand five hundred dollars or nine thousand dollars as applicable. The preceding sentence does not apply to estates or trusts. For the purpose of this subsection, the entire net income, including any part of the net income not allocated to Iowa, shall be taken into account. For purposes of this subsection, net income includes all amounts of pensions or other retirement income received from any source which is not taxable under this division as a result of the government pension exclusions in section 422.7, or any other state law. If the combined net income of a hus-

band and wife exceeds thirteen thousand five hundred dollars, neither of them shall receive the benefit of this subsection, and it is immaterial whether they file a joint return or separate returns. However, if a husband and wife file separate returns and have a combined net income of thirteen thousand five hundred dollars or less, neither spouse shall receive the benefit of this paragraph, if one spouse has a net operating loss and elects to carry back or carry forward the loss as provided in section 422.9, subsection 3. A person who is claimed as a dependent by another person as defined in section 422.12 shall not receive the benefit of this subsection if the person claiming the dependent has net income exceeding thirteen thousand five hundred dollars or nine thousand dollars as applicable or the person claiming the dependent and the person's spouse have combined net income exceeding thirteen thousand five hundred dollars or nine thousand dollars as applicable.

In addition, if the married persons', filing jointly or filing separately on a combined return, unmarried head of household's, or surviving spouse's net income exceeds thirteen thousand five hundred dollars, the regular tax imposed under this division shall be the lesser of the maximum state individual income tax rate times the portion of the net income in excess of thirteen thousand five hundred dollars or the regular tax liability computed without regard to this sentence. Taxpayers electing to file separately shall compute the alternate tax described in this paragraph using the total net income of the husband and wife. The alternate tax described in this paragraph does not apply if one spouse elects to carry back or carry forward the loss as provided in section 422.9, subsection 3.

3. The tax herein levied shall be computed and collected as hereinafter provided.

4. The provisions of this division shall apply to all salaries received by federal officials or employees of the United States government as provided for herein.

5. Upon determination of the latest cumulative inflation factor, the director shall multiply each dollar amount set forth in subsection 1, paragraphs "a" through "i" of this section by this cumulative inflation factor, shall round off the resulting product to the nearest one dollar, and shall incorporate the result into the income tax forms and instructions for each tax year.

6. The state income tax of a taxpayer whose net income includes the gain or loss from the forfeiture of an installment real estate contract, the transfer of real or personal property securing a debt to a creditor in cancellation of that debt, or from the sale or exchange of property as a result of actual notice of foreclosure where the fair market value of the taxpayer's assets exceeds the taxpayer's liabilities immediately before such forfeiture, transfer, or sale or exchange shall not be greater than such excess, including any asset transferred within one

hundred twenty days prior to such forfeiture, transfer, or sale or exchange. For purposes of this subsection, in the case of married taxpayers, except in the case of a husband and wife who live apart at all times during the tax year, the assets and liabilities of both spouses shall be considered in determining if the fair market value of the taxpayer's assets exceed the taxpayer's liabilities.

7. In addition to the other taxes imposed by this section, a tax is imposed on the amount of a lump sum distribution for which the taxpayer has elected under section 402(e) of the Internal Revenue Code to be separately taxed for federal income tax purposes for the tax year. The rate of tax is equal to twenty-five percent of the separate federal tax imposed on the amount of the lump sum distribution. A nonresident is liable for this tax only on that portion of the lump sum distribution allocable to Iowa. The total amount of the lump sum distribution subject to separate federal tax shall be included in net income for purposes of determining eligibility under the thirteen thousand five hundred dollar or less or nine thousand dollar or less exclusion, as applicable.

8. In the case of income derived from the sale or exchange of livestock which qualifies under section 451(e) of the Internal Revenue Code because of drought, the taxpayer may elect to include the income in the taxpayer's net income in the tax year following the year of the sale or exchange in accordance with rules prescribed by the director.

9. If an individual's federal income tax was forgiven for a tax year under section 692 of the Internal Revenue Code, because the individual was killed while serving in an area designated by the president of the United States or the United States Congress as a combat zone, the individual was missing in action and presumed dead, or the individual was killed outside the United States in a terroristic or military action while the individual was a military or civilian employee of the United States, the individual's Iowa income tax is also forgiven for the same tax year.

10. If a taxpayer repays in the current tax year certain amounts of income that were subject to tax under this division in a prior year and a tax benefit would be allowed under similar circumstances under section 1341 of the Internal Revenue Code, a tax benefit shall be allowed on the Iowa return. The tax benefit shall be the reduced tax for the current tax year due to the deduction for the repaid income or the reduction in tax for the prior year or years due to exclusion of the repaid income. The reduction in tax shall qualify as a refundable tax credit on the return for the current year pursuant to rules prescribed by the director.

99 Acts, ch 151, §4, 89
Subsections 3 and 11 stricken and former subsections 4-12 renumbered as 3-10

422.6 Income from estates or trusts.

The tax imposed by section 422.5 less the credits allowed under sections 15.333, 15.335, 15E.193A, 422.10, 422.11, 422.11A, and 422.11B, and the personal exemption credit allowed under section 422.12 apply to and are a charge against estates and trusts with respect to their taxable income, and the rates are the same as those applicable to individuals. The fiduciary shall make the return of income for the estate or trust for which the fiduciary acts, whether the income is taxable to the estate or trust or to the beneficiaries. However, for tax years ending after August 5, 1997, if the trust is a qualified preneed funeral trust as set forth in section 685 of the Internal Revenue Code and the trustee has elected the special tax treatment under section 685 of the Internal Revenue Code, neither the trust nor the beneficiary is subject to Iowa income tax on income accruing to the trust.

The beneficiary of a trust who receives an accumulation distribution shall be allowed credit without interest for the Iowa income taxes paid by the trust attributable to the accumulation distribution in a manner corresponding to the provisions for credit under the federal income tax relating to accumulation distributions as contained in the Internal Revenue Code. The trust is not entitled to a refund of taxes paid on the distributions. The trust shall maintain detailed records to verify the computation of the tax.

99 Acts, ch 95, §4, 12, 13

1999 amendment to unnumbered paragraph 1 applies retroactively to tax years beginning on or after January 1, 1998; 99 Acts, ch 95, §12, 13
Unnumbered paragraph 1 amended

422.9 Deductions from net income.

In computing taxable income of individuals, there shall be deducted from net income the larger of the following amounts:

1. An optional standard deduction, after deduction of federal income tax, equal to one thousand two hundred thirty dollars for a married person who files separately or a single person or equal to three thousand thirty dollars for a husband and wife who file a joint return, a surviving spouse, or an unmarried head of household. The optional standard deduction shall not exceed the amount remaining after deduction of the federal income tax.

2. The total of contributions, interest, taxes, medical expense, nonbusiness losses, and miscellaneous expenses deductible for federal income tax purposes under the Internal Revenue Code, with the following adjustments:

a. Subtract the deduction for Iowa income taxes.

b. Add the amount of federal income taxes paid or accrued as the case may be, during the tax year, adjusted by any federal income tax refunds. Provided, however, that where married persons, who have filed a joint federal income tax return, file separately, such total shall be divided between them

according to the portion thereof paid or accrued, as the case may be, by each.

c. Add the amount by which expenses paid or incurred in connection with the adoption of a child by the taxpayer exceed three percent of the net income of the taxpayer, or of the taxpayer and spouse in the case of a joint return. The expenses may include medical and hospital expenses of the biological mother which are incident to the child's birth and are paid by the taxpayer, welfare agency fees, legal fees, and all other fees and costs relating to the adoption of a child if the child is placed by a child-placing agency licensed under chapter 238 or by a person making an independent placement according to the provisions of chapter 600.

d. Add an additional deduction for mileage incurred by the taxpayer in voluntary work for a charitable organization consisting of the excess of the state employee mileage reimbursement over the amount deductible for federal income tax purposes. The deduction shall be proven by the keeping of a contemporaneous diary by the person throughout the period of the voluntary work in the tax year.

e. Add the amount, not to exceed five thousand dollars, of expenses not otherwise deductible under this section actually incurred in the home of the taxpayer for the care of a person who is the grandchild, child, parent, or grandparent of the taxpayer or the taxpayer's spouse and who is unable, by reason of physical or mental disability, to live independently and is receiving, or would be eligible to receive if living in a health care facility licensed under chapter 135C, medical assistance benefits under chapter 249A. In the event that the person being cared for is receiving assistance benefits under chapter 239B, the expenses not otherwise deductible shall be the net difference between the expenses actually incurred in caring for the person and the assistance benefits received under chapter 239B.

f. Add the amount of the mortgage interest credit allowable for the tax year under section 25 of the Internal Revenue Code to the extent the credit decreased the amount of interest deductible under section 163(g) of the Internal Revenue Code.

g. Reserved.

h. To the extent not otherwise included pursuant to section 164 of the Internal Revenue Code, add the amount of the annual registration fee paid for a multipurpose vehicle pursuant to section 321.124, subsection 3, paragraph "h", which is based upon the value of the vehicle. For purposes of this paragraph, sixty percent of the amount of the registration fee is based upon the value of the multipurpose vehicle.

i. If the taxpayer has a deduction for medical care expenses under section 213 of the Internal Revenue Code, the taxpayer shall recompute for the purposes of this subsection the amount of the

deduction under section 213 by excluding from medical care, as defined in section 213, the amount subtracted under section 422.7, subsection 29.

3. If, after applying all of the adjustments provided for in section 422.7, the allocation provisions of section 422.8, and the deductions allowable in this section subject to the modifications provided in section 172(d) of the Internal Revenue Code, the taxable income results in a net operating loss, the net operating loss shall be deducted as follows:

a. The Iowa net operating loss shall be carried back three taxable years for an individual taxpayer with a casualty or theft property loss or for a net operating loss in a presidentially declared disaster area incurred by a taxpayer engaged in a small business or in the trade or business of farming. For all other Iowa net operating losses, the net operating loss shall be carried back two taxable years or to the taxable year in which the taxpayer first earned income in Iowa whichever year is the later.

b. The Iowa net operating loss remaining after being carried back as required in paragraph "a" or "d" or if not required to be carried back shall be carried forward twenty taxable years.

c. If the election under section 172(b)(3) of the Internal Revenue Code is made, the Iowa net operating loss shall be carried forward twenty taxable years.

d. Notwithstanding paragraph "a", for a taxpayer who is engaged in the trade or business of farming as defined in section 263A(e)(4) of the Internal Revenue Code and has a loss from farming as defined in section 172(b)(1)(F) of the Internal Revenue Code including modifications prescribed by rule by the director, the Iowa loss from the trade or business of farming is a net operating loss which may be carried back five taxable years prior to the taxable year of the loss.

4. Where married persons file separately, both must use the optional standard deduction if either elects to use it.

5. A taxpayer affected by section 422.8 shall, if the optional standard deduction is not used, be permitted to deduct only such portion of the total referred to in subsection 2 above as is fairly and equitably allocable to Iowa under the rules prescribed by the director.

99 Acts, ch 95, §5, 6, 12, 13; 99 Acts, ch 114, §25

1999 amendments to subsection 3 apply retroactively to tax years beginning on or after January 1, 1998; 99 Acts, ch 95, §12, 13

Subsection 2, paragraph i amended

Subsection 3, paragraph b amended and NEW paragraph d

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, 1999.

Any credit in excess of the tax liability imposed by section 422.5 less the credits allowed under sections 422.11A, 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.

99 Acts, ch 95, §7, 12, 13

1999 amendment to unnumbered paragraph 1 applies retroactively to tax years beginning on or after January 1, 1998; 99 Acts, ch 95, §12, 13
Unnumbered paragraph 1 amended

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, a limited liability company whose members are taxed on the company's income under provisions of the Internal Revenue Code, trust, or corporation whose stockholders are taxed on the corporation's income under the provisions of the Internal Revenue Code may, not later than the due date for filing its return for the taxable year, including any extension thereof, elect to file a composite return for the nonresident partners, members, beneficiaries, or shareholders. The director may require that a composite return be filed under the conditions deemed appropriate by the director. A partnership, limited liability company, 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.

99 Acts, ch 151, §5, 89

1999 amendment to subsection 5 applies retroactively to January 1, 1999, for tax years beginning on or after that date; 99 Acts, ch 151, §89

Subsection 5 amended

422.16 Withholding of income tax at source — penalties — interest — declaration of estimated tax — bond.

1. Every withholding agent and every employer as defined in this chapter and further defined in the Internal Revenue Code, with respect to income tax collected at source, making payment of wages to a nonresident employee working in Iowa, or to a resident employee, shall deduct and withhold from the wages an amount which will approximate the employee's annual tax liability on a calendar year basis, calculated on the basis of tables to be prepared by the department and schedules or percentage rates, based on the wages, to be prescribed by the department. Every employee or other person shall declare to the employer or withholding agent the number of the employee's or other person's personal exemptions and dependency exemptions or credits to be used in applying the tables and schedules or percentage rates. However, no greater number of personal or dependency exemptions or cred-

its may be declared by the employee or other person than the number to which the employee or other person is entitled except as allowed under section 3402(m)(1) of the Internal Revenue Code and as allowed for the child and dependent care credit provided in section 422.12C. The claiming of exemptions or credits in excess of entitlement is a serious misdemeanor.

Nonresidents engaged in any facet of feature film, television, or educational production using the film or videotape disciplines in the state are not subject to Iowa withholding if the employer has applied to the department for exemption from the withholding requirement and the department has determined that any nonresident receiving wages would be entitled to a credit against Iowa income taxes paid.

For the purposes of this subsection, state income tax shall be withheld from pensions, annuities, other similar periodic payments, and other income payments of those persons whose primary residence is in Iowa in those circumstances in which those persons have federal income tax withheld from pensions, annuities, other similar periodic payments, and other income payments under sections 3402(o), 3402(p), 3402(s), 3405(a), 3405(b), and 3405(c) of the Internal Revenue Code at a rate to be specified by the department.

For the purposes of this subsection, state income tax shall be withheld on winnings in excess of six hundred dollars derived from gambling activities authorized under chapter 99B or 99E. State income tax shall be withheld on winnings in excess of one thousand dollars from gambling activities authorized under chapter 99D. State income tax shall be withheld on winnings in excess of twelve hundred dollars derived from slot machines authorized under chapter 99F.

For the purposes of this subsection, state income tax at the rate of six percent shall be withheld from supplemental wages of employees in those circumstances in which the employer treats the supplemental wages as wholly separate from regular wages for purposes of withholding and federal income tax is withheld from the supplemental wages under section 3402(g) of the Internal Revenue Code.

2. A withholding agent required to deduct and withhold tax under subsections 1 and 12, except those required to deposit on a semimonthly basis, shall deposit for each calendar quarterly period, on or before the last day of the month following the close of the quarterly period, on a quarterly deposit form as prescribed by the director and shall pay to the department, in the form of remittances made payable to "Treasurer, State of Iowa", the tax required to be withheld, or the tax actually withheld, whichever is greater, under subsections 1 and 12. However, a withholding agent who withholds more than fifty dollars in any one month, except those required to deposit on a semimonthly basis, shall de-

posit with the department the amount withheld, with a monthly deposit form as prescribed by the director. The monthly deposit form is due on or before the fifteenth day of the month following the month of withholding, except that a deposit is not required for the amount withheld in the third month of the quarter but the total amount of withholding for the quarter shall be computed and the amount by which the deposits for that quarter fail to equal the total quarterly liability is due with the filing of the quarterly deposit form. The quarterly deposit form is due within the month following the end of the quarter. A withholding agent who withholds more than eight thousand dollars in a semi-monthly period shall deposit with the department the amount withheld, with a semimonthly deposit form as prescribed by the director. The first semimonthly deposit form for the period from the first of the month through the fifteenth of the month is due on the twenty-fifth day of the month in which the withholding occurs. The second semimonthly deposit form for the period from the sixteenth of the month through the end of the month is due on the tenth day of the month following the month in which the withholding occurs.

Every withholding agent on or before the end of the second month following the close of the calendar year in which the withholding occurs shall make an annual reporting of taxes withheld and other information prescribed by the director and send to the department copies of wage and tax statements with the return. At the discretion of the director, the withholding agent shall not be required to send wage statements and tax statements with the annual reporting return form if the information is available from the internal revenue service or other state or federal agencies.

If the director has reason to believe that the collection of the tax provided for in subsections 1 and 12 is in jeopardy, the director may require the employer or withholding agent to make the report and pay the tax at any time, in accordance with section 422.30. The director may authorize incorporated banks, trust companies, or other depositories authorized by law which are depositories or financial agents of the United States or of this state, to receive any tax imposed under this chapter, in the manner, at the times, and under the conditions the director prescribes. The director shall also prescribe the manner, times, and conditions under which the receipt of the tax by those depositories is to be treated as payment of the tax to the department.

3. Every withholding agent employing not more than two persons who expects to employ either or both of such persons for the full calendar year may, with respect to such persons, pay with the withholding tax return due for the first calendar quarter of the year the full amount of income taxes required to be withheld from the wages of such persons for the full calendar year. The amount

to be paid shall be computed as if the employee were employed for the full calendar year for the same wages and with the same pay periods as prevailed during the first quarter of the year with respect to such employee. No such lump sum payment of withheld income tax shall be made without the written consent of all employees involved. The withholding agent shall be entitled to recover from the employee any part of such lump sum payment that represents an advance to the employee. If a withholding agent pays a lump sum with the first quarterly return the withholding agent shall be excused from filing further quarterly returns for the calendar year involved unless the withholding agent hires other or additional employees.

4. Every withholding agent who fails to withhold or pay to the department any sums required by this chapter to be withheld and paid, shall be personally, individually, and corporately liable therefor to the state of Iowa, and any sum or sums withheld in accordance with the provisions of subsections 1 and 12, shall be deemed to be held in trust for the state of Iowa. Notwithstanding sections 490A.601 and 490A.602, this subsection applies to a member or manager of a limited liability company.

5. In the event a withholding agent fails to withhold and pay over to the department any amount required to be withheld under subsections 1 and 12 of this section, such amount may be assessed against such employer or withholding agent in the same manner as prescribed for the assessment of income tax under the provisions of divisions II and VI of this chapter.

6. Whenever the director determines that any employer or withholding agent has failed to withhold or pay over to the department sums required to be withheld under subsections 1 and 12 of this section the unpaid amount thereof shall be a lien as defined in section 422.26, shall attach to the property of said employer or withholding agent as therein provided, and in all other respects the procedure with respect to such lien shall apply as set forth in said section 422.26.

7. Every withholding agent required to deduct and withhold a tax under subsections 1 and 12 of this section shall furnish to such employee, nonresident, or other person in respect of the remuneration paid by such employer or withholding agent to such employee, nonresident, or other person during the calendar year, on or before January 31 of the succeeding year, or, in the case of employees, if the employee's employment is terminated before the close of such calendar year, within thirty days from the day on which the last payment of wages is made, if requested by such employee, but not later than January 31 of the following year, a written statement showing the following:

a. The name and address of such employer or withholding agent, and the identification number of such employer or withholding agent.

b. The name of the employee, nonresident, or other person and that person's federal social security account number, together with the last known address of such employee, nonresident, or other person to whom wages have been paid during such period.

c. The gross amount of wages, or other taxable income, paid to the employee, nonresident, or other person.

d. The total amount deducted and withheld as tax under the provisions of subsections 1 and 12 of this section.

e. The total amount of federal income tax withheld.

The statements required to be furnished by this subsection in respect of any wages or other taxable Iowa income shall be in such form or forms as the director may, by regulation, prescribe.

8. An employer or withholding agent shall be liable for the payment of the tax required to be deducted and withheld or the amount actually deducted, whichever is greater, under subsections 1 and 12 of this section; and any amount deducted and withheld as tax under subsections 1 and 12 of this section during any calendar year upon the wages of any employee, nonresident, or other person shall be allowed as a credit to the employee, nonresident, or other person against the tax imposed by section 422.5, irrespective of whether or not such tax has been, or will be, paid over by the employer or withholding agent to the department as provided by this chapter.

9. The amount of any overpayment of the individual income tax liability of the employee taxpayer, nonresident, or other person which may result from the withholding and payment of withheld tax by the employer or withholding agent to the department under subsections 1 and 12, as compared to the individual income tax liability of the employee taxpayer, nonresident, or other person properly and correctly determined under the provisions of section 422.4, to and including section 422.25, may be credited against any income tax or installment thereof then due the state of Iowa and any balance of one dollar or more shall be refunded to the employee taxpayer, nonresident or other person with interest at the rate in effect under section 421.7 for each month or fraction of a month, the interest to begin to accrue on the first day of the second calendar month following the date the return was due to be filed or was filed, whichever is the later date. Amounts less than one dollar shall be refunded to the taxpayer, nonresident, or other person only upon written application, in accordance with section 422.73, and only if the application is filed within twelve months after the due date of the return. Refunds in the amount of one dollar or more provided for by this subsection shall be paid by the treasurer of state by warrants drawn by the director of revenue and finance, or an authorized employee of the department, and the taxpayer's re-

turn of income shall constitute a claim for refund for this purpose, except in respect to amounts of less than one dollar. There is appropriated, out of any funds in the state treasury not otherwise appropriated, a sum sufficient to carry out the provisions of this subsection.

10. a. An employer or withholding agent required under this chapter to furnish a statement required by this chapter who willfully furnishes a false or fraudulent statement, or who willfully fails to furnish the statement is, for each failure, subject to a civil penalty of five hundred dollars, the penalty to be in addition to any criminal penalty otherwise provided by the Code.

b. In addition to the tax or additional tax, any person or withholding agent shall pay a penalty as provided in section 421.27. The taxpayer shall also pay interest on the tax or additional tax at the rate in effect under section 421.7, for each month counting each fraction of a month as an entire month, computed from the date the semimonthly, monthly, or quarterly deposit form was required to be filed. The penalty and interest become a part of the tax due from the withholding agent.

c. If any withholding agent, being a domestic or foreign corporation, required under the provisions of this section to withhold on wages or other taxable Iowa income subject to this chapter, fails to withhold the amounts required to be withheld, make the required returns or remit to the department the amounts withheld, the director may, having exhausted all other means of enforcement of the provisions of this chapter, certify such fact or facts to the secretary of state, who shall thereupon cancel the articles of incorporation or certificate of authority (as the case may be) of such corporation, and the rights of such corporation to carry on business in the state of Iowa shall thereupon cease. The secretary of state shall immediately notify by registered mail such domestic or foreign corporation of the action taken by the secretary of state. The provisions of section 422.40, subsection 3, shall be applicable.

d. The department shall upon request of any fiduciary furnish said fiduciary with a certificate of acquittance showing that no liability as a withholding agent exists with respect to the estate or trust for which said fiduciary acts, provided the department has determined that there is no such liability.

11. a. A person or married couple filing a return shall make estimated tax payments if the person's or couple's Iowa income tax attributable to income other than wages subject to withholding can reasonably be expected to amount to two hundred dollars or more for the taxable year, except that, in the cases of farmers and fishermen, the exceptions provided in the Internal Revenue Code with respect to making estimated payments apply. The estimated tax shall be paid in quarterly installments. The first installment shall be paid on or before the last day of the fourth month of the taxpayer's tax

year for which the estimated payments apply. The other installments shall be paid on or before the last day of the sixth month of the tax year, the last day of the ninth month of the tax year, and the last day of the first month after the tax year. However, at the election of the person or married couple, an installment of the estimated tax may be paid prior to the date prescribed for its payment. If a person or married couple filing a return has reason to believe that the person's or couple's Iowa income tax may increase or decrease, either for purposes of meeting the requirement to make estimated tax payments or for the purpose of increasing or decreasing estimated tax payments, the person or married couple shall increase or decrease any subsequent estimated tax payments accordingly.

b. In the case of persons or married couples filing jointly, the total balance of the tax payable after credits for taxes paid through withholding, as provided in subsection 1 of this section, or through payment of estimated tax, or a combination of withholding and estimated tax payments is due and payable on or before April 30 following the close of the calendar year, or if the return is to be made on the basis of a fiscal year, then on or before the last day of the fourth month following the close of the fiscal year.

c. If a taxpayer is unable to make the taxpayer's estimated tax payments, the payments may be made by a duly authorized agent, or by the guardian or other person charged with the care of the person or property of the taxpayer.

d. Any amount of estimated tax paid is a credit against the amount of tax found payable on a final, completed return, as provided in subsection 9, relating to the credit for the tax withheld against the tax found payable on a return properly and correctly prepared under sections 422.5 through 422.25, and any overpayment of one dollar or more shall be refunded to the taxpayer and the return constitutes a claim for refund for this purpose. Amounts less than one dollar shall not be refunded. The method provided by the Internal Revenue Code for determining what is applicable to the addition to tax for underpayment of the tax payable applies to persons required to make payments of estimated tax under this section except the amount to be added to the tax for underpayment of estimated tax is an amount determined at the rate in effect under section 421.7. This addition to tax specified for underpayment of the tax payable is not subject to waiver provisions relating to reasonable cause, except as provided in the Internal Revenue Code. Underpayment of estimated tax shall be determined in the same manner as provided under the Internal Revenue Code and the exceptions in the Internal Revenue Code also apply.

e. In lieu of claiming a refund, the taxpayer may elect to have the overpayment shown on the taxpayer's final, completed return for the taxable

year credited to the taxpayer's tax liability for the following taxable year.

12. In the case of nonresidents having income subject to taxation by Iowa, but not subject to withholding of such tax under subsection 1 hereof, withholding agents shall withhold from such income at the same rate as provided in subsection 1 hereof, and such withholding agents and such nonresidents shall be subject to the provisions of this section, according to the context, except that such withholding agents may be absolved of such requirement to withhold taxes from such nonresident's income upon receipt of a certificate from the department issued in accordance with the provisions of section 422.17, as hereby amended. In the case of nonresidents having income from a trade or business carried on by them in whole or in part within the state of Iowa, such nonresident shall be considered to be subject to the provisions of this subsection unless such trade or business is of such nature that the business entity itself, as a withholding agent, is required to and does withhold Iowa income tax from the distributions made to such nonresident from such trade or business.

Notwithstanding this subsection, withholding agents are not required to withhold state income tax from payments subject to taxation made to nonresidents for commodity credit certificates, grain, livestock, domestic fowl, or other agricultural commodities or products sold to the withholding agents by the nonresidents or their representatives, if the withholding agents provide on forms prescribed by the department information relating to the sales required by the department to determine the state income tax liabilities of the nonresidents. However, the withholding agents may elect to make estimated tax payments on behalf of the nonresidents on the basis of the net incomes of the nonresidents from the agricultural commodities or products, if the estimated tax payments are made on or before the last day of the first month after the end of the tax years of the nonresidents.

13. The director shall enter into an agreement with the secretary of the treasury of the United States with respect to withholding of income tax as provided by this chapter, pursuant to an Act of Congress, section 1207 of the Tax Reform Act of 1976, Public Law 94-455, amending title 5, section 5517 of the United States Code.

14. The director may, when necessary and advisable in order to secure the collection of the tax required to be deducted and withheld or the amount actually deducted, whichever is greater, require an employer or withholding agent to file with the director a bond, issued by a surety company authorized to conduct business in this state and approved by the insurance commissioner as to solvency and responsibility, in an amount as the director may fix, to secure the payment of the tax and penalty due or which may become due. In lieu of the

bond, securities shall be kept in the custody of the department and may be sold by the director at public or private sale, without notice to the depositor, if it becomes necessary to do so in order to recover any tax and penalty due. Upon a sale, any surplus above the amounts due under this section shall be returned to the employer or withholding agent who deposited the securities.

If the withholding agent fails to file the bond as requested by the director to secure collection of the tax, the withholding agent is subject to penalty for failure to file the bond. The penalty is equal to fifteen percent of the tax the withholding agent is required to withhold on an annual basis. However, the penalty shall not exceed five thousand dollars.

99 Acts, ch 151, §6, 89

Subsection 2, unnumbered paragraph 2 amended

422.21 Form and time of return.

Returns shall be in the form the director prescribes, and shall be filed with the department on or before the last day of the fourth month after the expiration of the tax year. However, co-operative associations as defined in section 6072(d) of the Internal Revenue Code shall file their returns on or before the fifteenth day of the ninth month following the close of the taxable year and nonprofit corporations subject to the unrelated business income tax imposed by section 422.33, subsection 1A, shall file their returns on or before the fifteenth day of the fifth month following the close of the taxable year. If, under the Internal Revenue Code, a corporation is required to file a return covering a tax period of less than twelve months, the state return shall be for the same period and is due forty-five days after the due date of the federal tax return, excluding any extension of time to file. In case of sickness, absence, or other disability, or if good cause exists, the director may allow further time for filing returns. The director shall cause to be prepared blank forms for the returns and shall cause them to be distributed throughout the state and to be furnished upon application, but failure to receive or secure the form does not relieve the taxpayer from the obligation of making a return that is required. The department may as far as consistent with the Code draft income tax forms to conform to the income tax forms of the internal revenue department of the United States government. Each return by a taxpayer upon whom a tax is imposed by section 422.5 shall show the county of the residence of the taxpayer.

An individual in the armed forces of the United States serving in an area designated by the president of the United States or the United States Congress as a combat zone, or an individual serving in support of those forces, is allowed the same additional time period after leaving the combat zone, or after a period of continuous hospitalization, to file a state income tax return or perform other acts re-

lated to the department, as would constitute timely filing of the return or timely performance of other acts described in section 7508(a) of the Internal Revenue Code. For the purposes of this paragraph, "other acts related to the department" includes filing claims for refund for any tax administered by the department, making tax payments other than withholding payments, filing appeals on the tax matters, filing other tax returns, and performing other acts described in the department's rules. The additional time period allowed applies to the spouse of the individual described in this paragraph to the extent the spouse files jointly or separately on the combined return form with the individual or when the spouse is a party with the individual to any matter for which the additional time period is allowed. For the purposes of this paragraph, the Internal Revenue Code shall be interpreted to include the provisions of Pub. L. No. 102-2.

The department shall make available to persons required to make personal income tax returns under the provisions of this chapter, and when such income is derived mainly from salaries and wages or from the operation of a business or profession, a form which shall take into consideration the normal deductions and credits allowable to any such taxpayer, and which will permit the computation of the tax payable without requiring the listing of specific deductions and credits. In arriving at schedules for payment of taxation under such forms the department shall as nearly as possible base such schedules upon a total of deductions and credits which will result in substantially the same payment as would have been made by such taxpayer were the taxpayer to specifically list the taxpayer's allowable deductions and credits. In lieu of such return any taxpayer may elect to list permissible deductions and credits as provided by law. It is the intent and purpose of this provision to simplify the procedure of collection of personal income tax, and the director shall have the power in any case when deemed necessary or advisable to require any taxpayer, who has made a return in accordance with the schedule herein provided for, to make an additional return in which all deductions and credits are specifically listed. The department may revise the schedules adopted in connection with such simplified form whenever such revision is necessitated by changes in federal income tax laws, or to maintain the collection of substantially the same amounts from taxpayers as would be received were the specific listing of deductions and credits required.

The department shall provide space on the prescribed income tax form, wherein the taxpayer shall enter the name of the school district of the taxpayer's residence. Such place shall be indicated by prominent type. A nonresident taxpayer shall so indicate. If such information is not supplied on the

tax return it shall be deemed an incompleting return.

The director shall determine for the 1989 and each subsequent calendar year the annual and cumulative inflation factors for each calendar year to be applied to tax years beginning on or after January 1 of that calendar year. The director shall compute the new dollar amounts as specified to be adjusted in section 422.5 by the latest cumulative inflation factor and round off the result to the nearest one dollar. The annual and cumulative inflation factors determined by the director are not rules as defined in section 17A.2, subsection 11. The director shall determine for the 1990 calendar year and each subsequent calendar year the annual and cumulative standard deduction factors to be applied to tax years beginning on or after January 1 of that calendar year. The director shall compute the new dollar amounts of the standard deductions specified in section 422.9, subsection 1, by the latest cumulative standard deduction factor and round off the result to the nearest ten dollars. The annual and cumulative standard deduction factors determined by the director are not rules as defined in section 17A.2, subsection 11.

The department shall provide on income tax forms or in the instruction booklets in a manner that will be noticeable to the taxpayers a statement that, even though the taxpayer may not have any federal or state income tax liability, the taxpayer may be eligible for the federal earned income tax credit or state child and dependent care credit. The statement shall also contain notice of where the taxpayer may check on the taxpayer's eligibility for these credits.

If married taxpayers file a joint return or file separately on a combined return in accordance with rules prescribed by the director, both spouses are jointly and severally liable for the total tax due on the return, except when one spouse is considered to be an innocent spouse under criteria established pursuant to section 6013(e) of the Internal Revenue Code.

Section not amended; internal reference changes applied

422.23 Return by administrator.

The return by an individual, who, while living, was subject to income tax in the state during the tax year, and who has died before making the return, shall be made in the individual's name and behalf by the administrator or executor of the estate and the tax shall be levied upon and collected from the individual's estate. In the making of said return, the executor or administrator shall use the same method of computation, either cash or accrual, as was last used by the deceased taxpayer.

99 Acts, ch 151, §7, 89

1999 amendment striking unnumbered paragraph 2 applies retroactively to January 1, 1999, for tax years beginning on or after that date; 99 Acts, ch 151, §89

Unnumbered paragraph 2 stricken

422.25 Computation of tax, interest, and penalties — limitation.

1. *a.* Within three years after the return is filed or within three years after the return became due, including any extensions of time for filing, whichever time is the later, the department shall examine the return and determine the tax. However, if the taxpayer omits from income an amount which will, under the Internal Revenue Code, extend the statute of limitations for assessment of federal tax to six years under the federal law, the period for examination and determination is six years. In addition to the applicable period of limitation for examination and determination, the department may make an examination and determination at any time within six months from the date of receipt by the department of written notice from the taxpayer of the final disposition of any matter between the taxpayer and the internal revenue service with respect to the particular tax year. In order to begin the running of the six-month period, the notice shall be in writing in any form sufficient to inform the department of the final disposition with respect to that year, and a copy of the federal document showing the final disposition or final federal adjustments shall be attached to the notice.

b. The period for examination and determination of the correct amount of tax is unlimited in the case of a false or fraudulent return made with the intent to evade tax or in the case of a failure to file a return. In lieu of the period of limitation for any prior year for which an overpayment of tax or an elimination or reduction of an underpayment of tax due for that prior year results from the carryback to that prior year of a net operating loss or net capital loss, the period is the period of limitation for the taxable year of the net operating loss or net capital loss which results in the carryback. If the tax found due is greater than the amount paid, the department shall compute the amount due, together with interest and penalties as provided in subsection 2, and shall mail a notice of assessment to the taxpayer and, if applicable, to the taxpayer's authorized representative of the total, which shall be computed as a sum certain if paid on or before the last day of the month in which the notice is dated, or on or before the last day of the following month if the notice is dated after the twentieth day of any month. The notice shall also inform the taxpayer of the additional interest and penalty which will be added to the total due if not paid on or before the last day of the applicable month.

2. In addition to the tax or additional tax determined by the department under subsection 1, the taxpayer shall pay interest on the tax or additional tax at the rate in effect under section 421.7 for each month counting each fraction of a month as an entire month, computed from the date the return was required to be filed. In addition to the tax or addi-

tional tax, the taxpayer shall pay a penalty as provided in section 421.27.

3. If the amount of the tax as determined by the department is less than the amount paid, the excess shall be refunded with interest, the interest to begin to accrue on the first day of the second calendar month following the date of payment or the date the return was due to be filed, or the extended due date by which the return was due to be filed if ninety percent of the tax was paid by the original due date, or was filed, whichever is the latest, at the rate in effect under section 421.7 counting each fraction of a month as an entire month under the rules prescribed by the director. If an overpayment of tax results from a net operating loss or net capital loss which is carried back to a prior year, the overpayment, for purposes of computing interest on refunds, shall be considered as having been made on the date a claim for refund or amended return carrying back the net operating loss or net capital loss is filed with the department or on the first day of the second calendar month following the date of the actual payment of the tax, whichever is later. However, when the net operating loss or net capital loss carryback to a prior year eliminates or reduces an underpayment of tax due for an earlier year, the full amount of the underpayment of tax shall bear interest at the rate in effect under section 421.7 for each month counting each fraction of a month as an entire month from the due date of the tax for the earlier year to the last day of the taxable year in which the net operating loss or net capital loss occurred.

4. All payments received must be credited first, to the penalty and interest accrued, and then to the tax due. For purposes of this subsection, the department shall not reapply prior payments made by the taxpayer to penalty or interest determined to be due after the date of those prior payments, except that the taxpayer and the department may agree to apply payments in accordance with rules adopted by the director when there are both agreed and unagreed to items as a result of an examination.

5. A person or withholding agent required to supply information, to pay tax, or to make, sign, or file a semimonthly, monthly, or quarterly deposit form or return or supplemental return, who willfully makes a false or fraudulent semimonthly, monthly, or quarterly deposit form or return, or willfully fails to pay the tax, supply the information, or make, sign, or file the semimonthly, monthly, or quarterly deposit form or return, at the time or times required by law, is guilty of a fraudulent practice.

6. The certificate of the director to the effect that a tax has not been paid, that a return has not been filed, or that information has not been supplied, as required under the provisions of this division shall be prima facie evidence thereof except as otherwise provided in this section.

7. The periods of limitation provided by this section may be extended by the taxpayer by signing a waiver agreement to be provided by the department. The agreement shall stipulate the period of extension and the year or years to which the extension applies. It shall provide that a claim for refund may be filed by the taxpayer at any time during the period of extension.

8. A person or withholding agent who willfully attempts in any manner to defeat or evade a tax imposed by this division or the payment of the tax, upon conviction for each offense is guilty of a class "D" felony.

9. A prosecution for any offense defined in this section must be commenced within six years after the commission thereof, and not after.

10. If a taxpayer files an amended return within sixty days prior to the expiration of the applicable period of limitations described in subsection 1, the department has sixty days from the date of receipt of the amended return to issue an assessment for any applicable tax, interest, or penalty.

99 Acts, ch 151, §8, 9, 89; 99 Acts, ch 152, §3, 40

1994 amendments to subsections 1 and 4 are effective for notices of assessment issued and payments made on or after January 1, 1995; 94 Acts, ch 1133, §16

Subsection 10 is retroactive to April 1, 1995, for amended tax returns filed on or after that date; 95 Acts, ch 83, §34

1999 amendment to subsection 3 applies retroactively to January 1, 1999, for tax years beginning on or after that date; 99 Acts, ch 151, §89

Subsection 1, paragraph b amended

Subsection 3 amended

Subsection 9 stricken and former subsections 10 and 11 renumbered as 9 and 10

422.32 Definitions.

For the purpose of this division and unless otherwise required by the context:

1. The term "*affiliated group*" means a group of corporations as defined in section 1504(a) of the Internal Revenue Code.

2. "*Business income*" means income arising from transactions and activity in the regular course of the taxpayer's trade or business; or income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations; or gain or loss resulting from the sale, exchange, or other disposition of real property or of tangible or intangible personal property, if the property while owned by the taxpayer was operationally related to the taxpayer's trade or business carried on in Iowa or operationally related to sources within Iowa, or the property was operationally related to sources outside this state and to the taxpayer's trade or business carried on in Iowa; or gain or loss resulting from the sale, exchange, or other disposition of stock in another corporation if the activities of the other corporation were operationally related to the taxpayer's trade or business carried on in Iowa while the stock was owned by the taxpayer. A taxpayer may have more than one regular trade or business in determining whether income is business income.

It is the intent of the general assembly to treat as apportionable business income all income that may be treated as apportionable business income under the Constitution of the United States.

The filing of an Iowa income tax return on a combined report basis is neither allowed nor required by this subsection.

3. “*Commercial domicile*” means the principal place from which the trade of business of the taxpayer is directed or managed.

4. “*Corporation*” includes joint stock companies, and associations organized for pecuniary profit, and partnerships and limited liability companies taxed as corporations under the Internal Revenue Code.

5. The words “*domestic corporation*” mean any corporation organized under the laws of this state.

6. The words “*foreign corporation*” mean any corporation other than a domestic corporation.

7. “*Nonbusiness income*” means all income other than business income.

8. “*State*” means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

9. “*Taxable in another state*”. For purposes of allocation and apportionment of income under this division, a taxpayer is taxable in another state if:

a. In that state the taxpayer is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax; or

b. That state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not.

10. The term “*unitary business*” means a business carried on partly within and partly without a state where the portion of the business carried on within the state depends on or contributes to the business outside the state.

The words, terms, and phrases defined in division II, section 422.4, subsections 4 to 6, 8, 9, 13, and 15 to 17, when used in this division, shall have the meanings ascribed to them in said section except where the context clearly indicates a different meaning.

99 Acts, ch 152, §4, 40

1999 amendment to subsection 2 is retroactive to January 1, 1999, for tax years beginning on or after that date; 99 Acts, ch 152, §4, 40

Subsection 2, unnumbered paragraph 1 amended

422.33 Corporate tax imposed — credit.

1. A tax is imposed annually upon each 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, tangible, or intangible 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, subsection 2, 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, or if income is derived from trade or business and sources, all of which are not entirely in 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, 1999.

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 in-

creased 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 imposed for all prior tax years beginning on or after January 1, 1987, over the amount allowable as a credit under this subsection for those prior tax years.

b. The allowable credit under paragraph "a" for a tax year shall not exceed the excess, if any, of the tax determined in subsection 1 over the state alternative minimum tax as determined in subsection 4.

The net minimum tax for a tax year is the excess, if any, of the tax determined in subsection 4 for the tax year over the tax determined in subsection 1 for the tax year.

The adjusted net minimum tax for a tax year is the net minimum tax for the tax year reduced by the amount which would be the net minimum tax if the only item of tax preference taken into account was that described in paragraph (6) of section 57(a) of the Internal Revenue Code.

8. The taxes imposed under this division shall be reduced by a franchise tax credit. A taxpayer who is a shareholder in a financial institution, as defined in section 581 of the Internal Revenue Code, which has in effect for the tax year an election under subchapter S of the Internal Revenue Code shall compute the amount of the tax credit by recomputing the amount of tax under this division by reducing the taxable income of the taxpayer by the taxpayer's pro rata share of the items of income and expense of the financial institution. This re-

computed tax shall be subtracted from the tax computed under this division and the resulting amount, which shall not exceed the taxpayer's pro rata share of franchise tax paid by the financial institution, is the amount of the franchise tax credit allowed.

99 Acts, ch 95, §§ 9, 12, 13; 99 Acts, ch 151, §10, 11, 89
 1999 amendment to subsection 2 applies retroactively to tax years beginning on or after January 1, 1999; 99 Acts, ch 151, § 89
 1999 amendment to subsection 5 and new subsection 8 apply retroactively to tax years beginning on or after January 1, 1998; 99 Acts, ch 95, §12, 13
 Subsection 1, unnumbered paragraph 1 amended
 Subsection 2, unnumbered paragraph 1 amended
 Subsection 5, unnumbered paragraph 1 amended
 NEW subsection 8

422.35 Net income of corporation — how computed.

The term "*net income*" means the taxable income before the net operating loss deduction, as properly computed for federal income tax purposes under the Internal Revenue Code, with the following adjustments:

1. Subtract interest and dividends from federal securities.

2. Add interest and dividends from foreign securities, from securities of state and other political subdivisions, and from regulated investment companies exempt from federal income tax under the Internal Revenue Code.

3. Where the net income includes capital gains or losses, or gains or losses from property other than capital assets, and such gains or losses have been determined by using a basis established prior to January 1, 1934, an adjustment may be made, under rules and regulations prescribed by the director, to reflect the difference resulting from the use of a basis of cost or January 1, 1934, fair market value, less depreciation allowed or allowable, whichever is higher. Provided that the basis shall be fair market value as of January 1, 1955, less depreciation allowed or allowable, in the case of property acquired prior to that date if use of a prior basis is declared to be invalid.

4. Subtract fifty percent of the federal income taxes paid or accrued, as the case may be, during the tax year, adjusted by any federal income tax refunds; and add the Iowa income tax deducted in computing said taxable income.

5. Subtract the amount of the work opportunity tax credit allowable for the tax year under section 51 of the Internal Revenue Code to the extent that the credit increased federal taxable income.

6. If the taxpayer is a small business corporation, subtract an amount equal to sixty-five percent of the wages paid to individuals, but not to exceed twenty thousand dollars per individual, named in paragraphs "a", "b", and "c" who were hired for the first time by the taxpayer during the tax year for work done in this state:

a. An individual with a disability 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.

This deduction is allowed for the wages paid to the individuals successfully completing a probationary period named in paragraphs "a", "b", and "c" during the twelve months following the date of first employment by the taxpayer and shall be deducted in the tax years when paid.

For purposes of this subsection, "*physical or mental impairment*" means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the body systems or any mental or psychological disorder, including mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

For purposes of this subsection, "*small business*" means small business as defined in section 16.1, subsection 36, except that it shall also include the operation of a farm.

6A. If the taxpayer is a business corporation and does not qualify for the adjustment under subsection 6, subtract an amount equal to sixty-five percent of the wages paid to individuals, but shall not exceed twenty thousand dollars per individual, named in paragraphs "a" and "b" who were hired for the first time by the taxpayer during the tax year for work done in this state:

a. An individual domiciled in this state at the time of the hiring who meets any of the following conditions:

(1) Has been convicted of a felony in this or any other state or the District of Columbia.

(2) Is on parole pursuant to chapter 906.

(3) Is on probation pursuant to chapter 907, for an offense other than a simple misdemeanor.

(4) Is in a work release program pursuant to chapter 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.

This deduction is allowed for the wages paid to the individuals successfully completing a probationary period named in paragraphs “a” and “b” during the twelve months following the date of first employment by the taxpayer and shall be deducted in the tax years when paid.

The department shall develop and distribute information concerning the deduction available for businesses employing persons named in paragraphs “a” and “b”.

7. Subtract the amount of the alcohol fuel credit allowable for the tax year under section 40 of the Internal Revenue Code to the extent that the credit increased federal taxable income.

8. Add the amounts deducted and subtract the amounts included in income as a result of the treatment provided sale-leaseback agreements under section 168(f)(8) of the Internal Revenue Code for property placed in service by the transferee prior to January 1, 1986, to the extent that the amounts deducted and the amounts included in income are not otherwise deductible or included in income under the other provisions of the Internal Revenue Code as amended to and including December 31, 1985. Entitlement to depreciation on any property involved in a sale-leaseback agreement which is placed in service by the transferee prior to January 1, 1986, shall be determined under the Internal Revenue Code as amended to and including December 31, 1985, excluding section 168(f)(8) in making the determination.

9. Reserved.

10. Add the percentage depletion amount determined with respect to an oil, gas, or geothermal well using methods in section 613 of the Internal Revenue Code that is in excess of the cost depletion amount determined under section 611 of the Internal Revenue Code.

11. If after applying all of the adjustments provided for in this section and the allocation and apportionment provisions of section 422.33, the Iowa taxable income results in a net operating loss, such net operating loss shall be deducted as follows:

a. The Iowa net operating loss shall be carried back three taxable years for a net operating loss incurred in a presidentially declared disaster area by a taxpayer engaged in a small business or in the trade or business of farming. For all other Iowa net operating losses, the net operating loss shall be carried back two taxable years or to the taxable year in which the corporation first commenced doing business in this state, whichever is later.

b. The Iowa net operating loss remaining after being carried back as required in paragraph “a” or “f” or if not required to be carried back shall be carried forward twenty taxable years.

c. If the election under section 172(b)(3) of the Internal Revenue Code is made, the Iowa net operating loss shall be carried forward twenty taxable years.

d. No portion of a net operating loss which was sustained from that portion of the trade or business carried on outside the state of Iowa shall be deducted.

e. The limitations on net operating loss carryback and carryforward under sections 172(b)(1)(E) and 172(h) of the Internal Revenue Code shall apply.

f. Notwithstanding paragraph “a”, for a taxpayer who is engaged in the trade or business of farming as defined in section 263A(e)(4) of the Internal Revenue Code and has a loss from farming as defined in section 172(b)(1)(F) of the Internal Revenue Code including modifications prescribed by rule by the director, the Iowa loss from the trade or business of farming is a net operating loss which may be carried back five taxable years prior to the taxable year of the loss.

Provided, however, that a corporation affected by the allocation provisions of section 422.33 shall be permitted to deduct only such portion of the deductions for net operating loss and federal income taxes as is fairly and equitably allocable to Iowa, under rules prescribed by the director.

12. Subtract the loss on the sale or exchange of a share of a regulated investment company held for six months or less to the extent the loss was disallowed under section 852(b)(4)(B) of the Internal Revenue Code.

13. Subtract the interest earned from bonds and notes issued by the agricultural development authority as provided in section 175.17, subsection 10.

14. Subtract, to the extent not deducted for federal income tax purposes, the amount of any gift, grant, or donation made to the Iowa educational savings plan trust, as created in chapter 12D, for deposit in the endowment fund of that trust.

15. To the extent not otherwise included pursuant to section 164 of the Internal Revenue Code, subtract the amount of the annual registration fee paid for a multipurpose vehicle pursuant to section 321.124, subsection 3, paragraph “h”, which is based upon the value of the vehicle. For purposes of this subsection, sixty percent of the amount of the registration fee is based upon the value of the vehicle.

16. Add depreciation taken for federal income tax purposes on a speculative shell building defined in section 427.1, subsection 27, 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 during the period during which it is owned by the taxpayer and is receiving the property tax exemption. However, this subsection does not apply to a speculative shell building which is used by the taxpayer, subsidiary of the taxpayer, or majority owners of the taxpayer, for other than as a speculative

shell building, as defined in section 427.1, subsection 27.

17. Subtract the amount of the employer social security credit allowable for the tax year under section 45B of the Internal Revenue Code to the extent that the credit increases federal adjusted gross income.

99 Acts, ch 95, §10-13

1999 amendments to subsection 11 apply retroactively to tax years beginning on or after January 1, 1998; 99 Acts, ch 95, §12, 13
Subsection 11, paragraph b amended and NEW paragraph f

422.42 Definitions.

The following words, terms, and phrases, when used in this division, have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

1. *"Agricultural production"* includes the production of flowering, ornamental, or vegetable plants in commercial greenhouses or otherwise, and production from aquaculture. *"Agricultural products"* include flowering, ornamental, or vegetable plants and those products of aquaculture.

2. *"Business"* includes any activity engaged in by any person or caused to be engaged in by the person with the object of gain, benefit, or advantage, either direct or indirect.

3. *"Casual sales"* means:

a. Sales or the rendering, furnishing or performing of a nonrecurring nature of tangible personal property or services by the owner, if the seller, at the time of the sale, is not engaged for profit in the business of selling tangible personal property or services taxed under section 422.43.

b. The sale of all or substantially all of the tangible personal property or services held or used by a retailer in the course of the retailer's trade or business for which the retailer is required to hold a sales tax permit when the retailer sells or otherwise transfers the trade or business to another person who shall engage in a similar trade or business.

4. *"Farm machinery and equipment"* means machinery and equipment used in agricultural production.

5. *"Gross receipts"* means the total amount of the sales of retailers, valued in money, whether received in money or otherwise; provided, however,

a. That discounts for any purpose allowed and taken on sales shall not be included if excessive sales tax is not collected from the purchaser, nor shall the sale price of property returned by customers when the total sale price thereof is refunded either in cash or by credit.

b. That in transactions in which tangible personal property is traded toward the purchase price of other tangible personal property the gross receipts are only that portion of the purchase price which is payable in money to the retailer if the following conditions are met:

(1) The tangible personal property traded to the retailer is the type of property normally sold in the regular course of the retailer's business.

(2) The tangible personal property traded to the retailer is intended by the retailer to be ultimately sold at retail or is intended to be used by the retailer or another in the remanufacturing of a like item.

6. *"Gross taxable services"* means the total amount received in money, credits, property, or other consideration, valued in money, from services rendered, furnished, or performed in this state except where the service is used in processing of tangible personal property for use in retail sales or services and embraced within the provisions of this division. However, the taxpayer may take credit in the taxpayer's report of gross taxable services for an amount equal to the value of services rendered, furnished, or performed when the full value of the services is refunded either in cash or by credit. Taxes paid on gross taxable services represented by accounts found to be worthless and actually charged off for income tax purposes may be credited upon a subsequent payment of the tax due, but if any accounts are thereafter collected by the taxpayer, a tax shall be paid upon the amounts collected.

7. *"Nonresidential commercial operations"* means industrial, commercial, mining, and agricultural operations, whether for profit or not, but does not include apartment complexes and mobile home parks.

8. *"Place of business"* shall mean any warehouse, store, place, office, building or structure where goods, wares or merchandise are offered for sale at retail or where any taxable amusement is conducted or each office where gas, water, heat, communication or electric services are offered for sale at retail.

9. Where a retailer or amusement operator sells merchandise by means of vending machines or operates music or amusement devices by coin-operated machines at more than one location within the state, the office, building or place where the books, papers and records of the taxpayer are kept shall be deemed to be the taxpayer's place of business.

10. *"Property purchased for resale in connection with the performance of a service"* means property which is purchased for resale in connection with the performance of a service by a person who renders, furnishes, or performs the service if all of the following occur:

a. The provider and user of the service intend that a sale of the property will occur.

b. The property is transferred to the user of the service in connection with the performance of the service in a form or quantity capable of a fixed or definite price value.

c. The sale is evidenced by a separate charge for the identifiable piece of property.

11. *"Person"* includes any individual, firm, co-partnership, joint adventure, association, corporation, municipal corporation, estate, trust, business

trust, receiver, or any other group or combination acting as a unit and the plural as well as the singular number.

12. "Relief agency" means the state, any county, city and county, city or district thereof, or any agency engaged in actual relief work.

13. "Retailer" includes every person engaged in the business of selling tangible goods, wares, merchandise or taxable services at retail, or the furnishing of gas, electricity, water, and communication service, and tickets or admissions to places of amusement and athletic events as provided in this division or operating amusement devices or other forms of commercial amusement from which revenues are derived; provided, however, that when in the opinion of the director it is necessary for the efficient administration of this division to regard any salespersons, representatives, truckers, peddlers, or canvassers, as agents of the dealers, distributors, supervisors, employers, or persons under whom they operate or from whom they obtain tangible personal property sold by them irrespective of whether or not they are making sales on their own behalf or on behalf of such dealers, distributors, supervisors, employers, or persons, the director may so regard them, and may regard such dealers, distributors, supervisors, employers, or persons as retailers for the purposes of this division.

14. "Retail sale" or "sale at retail" means the sale to a consumer or to any person for any purpose, other than for processing, for resale of tangible personal property or taxable services, or for resale of tangible personal property in connection with taxable services; and includes the sale of gas, electricity, water, and communication service to retail consumers or users; but does not include agricultural breeding livestock and domesticated fowl; and does not include commercial fertilizer, agricultural limestone, herbicide, pesticide, insecticide, including adjuvants, surfactants, and other products directly related to the application enhancement of those products, and food, medication, or agricultural drain tile, including installation of agricultural drain tile, any of which are to be used in disease control, weed control, insect control, or health promotion of plants or livestock produced as part of agricultural production for market; and does not include electricity, steam, or any taxable service when purchased and used in the processing of tangible personal property intended to be sold ultimately at retail. When used by a manufacturer of food products, carbon dioxide in a liquid, solid, or gaseous form, electricity, steam, and other taxable services are sold for processing when used to produce marketable food products for human consumption, including but not limited to, treatment of material to change its form, context, or condition, in order to produce the food product, maintenance of quality or integrity of the food product, changing or maintenance of temperature levels necessary to avoid spoilage or to hold the food product in mar-

ketable condition, maintenance of environmental conditions necessary for the safe or efficient use of machinery and material used to produce the food product, sanitation and quality control activities, formation of packaging, placement into shipping containers, and movement of the material or food product until shipment from the building of manufacture. Tangible personal property is sold for processing within the meaning of this subsection only when it is intended that the property will, by means of fabrication, compounding, manufacturing, or germination become an integral part of other tangible personal property intended to be sold ultimately at retail; or will be consumed as fuel in creating heat, power, or steam for processing including grain drying, or for providing heat or cooling for livestock buildings or for greenhouses or buildings or parts of buildings dedicated to the production of flowering, ornamental, or vegetable plants intended for sale in the ordinary course of business, or for use in cultivation of agricultural products by aquaculture, or for generating electric current, or in implements of husbandry engaged in agricultural production; or the property is a chemical, solvent, sorbent, or reagent, which is directly used and is consumed, dissipated, or depleted, in processing personal property which is intended to be sold ultimately at retail or consumed in the maintenance or repair of fabric or clothing, and which may not become a component or integral part of the finished product. The distribution to the public of free newspapers or shoppers guides is a retail sale for purposes of the processing exemption.

15. Sales of building materials, supplies, and equipment to owners, contractors, subcontractors or builders, for the erection of buildings or the alteration, repair, or improvement of real property, are retail sales in whatever quantity sold. Where the owner, contractor, subcontractor, or builder is also a retailer holding a retail sales tax permit and transacting retail sales of building materials, supplies, and equipment, the person shall purchase such items of tangible personal property without liability for the tax if such property will be subject to the tax at the time of resale or at the time it is withdrawn from inventory for construction purposes. The sales tax shall be due in the reporting period when the materials, supplies, and equipment are withdrawn from inventory for construction purposes or when sold at retail. The tax shall not be due when materials are withdrawn from inventory for use in construction outside of Iowa and the tax shall not apply to tangible personal property purchased and consumed by the manufacturer as building materials in the performance by the manufacturer or its subcontractor of construction outside of Iowa.

For the purposes of this subsection, the sale of carpeting is not a sale of building materials. The sale of carpeting to owners, contractors, subcon-

tractors, or builders shall be treated as the sale of ordinary tangible personal property and subject to the tax imposed under section 422.43, subsection 1, and the tax imposed under section 423.2.

16. The use within this state of tangible personal property by the manufacturer thereof, as building materials, supplies, or equipment, in the performance of construction contracts in Iowa, shall, for the purpose of this division, be construed as a sale at retail thereof by the manufacturer who shall be deemed to be the consumer of such tangible personal property. The tax shall be computed upon the cost to the manufacturer of the fabrication or production thereof.

17. “Sales” means any transfer, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, for a consideration.

18. “Services” means all acts or services rendered, furnished, or performed, other than services used in processing of tangible personal property for use in retail sales or services, for an “employer” as defined in section 422.4, subsection 3, for a valuable consideration by any person engaged in any business or occupation specifically enumerated in this division. The tax shall be due and collectible when the service is rendered, furnished, or performed for the ultimate user of the service.

“Services used in the processing of tangible personal property” includes the reconditioning or repairing of tangible personal property of the type normally sold in the regular course of the retailer’s business and which is held for sale.

19. The word “taxpayer” includes any person within the meaning of subsection 11 hereof, who is subject to a tax imposed by this division, whether acting on the person’s own behalf or as a fiduciary.

20. “User” means the immediate recipient of the services who is entitled to exercise a right of power over the product of such services.

21. “Value of services” means the price to the user exclusive of any direct tax imposed by the federal government or by this division.

99 Acts, ch 151, §12, 13, 89; 99 Acts, ch 152, §5, 40

See Code editor’s note

Subsections 6 and 18 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 receipts 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, except residential service contracts regulated under chapter 523C, 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, other than a residential service contract regulated under chapter 523C, 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.

If the optional service or warranty contract is a computer software maintenance or support service contract and there is no separately stated fee for the taxable personal property or for the nontaxable service, the tax of five percent imposed by this subsection shall be imposed on fifty percent of the gross receipts from the sale of such contract. If the contract provides for technical support services only, no tax shall be imposed under this subsection. The provisions of this subsection also apply to the tax imposed by chapter 423.

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 services 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 nonresidential 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, including mobile testing laboratories and field testing by testing laboratories, and excluding tests on humans or animals; termite, bug, roach, and pest eradicators; tin and sheet metal repair; turkish baths, massage, and reducing salons, excluding services provided by massage therapists licensed under chapter 152C; 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 the sales of prepaid telephone calling cards and prepaid authorization numbers.

For the purpose of this division, the sales of prepaid telephone calling cards and prepaid authorization numbers are sales of tangible personal property.

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 auto hulks; street sweepings; ash; construction debris; mining waste; trees; tires; lead acid batteries; used oil; 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 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 portion of a service to collect and manage recyclable materials separated from solid waste by the waste generator is exempt from the tax imposed by this subsection.

14. An increase or decrease in the retail sales tax rate shall only be effective on January 1 or July 1, but not sooner than ninety days after enactment of the rate increase or decrease.

99 Acts, ch 156, §1, 23

Local sales and services tax; §422B.8 et seq.

Subsection 14 is effective January 1, 2000, for state sales and use taxes;
99 Acts, ch 156, §1, 23

NEW subsection 14

422.44 Federal sales of property and services.

Purchases of tangible personal property or services from the government of the United States or any of its agencies by ultimate consumer-users are hereby declared to be subject to the state use tax.

99 Acts, ch 151, §14, 89

Unnumbered paragraph 2 stricken

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. This exemption does not apply to the transportation of electric energy.

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 and sales of aircraft subject to registration under section 328.20.

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”.

7. A private nonprofit educational institution in this state, nonprofit private museum in this state, 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 in this state if the property becomes an integral part of the project under contract and at the completion of the project becomes public property, 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 one year after the final settlement has been made, make application to the department for any refund of the amount of the sales or use tax which shall have been paid upon any goods, wares or merchandise, or services rendered, furnished, or performed, the application to be made in the manner and upon forms to be provided by the department, and the department shall forthwith audit the claim and, if approved, issue a warrant to the governmental unit, educational institution, or nonprofit private museum in the amount of the sales or use tax which has been paid to the state of Iowa under the contract.

Refunds authorized under this subsection shall accrue interest at the rate in effect under section 421.7 from the first day of the second calendar month following the date the refund claim is received by the department.

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.

7A. The refund of sales and use tax paid on transportation construction projects let by the state department of transportation is subject to the special provisions of this subsection.

a. A contractor awarded a contract for a transportation construction project is considered the consumer of all building materials, building supplies and equipment and shall pay sales tax to the supplier or remit consumer use tax directly to the department.

b. The contractor is not required to file information with the department of transportation stating the amount of goods, wares, or merchandise, or services rendered, furnished, or performed and used in the performance of the contract or the amount of sales or use tax paid.

c. The department of transportation shall file a refund claim based on a formula that considers the following:

(1) The quantity of material to complete the contract, and quantities of items of work.

(2) The estimated cost of these materials included in the items of work, and the state sales or use tax to be paid on the tax rate in effect in section 422.43.

The quantity of materials shall be determined after each letting based on the contract quantities of all items of work let to contract. The quantity of individual component materials required for each item shall be determined and maintained in a database. The total quantities of materials shall be de-

terminated by multiplying the quantities of component materials for each contract item of work by the total quantities of each contract item for each letting. Where variances exist in the cost of materials, the lowest cost shall be used as the base cost.

d. Only the state sales or use tax is refundable. Local option taxes paid by the contractor are not refundable.

7B. The gross receipts from the sale of building materials, supplies, or equipment sold to rural water districts organized under chapter 504A as provided in chapter 357A and used for the construction of facilities of a rural water district.

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, ostomy, urological, and tracheostomy equipment and supplies, and diabetic testing materials, hypodermic syringes and needles, anesthesia trays, biopsy trays and biopsy needles, cannula systems, catheter trays and invasive catheters, dialyzers, drug infusion devices, fistula sets, hemodialysis devices, insulin infusion devices, intraocular lenses, irrigation solutions, intravenous administering sets, solutions and stopcocks, myelogram trays, nebulizers, small vein infusion kits, spinal puncture trays, transfusion sets, venous blood sets, 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.

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 five months, 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 retailers or manufacturers for the purpose of packaging or facilitating the transportation of tangible personal property sold at retail or transferred in association with the maintenance or repair of fabric or clothing.*

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; and does not apply to fees paid to cities and counties for the privilege of participating in any athletic sports.

21. The gross receipts from sales or rentals to a printer or publisher of the following: acetate; anti-halation backing; anti-static spray; back lining; base material used as a carrier for light sensitive emulsions; blankets; blow-ups; bronze powder; carbon tissue; codas; color filters; color separations; contacts; continuous tone separations; creative art; custom dies and die cutting materials; dampener sleeves; dampening solution; design and styling; diazo coating; dot etching; dot etching solutions; drawings; drawsheets; driers; duplicate films or prints; electronically digitized images; electrotypes; end product of image modulation; engravings; etch solutions; film; finished art or final art; fix; fixative spray; flats; flying pasters; foils; gold-enrod paper; gum; halftones; illustrations; ink; ink paste; keylines; lacquer; lasering images; layouts; lettering; line negatives and positives; linotypes; lithographic offset plates; magnesium and zinc etchings; masking paper; masks; masters; mats; mat service; metal toner; models, modeling; mylar; negatives; nonoffset spray; opaque film process paper; opaquin; padding compound; paper stock; photographic materials: acids, plastic film, desensitizer emulsion, exposure chemicals, fix, developers, paper; photography, day rate; photopolymer coating; photographs; photostats; photo-display

tape; phototypesetter materials; ph-indicator sticks; positives; press pack; printing cylinders; printing plates, all types; process lettering; proof paper; proofs and proof processes, all types; pumice powder; purchased author alterations; purchased composition; purchased phototypesetting; purchased stripping and paste-ups; red litho tape; reducers; roller covering; screen tints; sketches; stepped plates; stereotypes; strip types; substrate; tints; tissue overlays; toners; transparencies; tympan; typesetting; typography; varnishes; veloxes; wood mounts; and any other items used in a like capacity to any of the above enumerated items by the printer or publisher to complete a finished product for sale at retail. Expendable tools and supplies which are not enumerated in this subsection are excluded from the exemption. "Printer" means that portion of a person's business engaged in printing that completes a finished product for ultimate sale at retail or means that portion of a person's business used to complete a finished printed packaging material used to package a product for ultimate sale at retail. "Printer" does not mean an in-house printer who prints or copyrights its own materials.

22. The gross receipts from the sale or rental of tangible personal property or from services performed, rendered, or furnished to the following nonprofit corporations:

a. Residential care facilities and intermediate care facilities for persons with mental retardation and residential care facilities for persons with mental illness 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 persons with mental retardation and other persons with developmental disabilities 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. § 254c and migrant health centers as defined in 42 U.S.C. § 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 auxiliary attachments which improve the performance, safety, operation, or efficiency of the machinery and equipment and 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. a. The gross receipts from the sale or rental of computers, machinery, and equipment, including replacement parts, and materials used to construct or self-construct computers, machinery, and equipment if such items are any of the following:

(1) Directly and primarily used in processing by a manufacturer.

(2) Directly and primarily used to maintain the integrity of the product or to maintain unique environmental conditions required for either the product or the computers, machinery, and equipment used in processing by a manufacturer, including test equipment used to control quality and specifications of the product.

(3) Directly and primarily used in research and development of new products or processes of processing.

(4) Computers used in processing or storage of data or information by an insurance company, financial institution, or commercial enterprise.

(5) Directly and primarily used in recycling or reprocessing of waste products.

(6) Pollution control equipment used by a manufacturer, including but not limited to that required or certified by an agency of this state or of the United States government.

b. The gross receipts from the sale of fuel used in creating heat, power, steam, or for generating electrical current, or from the sale of electricity, consumed by computers, machinery, or equipment used in an exempt manner described in paragraph "a", subparagraph (1), (2), (3), (5), or (6).

c. However, the gross receipts from the sale or rental of the following shall not be exempt from the tax imposed by this division:

(1) Hand tools.

(2) Point-of-sale equipment and computers.

(3) Industrial machinery, equipment, and computers, including pollution control equipment, within the scope of section 427A.1, subsection 1, paragraphs "h" and "i".

(4) Vehicles subject to registration, except vehicles subject to registration which are directly and primarily used in recycling or reprocessing of waste products.

d. As used in this subsection:

(1) "*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.

(2) "*Financial institution*" means as defined in section 527.2.

(3) "*Insurance company*" means an insurer organized or operating under chapter 508, 514, 515, 518, 518A, 519, or 520, or authorized to do business in Iowa as an insurer or a licensed insurance agent under chapter 522.

(4) "*Manufacturer*" means as defined in section 428.20, but also includes contract manufacturers. A contract manufacturer is a manufacturer that otherwise falls within the definition of manufacturer under section 428.20, except that a contract manufacturer does not sell the tangible personal property the contract manufacturer processes on behalf of other manufacturers. A business engaged in activities subsequent to the extractive process of quarrying or mining, such as crushing, washing, sizing, or blending of aggregate materials, is a manufacturer with respect to these activities.

(5) "*Processing*" means a series of operations in which materials are manufactured, refined, purified, created, combined, or transformed by a manufacturer, ultimately into tangible personal property. Processing encompasses all activities commencing with the receipt or producing of raw materials by the manufacturer and ending at the point products are delivered for shipment or transferred from the manufacturer. Processing includes but is not limited to refinement or purification of

materials; treatment of materials to change their form, context, or condition; maintenance of the quality or integrity of materials, components, or products; maintenance of environmental conditions necessary for materials, components, or products; quality control activities; and construction of packaging and shipping devices, placement into shipping containers or any type of shipping devices or medium, and the movement of materials, components, or products until shipment from the processor.

(6) *“Receipt or producing of raw materials”* means activities performed upon tangible personal property only. With respect to raw materials produced from or upon real estate, the receipt or producing of raw materials is deemed to occur immediately following the severance of the raw materials from the real estate.

28. Reserved.

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. The gross receipts from the sale of automotive fluids to a retailer to be used either in providing a service which includes the installation or application of the fluids in or on a motor vehicle, which service is subject to section 422.43, subsection 11, or to be installed in or applied to a motor vehicle which the retailer intends to sell, which sale is subject to section 423.7. For purposes of this subsection, automotive fluids are all those which are refined, manufactured or otherwise processed and packaged for sale prior to their installation in or application to a motor vehicle. They include but are not limited to motor oil and other lubricants, hydraulic fluids, brake fluid, transmission fluid, sealants, undercoatings, antifreeze and gasoline additives.

33A. The gross receipts from the sale of electricity to water companies assessed for property tax pursuant to sections 428.24, 428.26, and 428.28 which is used solely for the purpose of pumping water from a river or well.

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.

38A. The gross receipts from the sale or rental of aircraft; the sale or rental of tangible personal property permanently affixed or attached as a component part of the aircraft, including but not limited to repair or replacement materials or parts; and the gross receipts of all services used for aircraft repair, remodeling, and maintenance services when such services are performed on aircraft, aircraft engines, or aircraft component materials or parts. For the purposes of this exemption, *“aircraft”* means aircraft used in a scheduled interstate federal aviation administration-certified air carrier operation.

38B. The gross receipts from the sale or rental of tangible personal property permanently affixed or attached as a component part of the aircraft, including but not limited to repair or replacement materials or parts; and the gross receipts of all services used for aircraft repair, remodeling, and maintenance services when such services are performed on aircraft, aircraft engines, or aircraft component materials or parts. For the purposes of this exemption, *“aircraft”* means aircraft used in a nonscheduled interstate federal aviation administration-certified air carrier operation operating under 14 C.F.R. ch. 1, pt. 135.

38C. The gross receipts from the sale of aircraft to an aircraft dealer who in turn rents or leases the aircraft if all of the following apply:

a. The aircraft is kept in the inventory of the dealer for sale at all times.

b. The dealer reserves the right to immediately take the aircraft from the renter or lessee when a buyer is found.

c. The renter or lessee is aware that the dealer will immediately take the aircraft when a buyer is found.

If an aircraft exempt under this subsection is used for any purpose other than leasing or renting, or the conditions in paragraphs *“a”*, *“b”*, and *“c”* are not continuously met, the dealer 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.

39. The gross receipts from the sale or rental of farm machinery and equipment, including auxiliary attachments which improve the performance,

safety, operation, or efficiency of the machinery and equipment and 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, used in aquaculture production, or in the production of flowering, ornamental, or vegetable plants.

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, use in aquaculture production, or in the production of flowering, ornamental, or vegetable plants.

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.

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 or of services performed on property which the retailer 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 retailer'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. Reserved.

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.

49. The gross receipts from services rendered, furnished, or performed, by the notification center established pursuant to section 480.3, and the vendor selected pursuant to section 480.3 to provide the notification service.

50. The gross receipts from sales or services rendered, furnished, or performed by the state fair organized under chapter 173 or a fair society organized under chapter 174.

51. The gross receipts from the sale of property which is a container, label, carton, pallet, packing case, wrapping, baling wire, twine, bag, bottle, shipping case, or other similar article or receptacle sold for use in agricultural, livestock, or dairy production.

52. The gross receipts from the sales of food and beverages for human consumption by a nonprofit organization which principally promotes a food or beverage product for human consumption produced, grown, or raised in this state and whose income is exempt from federal taxation under section 501(c) of the Internal Revenue Code.

53. The gross receipts from the sale of tangible property or from services performed, rendered, or furnished to a statewide nonprofit organ procurement organization, as defined in section 142C.2.

54. The gross receipts from the sale or rental of tangible personal property or from services performed, rendered, or furnished to a nonprofit hospital licensed pursuant to chapter 135B to be used in the operation of the hospital.

54A. The gross receipts from the sale or rental of tangible personal property or from services performed, rendered, or furnished to a freestanding nonprofit hospice facility which operates a hospice program as defined in 42 C.F.R., ch. IV, § 418.3, which property or services are to be used in the hospice program.

55. The gross receipts from the sale of argon and other similar gases to be used in the manufacturing process.

56. The gross receipts from charges paid to a provider for access to on-line computer services. For purposes of this subsection, "on-line computer service" means a service that provides or enables computer access by multiple users to the internet.

99 Acts, ch 59, §1, 2; 99 Acts, ch 62, §1; 99 Acts, ch 151, §15-18, 89; 99 Acts, ch 152, §6, 40; 99 Acts, ch 168, §1; 99 Acts, ch 170, §1-3; 99 Acts, ch 173, §1

*See 88 Acts, ch 1182, §4 and 5, for amendment to subsection 19 and addition of subsections 19A and 19B, effective on a date 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

See 99 Acts, ch 151, §16, 89, for amendment to subsection 2 relating to the transportation of natural gas, effective April 1, 2000

Subsection 7B applies retroactively to July 1, 1998, for sales made or uses occurring on or after that date; 99 Acts, ch 59, §2

Subsection 55 applies retroactively to January 1, 1991; refund claims and limits; 99 Acts, ch 170, §2, 3

Subsection 2 amended

Subsections 4 and 6 amended

Subsection 7, paragraph b, unnumbered paragraph 1 amended

NEW subsection 7B

Subsection 41, unnumbered paragraph 2 stricken

Subsection 46 amended

NEW subsections 54A, 55, and 56

422.47 Refunds — exemption certificates.

1. *a.* A relief agency may apply to the director for refund of the amount of tax imposed hereunder and paid upon sales to it of any goods, wares, merchandise, or services rendered, furnished, or performed, used for free distribution to the poor and needy.

b. Such refunds may be obtained only in the following amounts and manner and only under the following conditions:

(1) On forms furnished by the department, and filed within such time as the director shall provide by regulation, the relief agency shall report to the department the total amount or amounts, valued in money, expended directly or indirectly for goods, wares, merchandise, or services rendered, furnished, or performed, used for free distribution to the poor and needy.

(2) On these forms the relief agency shall separately list the persons making the sales to it or to its order, together with the dates of the sales, and the total amount so expended by the relief agency.

(3) The relief agency must prove to the satisfaction of the director that the person making the sales has included the amount thereof in the computation of the gross receipts of such person and that such person has paid the tax levied by this division, based upon such computation of gross receipts.

c. If satisfied that the foregoing conditions and requirements have been complied with, the director shall refund the amount claimed by the relief agency.

2. Construction contractors may make application to the department for a refund of the additional one percent tax paid under this division or the additional one percent tax paid under chapter 423 by reason of the increase in the tax from four to five

percent for taxes paid on goods, wares, or merchandise under the following conditions:

a. The goods, wares, or merchandise are incorporated into an improvement to real estate in fulfillment of a written contract fully executed prior to July 1, 1992. The refund shall not apply to equipment transferred in fulfillment of a mixed construction contract.

b. The contractor has paid to the department or to a retailer the full five percent tax.

c. The claim is filed on forms provided by the department and is filed within one year of the date the tax is paid.

A contractor who makes an erroneous application for refund shall be liable for payment of the excess refund paid plus interest at the rate in effect under section 421.7. In addition, a contractor who willfully makes a false application for refund is guilty of a simple misdemeanor and is liable for a penalty equal to fifty percent of the excess refund claimed. Excess refunds, penalties, and interest due under this subsection may be enforced and collected in the same manner as the tax imposed by this division.

3. *a.* The department shall issue or the seller may separately provide exemption certificates in the form prescribed by the director to assist retailers in properly accounting for nontaxable sales of tangible personal property or services to purchasers for a nontaxable purpose. The department shall also allow the use of exemption certificates for those circumstances in which a sale is taxable but the seller is not obligated to collect tax from the buyer.

b. The sales tax liability for all sales of tangible personal property and all sales of services is upon the seller and the purchaser unless the seller takes in good faith from the purchaser a valid exemption certificate stating under penalties for perjury that the purchase is for a nontaxable purpose and is not a retail sale as defined in section 422.42, subsection 14, or the seller is not obligated to collect tax due, or unless the seller takes a fuel exemption certificate pursuant to subsection 4. If the tangible personal property or services are purchased tax free pursuant to a valid exemption certificate which is taken in good faith by the seller, and the tangible personal property or services are used or disposed of by the purchaser in a nonexempt manner, the purchaser is solely liable for the taxes and shall remit the taxes directly to the department and sections 422.50, 422.51, 422.52, 422.54, 422.55, 422.56, 422.57, 422.58, and 422.59 shall apply to the purchaser.

c. A valid exemption certificate is an exemption certificate which is complete and correct according to the requirements of the director.

d. A valid exemption certificate is taken in good faith by the seller when the seller has exercised that caution and diligence which honest persons of ordinary prudence would exercise in han-

ding their own business affairs, and includes an honesty of intention and freedom from knowledge of circumstances which ought to put one upon inquiry as to the facts. In order for a seller to take a valid exemption certificate in good faith, the seller must exercise reasonable prudence to determine the facts supporting the valid exemption certificate, and if any facts upon such certificate would lead a reasonable person to further inquiry, then such inquiry must be made with an honest intent to discover the facts.

e. If the circumstances change and as a result the tangible personal property or services are used or disposed of by the purchaser in a nonexempt manner or the purchaser becomes obligated to pay the tax, the purchaser is liable solely for the taxes and shall remit the taxes directly to the department in accordance with this subsection.

4. a. The department shall issue or the seller may separately provide fuel exemption certificates in the form prescribed by the director.

b. The seller may accept a completed fuel exemption certificate, as prepared by the purchaser, for five years unless the purchaser files a new completed exemption certificate. If the fuel is purchased tax free pursuant to a fuel exemption certificate which is taken by the seller, and the fuel is used or disposed of by the purchaser in a nonexempt manner, the purchaser is solely liable for the taxes, and shall remit the taxes directly to the department and sections 422.50, 422.51, 422.52, 422.54, 422.55, 422.56, 422.57, 422.58, and 422.59 shall apply to the purchaser.

c. The purchaser may apply to the department for its review of the fuel exemption certificate. In this event, the department shall review the fuel exemption certificate within twelve months from the date of application and determine the correct amount of the exemption. If the amount determined by the department is different than the amount that the purchaser claims is exempt, the department shall promptly notify the purchaser of the determination. Failure of the department to make a determination within twelve months from the date of application shall constitute a determination that the fuel exemption certificate is correct as submitted. A determination of exemption by the department is final unless the purchaser appeals to the director for a revision of the determination within sixty days after the date of the notice of determination. The director shall grant a hearing, and upon the hearing the director shall determine the correct exemption and notify the purchaser of the decision by mail. The decision of the director is final unless the purchaser seeks judicial review of the director's decision under section 422.55 within sixty days after the date of the notice of the director's decision. Unless there is a substantial change, the department shall not impose penalties pursuant to section 422.58, both retroactively to purchases made after the date of application and pro-

spectively until the department gives notice to the purchaser that a tax or additional tax is due, for failure to remit any tax due which is in excess of a determination made under this section. A determination made by the department pursuant to this subsection does not constitute an audit for purposes of section 422.54.

d. If the circumstances change and the fuel is used or disposed of by the purchaser in a nonexempt manner, the purchaser is solely liable for the taxes and shall remit the taxes directly to the department in accordance with subsection 3.

e. The purchaser shall attach documentation to the fuel exemption certificate which is reasonably necessary to support the exemption for fuel consumed in processing. If the purchaser files a new exemption certificate with the seller, documentation shall not be required if the purchaser previously furnished the seller with this documentation and substantial change has not occurred since that documentation was furnished or if fuel consumed in processing is separately metered and billed by the seller.

f. In this section, "fuel" includes gas, electricity, water, heat, steam, and any other tangible personal property consumed in creating heat, power, or steam. In this section, "fuel consumed in processing" means fuel used or disposed of for processing including grain drying, for providing heat or cooling for livestock buildings or for greenhouses or buildings or parts of buildings dedicated to the production of flowering, ornamental, or vegetable plants intended for sale in the ordinary course of business, for use in aquaculture production, or for generating electric current, or in implements of husbandry engaged in agricultural production. In this subsection, "fuel exemption certificate" means an exemption certificate given by the purchaser under penalty of perjury to assist retailers in properly accounting for nontaxable sales of fuel consumed in processing. In this subsection, "substantial change" means a change in the use or disposition of tangible personal property and services by the purchaser such that the purchaser pays less than ninety percent of the purchaser's actual sales tax liability. A change includes a misstatement of facts in an application made pursuant to paragraph "c" or in a fuel exemption certificate.

99 Acts, ch 151, §19-21, 89
Subsection 3, paragraphs a, b, and e amended
Subsection 4, paragraph c amended

422.50 Records required.

It shall be the duty of every retailer required to make a return and pay any tax under this division, to preserve those records of the gross receipts from sales or services as the director may require and it shall be the duty of every retailer to preserve for a period of five years all invoices and other records of goods, wares, merchandise, or services; and all these books, invoices, and other records shall be open to examination at any time by the depart-

ment, and shall be made available within this state for examination upon reasonable notice when the director orders.

99 Acts, ch 151, §22, 89
Section amended

422.51 Return of gross receipts.

1. Each person subject to sections 422.52 and 422.53 and in accordance with the provisions thereof shall, on or before the last day of the month following the close of each calendar quarter during which such person is or has become or ceased being subject to the provisions of such sections, make, sign, and file a return for such calendar quarter in such form as may be required. Such returns shall show information relating to gross receipts including goods, wares, and services converted to the use of such person, the amounts of gross receipts excluded and exempt from the tax, the receipts subject to tax, a calculation of tax due, and such other information for the period covered by the return as may be required. Persons required to file, or committed to file by reason of voluntary action or by order of the department, monthly deposits of taxes due under this division shall be entitled to take credit against the total quarterly amount of tax due such amount as shall have been deposited by such persons during such calendar quarter. The balance remaining due after such credit for monthly deposits shall be entered on the return; provided, however, that such person may be granted an extension of time not exceeding thirty days for filing such quarterly return, upon a proper showing of necessity therefor. If such extension be granted such person shall have paid by the twentieth day of the month following the close of such quarter ninety percent of the estimated tax due.

2. If necessary or advisable in order to insure the payment of the tax imposed by this division, the director may require returns and payment of the tax to be made for other than quarterly periods, the provisions of section 422.52 or elsewhere to the contrary notwithstanding.

3. Returns shall be signed by the retailer or the retailer's authorized agent and must be certified by the retailer to be correct in accordance with forms and rules prescribed by the director.

4. If it is reasonably expected, as determined by rules prescribed by the director, that a retailer's annual tax liability will not exceed one hundred twenty dollars for a calendar year, the retailer may request and the director may grant permission, in lieu of the quarterly filing requirement of subsection 1 of this section and the remitting requirements of section 422.52, to file the return required under this section and remit the sales tax due on a calendar year basis. The return and tax are due and payable no later than January 31 following each calendar year in which the retailer carried on business.

5. Upon making application and receiving approval from the director, a parent corporation and

its affiliated corporations that make retail sales of tangible personal property or taxable enumerated services may make deposits and file a consolidated sales tax return for the affiliated group, pursuant to rules adopted by the director. A parent corporation and each affiliate corporation that files a consolidated return is jointly and severally liable for all tax, penalty, and interest found due for the tax period for which a consolidated return is filed or required to be filed.

99 Acts, ch 156, §2, 23
Subsection 5 is effective January 1, 2000, for state sales and use taxes; 99 Acts, ch 156, §2, 23
NEW subsection 5

422.52 Payment of tax — bond.

1. The tax levied under this division is due and payable in quarterly installments on or before the last day of the month following each quarterly period except as otherwise provided in this subsection. Every retailer who collects more than four thousand dollars in retail sales tax in a semimonthly period shall deposit with the department or in a depository authorized by law and designated by the director, the amount collected or an amount equal to not less than one-sixth of the tax collected and paid to the department during the preceding quarter, with a deposit form for the semimonthly period as prescribed by the director. The first semimonthly deposit form is for the period from the first of the month through the fifteenth of the month and is due on or before the twenty-fifth day of the month. The second semimonthly deposit form is for the period from the sixteenth through the end of the month and is due on or before the tenth day of the month following the month of collection. A deposit is not required for the last semimonthly period of the calendar quarter. The total quarterly amount, less the amount deposited for the five previous semimonthly periods, is due with the quarterly report on the last day of the month following the month of collection. A retailer who collects more than five hundred dollars in retail sales taxes in one month and not more than four thousand dollars in retail sales taxes in a semimonthly period shall deposit with the department or in a depository authorized by law and designated by the director, the amount collected or an amount equal to not less than one-third of the tax collected and paid to the department during the preceding quarter, with a deposit form for the month as prescribed by the director. The deposit form is due on or before the twentieth day of the month following the month of collection, except a deposit is not required for the third month of the calendar quarter and the total quarterly amount, less the amounts deposited for the first two months of the quarter, is due with the quarterly report on the last day of the month following the month of collection. Every retailer who collects more than fifty dollars and not more than five hundred dollars in retail sales tax in one month shall deposit with the department or in a depository authorized by law and designated by the

director, the amount collected, or an amount equal to not less than one-third of the tax collected and paid to the department during the last preceding quarter, with a deposit form for the month as prescribed by the director. The deposit form is due on or before the twentieth day of the month following the month of collection, except a deposit is not required for the third month of the calendar quarter and the total quarterly amount, less the amounts deposited for the first two months of the quarter, is due with the quarterly report on the last day of the month following the month of collection. The monthly remittance procedure is optional for any sales tax permit holder whose average monthly collection of tax amounts to more than twenty-five dollars and less than fifty dollars. If the exact amounts of the taxes due or an amount equal to not less than one-third or one-sixth, as applicable, of the tax collected and paid to the department during the last preceding quarter on the deposit form are not ascertainable by the retailer, or would work undue hardship in the computation of the taxes due by the retailer, the director may provide by rules alternative procedures for estimating the amounts (but not the dates) due by the retailers. The forms prescribed by the director shall be referred to as "retailers semimonthly tax deposit" or "retailers monthly tax deposit". Deposit forms shall be signed by the retailer or the retailer's duly authorized agent, and shall be duly certified by the retailer or agent to be correct. The director may authorize incorporated banks and trust companies or other depositories authorized by law which are depositories or financial agents of the United States, or of this state, to receive any tax imposed under this chapter, in the manner, at the times and under the conditions the director prescribes. The director shall prescribe the manner, times, and conditions under which the receipt of the tax by those depositories is to be treated as payment of the tax to the department.

2. Every permit holder at the time of making the return required hereunder, shall compute and pay to the department the tax due for the preceding period.

3. The director may, when necessary and advisable in order to secure the collection of the tax levied under this division, require any person subject to such tax to file with the director a bond, issued by a surety company authorized to transact business in this state and approved by the insurance commissioner as to solvency and responsibility, in such amount as the director may fix, to secure the payment of any tax or penalties due or which may become due from such person. In lieu of such bond, securities approved by the director, in such amount as the director may prescribe, may be deposited with the department, which securities shall be kept in the custody of the department and may be sold by the director at public or private sale, without notice to the depositor thereof, if it becomes necessary

so to do in order to recover any tax or penalties due. Upon any such sale, the surplus, if any, above the amounts due under this division shall be returned to the person who deposited the securities.

4. The tax by this division imposed upon those sales of motor vehicle fuel which are subject to tax and refund under chapter 452A shall be collected by the state treasurer by way of deduction from refunds otherwise allowable under said chapter. The amount of such deductions the treasurer shall transfer from the motor vehicle fuel fund to the special tax fund.

5. The provisions of subsection 1, according to the context, shall apply to persons having receipts from rendering, furnishing, or performing services enumerated in section 422.43.

6. *a.* If a purchaser fails to pay tax imposed by this division to the retailer required to collect the tax, then in addition to all of the rights, obligations, and remedies provided, the tax is payable by the purchaser directly to the department, and sections 422.50, 422.51, 422.52, 422.54, 422.55, 422.56, 422.57, 422.58, and 422.59 apply to the purchaser. For failure, the retailer and purchaser are liable, unless the circumstances described in section 422.47, subsection 3, paragraph "b" or "e" or subsection 4, paragraph "b" or "d" are applicable.

b. If any retailer subject to this division sells the retailer's business or stock of goods or quits the business, the retailer shall prepare a final return and pay all tax due within the time required by law. The immediate successor to the retailer, if any, shall withhold sufficient of the purchase price, in money or money's worth, to pay the amount of delinquent tax, interest or penalty due and unpaid. If the immediate successor of the business or stock of goods intentionally fails to withhold the amount due from the purchase price as provided in this paragraph, the immediate successor is personally liable for the payment of the delinquent taxes, interest and penalty accrued and unpaid on account of the operation of the business by the immediate former retailer, except when the purchase is made in good faith as provided in section 421.28. However, a person foreclosing on a valid security interest or retaking possession of premises under a valid lease is not an "immediate successor" for purposes of this paragraph. The department may waive the liability of the immediate successor under this paragraph if the immediate successor exercised good faith in establishing the amount of the previous liability.

c. A person sponsoring a flea market, or a craft, antique, coin, or stamp show or similar event shall obtain from every retailer selling tangible personal property or taxable services at the event proof that the retailer possesses a valid sales tax permit or secure from the retailer a statement, taken in good faith, that property or services offered for sale are not subject to sales tax. Failure to do so renders a sponsor of the event liable for payment of any sales

tax, interest and penalty due and owing from any retailer selling property or services at the event. Sections 422.50, 422.51, 422.52, 422.54, 422.55, 422.56, 422.57, 422.58, and 422.59 apply to the sponsors. For purposes of this paragraph a person sponsoring a flea market, or a craft, antique, coin or stamp show or similar event does not include an organization which sponsors an event less than three times a year or a state, county or district agricultural fair.

7. The tax on gross receipts from the sale or rental of tangible personal property under a consumer rental purchase agreement as defined in section 537.3604, subsection 8, is payable in the tax period of receipt.

8. If an amount of tax represented by a retailer to a consumer or user as constituting tax due is computed upon gross receipts that are not taxable or the amount represented is in excess of the actual taxable amount and the amount represented is actually paid by the consumer or user to the retailer, the excess amount of tax paid shall be returned to the consumer or user upon notification to the retailer by the department or by the consumer or user that an excess payment exists. If the retailer fails to make a return, the amount which the consumer or user has paid to the retailer shall be remitted by the retailer to the department.

99 Acts, ch 151, §23, 89
Personal liability of officers and partners; see §421.26
Subsection 3, unnumbered paragraph 2 stricken

422.53 Permits required — applications — revocation.

1. It is unlawful for any person to engage in or transact business as a retailer within this state, unless a permit has been issued to the retailer under this section, except as provided in subsection 6. Every person desiring to engage in or conduct business as a retailer within this state shall file with the department an application for a permit. Every application for a permit shall be made upon a form prescribed by the director and shall set forth the name under which the applicant transacts or intends to transact business, the location of the applicant's place of business, and any other information as the director may require. The application shall be signed by the owner if a natural person; in the case of an association or partnership, by a member or partner; in the case of a corporation, by an executive officer or some person specifically authorized by the corporation to sign the application, to which shall be attached the written evidence of the person's authority.

2. The applicant must have a permit for each place of business. The department may deny a permit to an applicant who is substantially delinquent in paying a tax due, or the interest or penalty on the tax, administered by the department at the time of application. If the applicant is a partnership, a permit may be denied if the partner is substantially delinquent in paying any delinquent tax, penalty,

or interest. If the applicant is a corporation, a permit may be denied if any officer having a substantial legal or equitable interest in the ownership of the corporation owes any delinquent tax, penalty, or interest.

3. The department shall grant and issue to each applicant a permit for each place of business within the state. A permit is not assignable and is valid only for the person in whose name it is issued and for the transaction of business at the place designated.

4. Permits issued under this division are valid and effective until revoked by the department.

5. If the holder of a permit fails to comply with any of the provisions of this division or any order or rule of the department adopted under this division or is substantially delinquent in the payment of a tax administered by the department or the interest or penalty on the tax, or if the person is a corporation and if any officer having a substantial legal or equitable interest in the ownership of the corporation owes any delinquent tax of the permit-holding corporation, or interest or penalty on the tax, administered by the department, the director may revoke the permit. The director shall send notice by mail to a permit holder informing that person of the director's intent to revoke the permit and of the permit holder's right to a hearing on the matter. If the permit holder petitions the director for a hearing on the proposed revocation, after giving ten days' notice of the time and place of the hearing in accordance with section 17A.18, subsection 3, the matter may be heard and a decision rendered. The director may restore permits after revocation. The director shall adopt rules setting forth the period of time a retailer must wait before a permit may be restored or a new permit may be issued. The waiting period shall not exceed ninety days from the date of the revocation of the permit.

6. Persons who are not regularly engaged in selling at retail and do not have a permanent place of business, but who are temporarily engaged in selling from trucks, portable roadside stands, concessionaires at state, county, district or local fairs, carnivals and the like, shall report and remit the tax on a nonpermit basis, under rules the director shall provide for the efficient collection of the sales tax.

Persons engaged in selling tangible personal property or performing services shall not be required to obtain or retain a sales tax permit for a place of business at which taxable sales of tangible personal property or taxable performance of services will not occur.

7. The provisions of subsection 1, dealing with lawful right of a retailer to transact business, according to the context, apply to persons having receipts from rendering, furnishing, or performing services enumerated in section 422.43, except that a person holding a permit pursuant to subsection 1 shall not be required to obtain any separate sales

tax permit for the purpose of engaging in business involving the services.

8. *a.* Except as provided in paragraph “*b*”, purchasers, users, and consumers of tangible personal property or enumerated services taxed pursuant to this division, chapter 423, or chapter 422B may be authorized, pursuant to rules adopted by the director, to remit tax owed directly to the department instead of the tax being collected and paid by the seller. To qualify for a direct pay tax permit, the purchaser, user, or consumer must accrue a tax liability of more than four thousand dollars in tax under this division and chapter 423, in a semi-monthly period and make deposits and file returns pursuant to section 422.52. This authority shall not be granted or exercised except upon application to the director and then only after issuance by the director of a direct pay tax permit.

b. The granting of a direct pay tax permit is not authorized for any of the following:

(1) Taxes imposed on the sales, furnishing, or service of gas, electricity, water, heat, pay television service, and communication service.

(2) Taxes imposed under sections 423.7 and 423.7A and chapter 422C.

99 Acts, ch 152, §7, 40

Subsection 6, NEW unnumbered paragraph 2

422.54 Failure to file return — incorrect return.

1. As soon as practicable after a return is filed and in any event within four years after the return is filed, if filed for quarterly periods beginning on or after January 1, 2000, and before January 1, 2001, and within three years after the return is filed, if filed for quarterly periods beginning on or after January 1, 2001, the department shall examine it, assess and determine the tax due if the return is found to be incorrect, and give notice to the taxpayer of the assessment and determination as provided in subsection 2. The period for the examination and determination of the correct amount of tax is unlimited in the case of a false or fraudulent return made with the intent to evade tax or in the case of a failure to file a return.

2. If a return required by this division is not filed, or if a return when filed is incorrect or insufficient and the maker fails to file a corrected or sufficient return within twenty days after the same is required by notice from the department, the department shall determine the amount of tax due from information as the department may be able to obtain and, if necessary, may estimate the tax on the basis of external indices, such as number of employees of the person concerned, rentals paid by the person, stock on hand, or other factors. The department shall give notice of the determination to the person liable for the tax. The determination shall fix the tax unless the person against whom it is assessed shall, within sixty days after the giving of notice of the determination, apply to the director

for a hearing or unless the taxpayer contests the determination by paying the tax, interest, and penalty and timely filing a claim for refund. At the hearing evidence may be offered to support the determination or to prove that it is incorrect. After the hearing the director shall give notice of the decision to the person liable for the tax.

3. The four-year or three-year period of limitation, as applicable, provided in subsection 1 may be extended by a taxpayer by signing a waiver agreement form to be provided by the department. The agreement shall stipulate the period of extension and the tax period to which the extension applies. The agreement shall also provide that a claim for refund may be filed by the taxpayer at any time during the period of extension.

99 Acts, ch 156, §3, 23

1999 amendments to subsections 1 and 3 are effective January 1, 2000, for state sales and use taxes; 99 Acts, ch 156, §3, 23
Subsections 1 and 3 amended

422.58 Penalties — offenses — limitation.

1. In addition to the tax or additional tax, the taxpayer shall pay a penalty as provided in section 421.27. The taxpayer shall also pay interest on the tax or additional tax at the rate in effect under section 421.7 for each month counting each fraction of a month as an entire month, computed from the date the semimonthly or monthly tax deposit form or return was required to be filed. The penalty and interest shall be paid to the department and disposed of in the same manner as other receipts under this division. Unpaid penalties and interest may be enforced in the same manner as the tax imposed by this division.

2. *a.* Any person who knowingly sells tangible personal property, tickets or admissions to places of amusement and athletic events, or gas, water, electricity, and communication service at retail, or engages in the rendering, furnishing, or performing of services enumerated in section 422.43, in this state without procuring a permit, as provided in section 422.53, or who violates section 422.49, and the officers of any corporation who so acts is guilty of a serious misdemeanor.

b. A person who knowingly sells tangible personal property, tickets or admissions to places of amusement and athletic events, or gas, water, electricity, and communication service at retail, or engages in the rendering, furnishing, or performing of services enumerated in section 422.43, in this state after the person's license has been revoked and before it has been restored as provided in section 422.53, subsection 5, and the officers of any corporation who so act are guilty of an aggravated misdemeanor.

3. A person who willfully attempts to evade a tax imposed by this division or the payment of the tax or a person who makes or causes to be made a false or fraudulent semimonthly or monthly tax deposit form or return with intent to evade the tax im-

posed by this division or the payment of the tax is guilty of a class "D" felony.

4. The certificate of the director to the effect that a tax has not been paid, that a return has not been filed, or that information has not been supplied pursuant to the provisions of this division, shall be prima facie evidence thereof.

5. A person required to pay a tax, or to make, sign, or file a semimonthly or monthly tax deposit form or return or supplemental return, who willfully makes a false or fraudulent semimonthly or monthly tax deposit form or return, or willfully fails to pay at least ninety percent of the tax or willfully fails to make, sign, or file the semimonthly or monthly tax deposit form or return, at the time required by law, is guilty of a fraudulent practice.

6. A prosecution for an offense specified in this section shall be commenced within six years after its commission.

99 Acts, ch 152, §8, 40

Subsection 6 stricken and former subsection 7 renumbered as 6

422.68 Powers and duties.

1. The director shall have the power and authority to prescribe all rules not inconsistent with the provisions of this chapter, necessary and advisable for its detailed administration and to effectuate its purposes.

2. The director may, for administrative purposes, divide the state into districts, provided that in no case shall a county be divided in forming a district.

3. The director may destroy useless records and returns, reports, and communications of any taxpayer filed with or kept by the department after those returns, records, reports, or communications have been in the custody of the department for a period of not less than three years or such time as the director prescribes by rule. However, after the accounts of a person have been examined by the director and the amount of tax and penalty due have been finally determined, the director may order the destruction of any records previously filed by that taxpayer, notwithstanding the fact that those records have been in the custody of the department for a period less than three years. These records and documents shall be destroyed in the manner prescribed by the director.

4. The department may make photostat, microfilm, electronic, or other photographic copies of records, reports, and other papers either filed by the taxpayer or prepared by the department. In addition, the department may create and use any system of recordkeeping reasonably calculated to preserve its records for any time period required by law. When these photostat, electronic, microfilm, or other copies have been made, the department may destroy the original records which are the basis for the copies in any manner prescribed by the director. These photostat, electronic, microfilm, or other types of copies, when no longer of use, may be destroyed as provided in subsection 3. These photo-

stat, microfilm, electronic, or other records shall be admissible in evidence when duly certified and authenticated by the officer having custody and control of them.

99 Acts, ch 151, §24, 89; 99 Acts, ch 152, §9, 40

See Code editor's note
Subsection 4 amended

422.72 Information deemed confidential — informational exchange agreement — subpoenas.

1. It is unlawful for the director, or any person having an administrative duty under this chapter, or any present or former officer or other employee of the state authorized by the director to examine returns, to divulge in any manner whatever, the business affairs, operations, or information obtained by an investigation under this chapter of records and equipment of any person visited or examined in the discharge of official duty, or the amount or source of income, profits, losses, expenditures or any particular thereof, set forth or disclosed in any return, or to permit any return or copy of a return or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law. It is unlawful for any person to willfully inspect, except as authorized by the director, any return or return information. However, the director may authorize examination of such state returns and other state information which is confidential under this section, if a reciprocal arrangement exists, by tax officers of another state or the federal government. The director may, by rules adopted pursuant to chapter 17A, authorize examination of state information and returns by other officers or employees of this state to the extent required by their official duties and responsibilities. Disclosure of state information to tax officers of another state is limited to disclosures which have a tax administrative purpose and only to officers of those states which by agreement with this state limit the disclosure of the information as strictly as the laws of this state protecting the confidentiality of returns and information. The director shall place upon the state tax form a notice to the taxpayer that state tax information may be disclosed to tax officials of another state or of the United States for tax administrative purposes.

The department shall not authorize the examination of tax information by officers and employees of this state, another state, or of the United States if the officers or employees would otherwise be required to obtain a judicial order to examine the information if it were to be obtained from another source, and if the purpose of the examination is other than for tax administration. However, the director may provide sample individual income tax information to be used for statistical purposes to the legislative fiscal bureau. The information shall not include the name or mailing address of the taxpayer or the taxpayer's social security number. Any in-

formation contained in an individual income tax return which is provided by the director shall only be used as a part of a data base which contains similar information from a number of returns. The legislative fiscal bureau shall not have access to the income tax returns of individuals. Each request for individual income tax information shall contain a statement by the director of the legislative fiscal bureau that the individual income tax information received by the bureau shall be used solely for statistical purposes. This subsection does not prevent the department from authorizing the examination of state returns and state information under the provisions of section 252B.9. This subsection prevails over any general law of this state relating to public records.

The director shall provide state tax returns and return information to the auditor of state, to the extent that the information is necessary to complete the annual audit of the department required by section 11.2. The state tax returns and return information provided by the director shall remain confidential and shall not be included in any public documents issued by the auditor of state.

2. Federal tax returns, copies of returns, and return information as defined in section 6103(b) of the Internal Revenue Code, which are required to be filed with the department for the enforcement of the income tax laws of this state, shall be held as confidential by the department and subject to the disclosure limitations in subsection 1.

3. Unless otherwise expressly permitted by section 421.17, subsections 21, 22, 22A, 23, 25, 29, and 32, sections 252B.9, 421.19, 421.28, 422.20, and 452A.63, and this section, a tax return, return information, or investigative or audit information shall not be divulged to any person or entity, other than the taxpayer, the department, or internal revenue service for use in a matter unrelated to tax administration.

This prohibition precludes persons or entities other than the taxpayer, the department, or the internal revenue service from obtaining such information from the department, and a subpoena, order, or process which requires the department to produce such information to a person or entity, other than the taxpayer, the department, or internal revenue service for use in a nontax proceeding is void.

4. A person violating subsection 1, 2, 3, or 6 is guilty of a serious misdemeanor.

5. The director may disclose taxpayer identity information to the press and other media for purposes of notifying persons entitled to tax refunds when the director, after reasonable effort and lapse of time, has been unable to locate the persons.

6. The department may enter into a written informational exchange agreement for tax administration purposes with a city or county which is entitled to receive funds due to a local hotel and motel tax or a local sales and services tax. The written in-

formational exchange agreement shall designate no more than two paid city or county employees that have access to actual return information relating to that city's or county's receipts from a local hotel and motel tax or a local sales and services tax.

City or county employees designated to have access to information under this subsection are deemed to be officers and employees of the state for purposes of the restrictions pursuant to subsection 1 pertaining to confidential information. The department may refuse to enter into a written informational exchange agreement if the city or county does not agree to pay the actual cost of providing the information and the department may refuse to abide by a written informational exchange agreement if the city or county does not promptly pay the actual cost of providing the information or take reasonable precautions to protect the information's confidentiality.

7. Notwithstanding subsection 3, the director shall provide state tax returns and return information in response to a subpoena issued by the court pursuant to rule of criminal procedure 5 commanding the appearance before the attorney general or an assistant attorney general if the subpoena is accompanied by affidavits from such person and from a sworn peace officer member of the department of public safety affirming that the information is necessary for the investigation of a felony violation of chapter 124 or chapter 706B. The affidavits accompanying the subpoenas and the information provided by the director shall remain a confidential record which may be disseminated only to a prosecutor or peace officer involved in the investigation, or to the taxpayer who filed the information and to the court in connection with the filing of criminal charges or institution of a forfeiture action. A person who knowingly files a false affidavit with the director to secure information or who divulges information received under this subsection in a manner prohibited by this subsection commits a serious misdemeanor.

99 Acts, ch 151, §25, 89; 99 Acts, ch 152, §10, 40
Subsection 1, unnumbered paragraph 1 amended
Subsection 6, unnumbered paragraph 2 amended

422.73 Correction of errors — refunds, credits and carrybacks.

1. If it shall appear that, as a result of mistake, an amount of tax, penalty, or interest has been paid which was not due under the provisions of division IV of this chapter or chapter 423, then such amount shall be credited against any tax due, or to become due, on the books of the department from the person who made the erroneous payment, or such amount shall be refunded to such person by the department. A claim for refund or credit that has not been filed with the department within four years after the tax payment for quarterly periods beginning on or after January 1, 2000, and before January 1, 2001, upon which a refund or credit is claimed became due, and within three years after

the tax payment for quarterly periods beginning on or after January 1, 2001, upon which a refund or credit is claimed became due, or one year after such tax payment was made, whichever time is the later, shall not be allowed by the director.

2. If it appears that an amount of tax, penalty, or interest has been paid which was not due under division II, III or V of this chapter, then that amount shall be credited against any tax due on the books of the department by the person who made the excessive payment, or that amount shall be refunded to the person or with the person's approval, credited to tax to become due. A claim for refund or credit that has not been filed with the department within three years after the return upon which a refund or credit claimed became due, or within one year after the payment of the tax upon which a refund or credit is claimed was made, whichever time is the later, shall not be allowed by the director. If, as a result of a carryback of a net operating loss or a net capital loss, the amount of tax in a prior period is reduced and an overpayment results, the claim for refund or credit of the overpayment shall be filed with the department within the three years after the return for the taxable year of the net operating loss or net capital loss became due. Notwithstanding the period of limitation specified, the taxpayer shall have six months from the day of final disposition of any income tax matter between the taxpayer and the internal revenue service with respect to the particular tax year to claim an income tax refund or credit.

The department shall enter into an agreement with the internal revenue service for the transmission of federal income tax reports on individuals required to file an Iowa income tax return who have been involved in an income tax matter with the internal revenue service. After final disposition of the income tax matter between the taxpayer and the internal revenue service, the department shall determine whether the individual is due a state income tax refund as a result of final disposition of such income tax matter. If the individual is due a state income tax refund, the department shall notify the individual within thirty days and request the individual to file a claim for refund or credit with the department.

3. Notwithstanding subsection 2, a claim for credit or refund of the income tax paid is considered timely if the claim is filed with the department on or before June 30, 1999, if the taxpayer's federal income tax was refunded due to a provision in the federal Taxpayer Relief Act of 1997, Pub. L. No. 105-34, which affected the federal adjusted gross incomes of individuals or estates and trusts, or affected the taxable incomes of corporate taxpayers.

99 Acts, ch 156, §4, 23

1999 amendment to subsection 1 is effective January 1, 2000, for state sales and use taxes; 99 Acts, ch 156, §4, 23

Subsection 1 amended

422.90 Penalty not subject to waiver. Repealed by 99 Acts, ch 151, § 85, 89.

422.100 Allocation to the child care credit fund.

The treasurer of state shall credit during the first month of each quarter of each fiscal year to the child care credit fund created in section 237A.28 the sum of six hundred fifty thousand dollars from the individual income tax withholding receipts.

99 Acts, ch 192, §33

Terminology changes applied

422.110 Income tax credit in lieu of refund.

In lieu of the fuel tax refund provided in section 452A.17, a person or corporation subject to taxation under divisions II or III of this chapter may elect to receive an income tax credit. The person or corporation which elects to receive an income tax credit shall cancel its refund permit obtained under section 452A.18 within thirty days after the first day of its tax year or the permit becomes invalid at that time. For the purposes of this section, "person" includes a person claiming a tax credit based upon the person's pro rata share of the earnings from a partnership, limited liability company, or corporation which is not subject to a tax under division II or III of this chapter as a partnership, limited liability company, or corporation. If the election to receive an income tax credit has been made, it remains effective for at least one tax year, and for subsequent tax years unless a change is requested and a new refund permit applied for within thirty days after the first day of the person's or corporation's tax year. The income tax credit shall be the amount of the Iowa fuel tax paid on fuel purchased by the person or corporation and is subject to the conditions provided in section 452A.17 with the exception that the income tax credit is not available for refunds relating to casualty losses, transport diversions, pumping credits, blending errors, idle time, power takeoffs, reefer units, and exports by eligible purchasers.

The right to a credit under this section is not assignable and the credit may be claimed only by the person or corporation that purchased the fuel.

99 Acts, ch 151, §26, 89

1995 amendments to unnumbered paragraph 1 and subsection 2 effective January 1, 1996; 95 Acts, ch 155, §44

Section amended

422.111 Fuel tax credit as income tax credit.

The fuel tax credit may be applied against the income tax liability of the person or corporation as determined on the tax return filed for the year in which the fuel tax was paid. The department shall provide forms for claiming the fuel tax credit. If the fuel tax credit would result in an overpayment of income tax, the person or corporation may apply for

a refund of the amount of overpayment or may have the overpayment credited to income tax due in subsequent years. Each person or corporation that claims a fuel tax credit shall maintain the original invoices showing the purchase of the fuel on which a credit is claimed. An invoice is not acceptable in support of a claim for credit unless the invoice is a separate serially numbered invoice covering no more than one purchase of motor fuel or undyed special fuel, prepared by the seller on a form approved by the department, or unless the invoice is legibly written with no corrections or erasures and shows the date of sale, the name and address of the seller and of the purchaser, the kind of fuel, the gallonage in figures, the per gallon price of the fuel, the total purchase price including the Iowa fuel tax, and that the total purchase price has been paid. However, as to refund invoices made on a billing machine, the department may waive these requirements. If an original invoice is lost or destroyed, the department may approve a credit supported by a copy identified and certified by the seller as being a true copy of the original. Each person or corporation that claims a fuel tax credit shall maintain complete records of purchases of motor fuel or undyed special fuel on which Iowa fuel tax was paid, and for which a fuel tax credit is claimed.

In order to verify the validity of a claim for credit the department shall have the right to require the claimant to furnish such additional proof of validity as the department may determine and to examine the books and records of the claimant. Failure of the claimant to furnish the books and records for

examination shall constitute a waiver of rights to claim a credit related to that taxpayer's year and the department may disallow the entire credit claimed by the taxpayer for that year.

99 Acts, ch 151, §27, 28, 89
Unnumbered paragraph 1 amended
Unnumbered paragraph 3 stricken

422.121 Appropriation — limitation.

Beginning with the fiscal year beginning July 1, 1997, there is appropriated annually from the general fund of the state two million dollars to refund the credits allowed under this division. Notwithstanding section 422.120, for tax years beginning on or after January 1, 1997, the livestock production tax credit shall only be allowed for cow-calf operations. In calculating the tax credit for cow-calf operations for tax years beginning in the 1997 calendar year, mature beef cows bred or for breeding, bred yearling heifers, and breeding bulls in the operations' inventory on December 31 of the tax year which were also in the operations on July 1 of the tax year and stockers and feeders sold during the tax year may be counted. In calculating the tax credit for cow-calf operations for tax years beginning on or after January 1, 1998, only those bred cows, bred heifers, and breeding bulls in the operations' inventory on December 31 of the tax year which were also in the operations on July 1 of the tax year may be counted.

99 Acts, ch 151, §29, 89
Applicable to tax years beginning on or after January 1, 1996; 96 Acts, ch 1197, §23
1999 amendment applies retroactively to January 1, 1997, for tax years beginning on or after that date; 99 Acts, ch 151, §89
Section amended

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 and subject to the exception provided in subsection 2.

2. *a.* A city whose corporate boundaries include areas of two counties may impose by ordinance of its city council a local sales and services tax if all of the following apply:

(1) At least eighty-five percent of the residents of the city live in one county.

(2) The county in which at least eighty-five percent of the city residents reside has held an election on the question of the imposition of a local sales and services tax and a majority of those voting on the question in the city favored its imposition.

(3) The city has entered into an agreement on the distribution of the sales and services tax revenues collected from the area where the city tax is imposed with the county where such area is located.

b. The city council of a city authorized to impose a local sales and services tax pursuant to paragraph "a" shall only do so subject to all of the following restrictions:

(1) The tax shall only be imposed in the area of the city located in the county where not more than fifteen percent of the city's residents reside.

(2) The tax shall be at the same rate and become effective at the same time as the county tax imposed in the other area of the city.

(3) The tax once imposed shall continue to be imposed until the county-imposed tax is reduced or increased in rate or repealed, and then the city-imposed tax shall also be reduced or increased in rate or repealed in the same amount and be effective on the same date.

(4) The tax shall be imposed on the same basis as provided in section 422B.8 and notification requirements in section 422B.9 apply.

(5) The city shall assist the department of revenue and finance to identify the businesses in the area which are to collect the city-imposed tax. The

process shall be ongoing as long as the city tax is imposed.

c. The agreement on the distribution of the revenues collected from the city-imposed tax shall provide that fifty percent of such revenues shall be remitted to the county in which the part of the city where the city tax is imposed is located.

d. The latest certified federal census preceding the election held by the county on the question of imposition of the local sales and services tax shall be used in determining if the city qualifies under paragraph "a", subparagraph (1), to impose its own tax and in determining the area where the city tax may be imposed under paragraph "b", subparagraph (1).

e. A city is not authorized to impose a local sales and services tax under this subsection after July 1, 2000. A city that has imposed a local sales and services tax under this subsection on or before July 1, 2000, may continue to collect the tax until such time as the tax is repealed by the city and the fact that the area acquires more than fifteen percent of the city's residents after the tax is imposed shall not affect the imposition or collection of the tax.

3. 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 6, 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.

4. 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 registered voters 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 registered voters 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".

5. 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 6 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.

6. *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 4 and 5 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 registered voters of the areas of the county where the tax has been imposed or has not been imposed, as appropriate. However, the governing body of the incorporated area or unincorporated area where the local sales and services tax is imposed may, upon its own motion, request the county commissioner of elections to hold an election in the incorporated or unincorporated area, as appropriate, on the question of the change in use of local sales and services tax revenues. The election may be held at any time but not sooner than sixty days following publication of the ballot proposition. If a majority of those voting in the incorporated or unincorporated area on the change in use favor the change, the governing body of that area shall change the use to which the revenues shall be used. The ballot proposition shall list the present use of the revenues, the proposed use, and the date after which revenues received will be used for the new use.

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 county auditor shall give written notice by sending a copy of the abstract of the ballot from the favorable election 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.

7. 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 registered voters in each taxing jurisdiction and the total number of registered voters in all of the taxing jurisdictions.

8. 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.

9. 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.

10. Notwithstanding subsection 9 or any other contrary provision of this chapter, a local option sales and services tax shall not be repealed or reduced in rate if obligations are outstanding which are payable as provided in section 422B.12, unless funds sufficient to pay the principal, interest, and premium, if any, on the outstanding obligations at and prior to maturity have been properly set aside and pledged for that purpose.

99 Acts, ch 156, §5-7, 10, 23

For future amendments to subsection 5, subsection 6, paragraph a, and subsection 9, effective April 1, 2000, for local sales and services taxes, see 99 Acts, ch 156, §8, 9, 11, 23

Subsection 2, paragraph a, subparagraphs (1) and (2) amended

Subsection 2, paragraph b, subparagraph (1) amended

Subsection 2, paragraph e amended

Subsection 6, paragraph b amended

422B.8 Local sales and services tax.

A local sales and services tax at the rate of not more than one percent may be imposed by a county on the gross receipts taxed by the state under chapter 422, division IV. A local sales and services tax shall be imposed on the same basis as the state sales and services tax or in the case of the use of

natural gas, natural gas service, electricity, or electric service on the same basis as the state use tax and shall not be imposed on the sale of any property or on any service not taxed by the state, except the tax shall not be imposed on the gross receipts from the sale of motor fuel or special fuel as defined in chapter 452A, on the gross receipts from the rental of rooms, apartments, or sleeping quarters which are taxed under chapter 422A during the period the hotel and motel tax is imposed, on the gross receipts from the sale of equipment by the state department of transportation, on the gross receipts from the sale of self-propelled building equipment, pile drivers, motorized scaffolding, or attachments customarily drawn or attached to self-propelled building equipment, pile drivers, and motorized scaffolding, including auxiliary attachments which improve the performance, safety, operation, or efficiency of the equipment and replacement parts and are directly and primarily used by contractors, subcontractors, and builders for new construction, reconstruction, alterations, expansion, or remodeling of real property or structures, and on the gross receipts from the sale of a lottery ticket or share in a lottery game conducted pursuant to chapter 99E and except the tax shall not be imposed on the gross receipts from the sale or use of natural gas, natural gas service, electricity, or electric service in a city or county where the gross receipts from the sale of natural gas or electric energy are subject to a franchise fee or user fee during the period the franchise or user fee is imposed. A local sales and services tax is applicable to transactions within those incorporated and unincorporated areas of the county where it is imposed and shall be collected by all persons required to collect state gross receipts taxes. However, a person required to collect state retail sales tax under chapter 422, division IV, is not required to collect local sales and services tax on transactions delivered within the area where the local sales and services tax is imposed unless the person has physical presence in that taxing area. All cities contiguous to each other shall be treated as part of one incorporated area and the tax would be imposed in each of those contiguous cities only if the majority of those voting in the total area covered by the contiguous cities favor its imposition.

The amount of the sale, for purposes of determining the amount of the local sales and services tax, does not include the amount of any state gross receipts taxes.

A tax permit other than the state tax permit required under section 422.53 or 423.10 shall not be required by local authorities.

If a local sales and services tax is imposed by a county pursuant to this chapter, a local excise tax at the same rate shall be imposed by the county on the purchase price of natural gas, natural gas service, electricity, or electric service subject to tax under chapter 423 and not exempted from tax by any provision of chapter 423. The local excise tax is appli-

cable only to the use of natural gas, natural gas service, electricity, or electric service within those incorporated and unincorporated areas of the county where it is imposed and, except as otherwise provided in this chapter, shall be collected and administered in the same manner as the local sales and services tax. For purposes of this chapter, "local sales and services tax" shall also include the local excise tax.

99 Acts, ch 151, §30-32; 99 Acts, ch 156, §12

1999 amendments to unnumbered paragraph 1 relating to the sales and services tax on natural gas, natural gas service, electricity, and electric service, and 1999 amendments to unnumbered paragraph 3, and adding new unnumbered paragraph 4 are effective May 1, 1999; 99 Acts, ch 151, §31, 32, 89

See Code editor's note to §10A.202

Unnumbered paragraphs 1 and 3 amended

NEW unnumbered paragraph 4

422B.9 Administration.

1. *a.* A local sales and services tax shall be imposed either January 1, April 1, July 1 or October 1 following the notification of the director of revenue and finance.

b. A local sales and services tax shall be repealed only on March 31, June 30, September 30, or December 31. However, a local sales and services tax shall not be repealed before the tax has been in effect for one year. At least forty days before the imposition or repeal of the tax, a county shall provide notice of the action by certified mail to the director of revenue and finance.

2. *a.* The director of revenue and finance shall administer a local sales and services tax as nearly as possible in conjunction with the administration of state gross receipts tax laws. The director shall provide appropriate forms or provide on the regular state tax forms for reporting local sales and services tax liability.

b. The ordinance of a county board of supervisors imposing a local sales and services tax shall adopt by reference the applicable provisions of the appropriate sections of chapter 422, division IV, and chapter 423. All powers and requirements of the director to administer the state gross receipts tax law and use tax law are applicable to the administration of a local sales and services tax law and the local excise tax, including but not limited to, the provisions of section 422.25, subsection 4, sections 422.30, 422.48 to 422.52, 422.54 to 422.58, 422.67, 422.68, 422.69, subsection 1, sections 422.70 to 422.75, 423.6, subsections 2 to 4, and sections 423.11 to 423.18, and 423.21. Local officials shall confer with the director of revenue and finance for assistance in drafting the ordinance imposing a local sales and services tax. A certified copy of the ordinance shall be filed with the director as soon as possible after passage.

c. Frequency of deposits and quarterly reports of a local sales and services tax with the department of revenue and finance are governed by the tax provisions in section 422.52. Local tax collections shall not be included in computation of the to-

tal tax to determine frequency of filing under section 422.52.

3. *a.* The director, in consultation with local officials, shall collect and account for a local sales and services tax. The director shall certify each quarter the amount of local sales and services tax receipts and any interest and penalties to be credited to the "local sales and services tax fund" established in the office of the treasurer of state.

b. All local tax moneys and interest and penalties received or refunded one hundred eighty days or more after the date on which the county repeals its local sales and services tax shall be deposited in or withdrawn from the state general fund.

99 Acts, ch 151, §33, 89

For future amendment to subsection 1 effective April 1, 2000, for local sales and services taxes, see 99 Acts, ch 156, §13, 23

1999 amendment to subsection 2, paragraph b is effective May 1, 1999; 99 Acts, ch 151, §33, 89

Subsection 2, paragraph b amended

422B.10 Payment to local governments.

1. The director shall credit the local sales and services tax receipts and interest and penalties from a county-imposed tax to the county's account in the local sales and services tax fund and from a city-imposed tax under section 422B.1, subsection 2, to the city's account in the local sales and services tax fund. If the director is unable to determine from which county any of the receipts were collected, those receipts shall be allocated among the possible counties based on allocation rules adopted by the director.

2. *a.* The director of revenue and finance within fifteen days of the beginning of each fiscal year shall send to each city or county where the local option tax is imposed, an estimate of the amount of tax moneys each city or county will receive for the year and for each month of the year. At the end of each month, the director may revise the estimates for the year and remaining months.

b. The director of revenue and finance shall remit ninety-five percent of the estimated tax receipts for the city or county to the city or county on or before August 31 of the fiscal year and on or before the last day of each following month.

c. The director of revenue and finance shall remit a final payment of the remainder of tax moneys due the city or county for the fiscal year before November 10 of the next fiscal year. If an overpayment has resulted during the previous fiscal year, the November payment shall be adjusted to reflect any overpayment.

3. Seventy-five percent of each county's account shall be remitted on the basis of the county's population residing in the unincorporated area

where the tax was imposed and those incorporated areas where the tax was imposed as follows:

a. To the board of supervisors a pro rata share based upon the percentage of the above population of the county residing in the unincorporated area of the county where the tax was imposed according to the most recent certified federal census.

b. To each city in the county where the tax was imposed a pro rata share based upon the percentage of the city's population residing in the county to the above population of the county according to the most recent certified federal census.

c. If a subsequent certified census exists which modifies that most recent certified federal census for a participating jurisdiction under paragraphs "a" and "b", the computations under paragraphs "a" and "b" shall utilize the subsequent certified census in the distribution formula under rules established by the director of revenue and finance.

4. Twenty-five percent of each county's account shall be remitted based on the sum of property tax dollars levied by the board of supervisors if the tax was imposed in the unincorporated areas and each city in the county where the tax was imposed during the three-year period beginning July 1, 1982, and ending June 30, 1985, as follows:

a. To the board of supervisors a pro rata share based upon the percentage of the total property tax dollars levied by the board of supervisors during the above three-year period.

b. To each city council where the tax was imposed a pro rata share based upon the percentage of property tax dollars levied by the city during the above three-year period of the above total property tax dollars levied by the board of supervisors and each city where the tax was imposed during the above three-year period.

5. From each city's account, the percent of revenues agreed to be distributed to the county in the agreement entered into as provided in section 422B.1, subsection 2, paragraph "a", subparagraph (3), and paragraph "c", shall be deposited into the appropriate county's account to be remitted as provided in subsections 3 and 4. The remaining revenues in the city's account shall be remitted to the city council. If a county does not have an account, its percent of the revenues shall be remitted directly to the county board of supervisors.

6. Local sales and services tax moneys received by a city or county may be expended for any lawful purpose of the city or county.

99 Acts, ch 151, §34, 89; 99 Acts, ch 156, §14

Subsection 2, paragraph c amended

Subsection 3, NEW paragraph c

CHAPTER 422D

OPTIONAL TAXES FOR EMERGENCY MEDICAL SERVICES

422D.3 Administration.

A local income surtax shall be imposed January 1 of the fiscal year in which the favorable election was held for tax years beginning on or after January 1, and is repealed as provided in section 422D.1, subsection 4, as of December 31 for tax years beginning after December 31.

The director of revenue and finance shall administer the local income surtax as nearly as possible in conjunction with the administration of state income tax laws. The director shall provide on the regular state tax forms for reporting local income surtax.

An ordinance imposing a local income surtax shall adopt by reference the applicable provisions of the appropriate sections of chapter 422, division II. All powers and requirements of the director in administering the state income tax law apply to the administration of a local income surtax, including but not limited to, the provisions of sections 422.4, 422.20 to 422.31, 422.68, 422.70, and 422.72 to 422.75. Local officials shall confer with the director

of revenue and finance for assistance in drafting the ordinance imposing a local income surtax. A certified copy of the ordinance shall be filed with the director as soon as possible after passage.

The director, in consultation with local officials, shall collect and account for a local income surtax and any interest and penalties. The director shall credit local income surtax receipts and any interest and penalties collected from returns filed on or before November 1 of the calendar year following the tax year for which the local income surtax is imposed to a "local income surtax fund" established in the department of revenue and finance. All local income surtax receipts and any interest and penalties received or refunded from returns filed after November 1 of the calendar year following the tax year for which the local income surtax is imposed shall be deposited in or withdrawn from the state general fund and shall be considered part of the cost of administering the local income surtax.

99 Acts, ch 151, §35, 89
Unnumbered paragraph 4 amended

CHAPTER 422E

SCHOOL INFRASTRUCTURE FUNDING

422E.1 Authorization — rate of tax — use of revenues.

1. A local sales and services tax for school infrastructure purposes may be imposed by a county on behalf of school districts as provided in this chapter.

If a local sales and services tax for school infrastructure is imposed by a county pursuant to this chapter, a local excise tax for school infrastructure at the same rate shall be imposed by the county on the purchase price of natural gas, natural gas service, electricity, or electric service subject to tax under chapter 423 and not exempted from tax by any provision of chapter 423. The local excise tax for school infrastructure is applicable only to the use of natural gas, natural gas service, electricity, or electric service within those incorporated and unincorporated areas of the county where it is imposed and, except as otherwise provided in this chapter, shall be collected and administered in the same manner as the local sales and services tax for school infrastructure. For purposes of this chapter, "local sales and services tax for school infrastructure" shall also include the local excise tax for school infrastructure.

2. The maximum rate of tax shall be one percent. The tax shall be imposed without regard to any other local sales and services tax authorized in chapter 422B, and is repealed at the expiration of a

period of ten years of imposition or a shorter period as provided in the ballot proposition.

3. Local sales and services tax moneys received by a county for school infrastructure purposes pursuant to this chapter shall be utilized solely for school infrastructure needs. For purposes of this chapter, "school infrastructure" means those activities for which a school district is authorized to contract indebtedness and issue general obligation bonds under section 296.1, except those activities related to a teacher's or superintendent's home or homes. These activities include the construction, reconstruction, repair, purchasing, or remodeling of schoolhouses, stadiums, gyms, fieldhouses, and bus garages and the procurement of schoolhouse construction sites and the making of site improvements. Additionally, "school infrastructure" includes the payment or retirement of outstanding bonds previously issued for school infrastructure purposes as defined in this subsection, and the payment or retirement of bonds issued under section 422E.4.

99 Acts, ch 151, §36, 89
Subsection 1, new unnumbered paragraph 2 is effective May 1, 1999; 99
Acts, ch 151, §36, 89
Subsection 1, NEW unnumbered paragraph 2

422E.2 Imposition by county.

1. A local sales and services tax shall be imposed by a county only after an election at which a majority of those voting on the question favors imposition. A local sales and services tax approved by a majority vote shall apply to all incorporated and unincorporated areas of that county.

2. *a.* Upon receipt by a county board of supervisors of a petition requesting imposition of a local sales and services tax for infrastructure purposes, 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, the board shall within thirty days direct the county commissioner of elections to submit the question of imposition of the tax to the registered voters of the whole county.

b. Alternatively, the question of imposition of a local sales and services tax for school infrastructure purposes may be proposed by motion or motions, requesting such submission, adopted by the governing body of a school district or school districts located within the county containing a total, or a combined total in the case of more than one school district, of at least one-half of the population of the county, or by the county board of supervisors. Upon adoption of such motion, the governing body of a school district shall notify the board of supervisors of the adoption of the motion. The county board of supervisors shall submit the motion to the county commissioner of elections, who 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.

3. The county commissioner of elections shall submit the question of imposition of a local sales and services tax for school infrastructure purposes 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 rate of tax, the date the tax will be imposed and repealed, and shall contain a statement as to the specific purpose or purposes for which the revenues shall be expended. The rate of tax shall not be more than one percent as set by the county board of supervisors. The state commissioner of elections shall establish by rule the form for the ballot proposition which form shall be uniform throughout the state.

4. *a.* The tax may be repealed or the rate increased, but not above one percent, or decreased after an election at which a majority of those voting on the question of repeal or rate change favored the repeal or rate change. The election at which the question of repeal or rate change is offered shall be called and held in the same manner and under the same conditions as provided in this section for the

election on the imposition of the tax. The election may be held at any time but not sooner than sixty days following publication of the ballot proposition. However, the tax shall not be repealed before it has been in effect for one year.

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 the tax, the county auditor shall give written notice by sending a copy of the abstract of ballot from the favorable election to the director of revenue and finance of the result of the election. Election costs shall be apportioned among school districts within the county on a pro rata basis in proportion to the number of registered voters in each school district and the total number of registered voters in all of the school districts within the county.

A local option sales and services tax shall not be repealed or reduced in rate if obligations are outstanding which are payable as provided in section 422E.4, unless funds sufficient to pay the principal, interest, and premium, if any, on the outstanding obligations at and prior to maturity have been properly set aside and pledged for that purpose.

99 Acts, ch 156, §16, 23

For future amendments to subsections 1 and 3, effective April 1, 2000, for local sales and services taxes, see 99 Acts, ch 156, §15, 23

Subsection 4, paragraph b, unnumbered paragraph 1 amended

422E.3 Collection of tax.

1. If a majority of those voting on the question of imposition of a local sales and services tax for school infrastructure purposes favors imposition of the tax, the tax shall be imposed by the county board of supervisors within the county pursuant to section 422E.2, at the rate specified for a ten-year duration on the gross receipts taxed by the state under chapter 422, division IV.

2. The tax shall be imposed on the same basis as the state sales and services tax or in the case of the use of natural gas, natural gas service, electricity, or electric service on the same basis as the state use tax and shall not be imposed on the sale of any property or on any service not taxed by the state, except the tax shall not be imposed on the gross receipts from the sale of motor fuel or special fuel as defined in chapter 452A, on the gross receipts from the rental of rooms, apartments, or sleeping quarters which are taxed under chapter 422A during the period the hotel and motel tax is imposed, on the gross receipts from the sale of equipment by the state department of transportation, on the gross receipts from the sale of self-propelled building equipment, pile drivers, motorized scaffolding, or attachments customarily drawn or attached to self-propelled building equipment, pile drivers, and motorized scaffolding, including auxiliary attachments which improve the performance, safety, operation, or efficiency of the equipment, and replacement parts and are directly and primarily used by contractors, subcontractors, and builders for new construction, reconstruction, alterations,

expansion, or remodeling of real property or structures, and on the gross receipts from the sale of a lottery ticket or share in a lottery game conducted pursuant to chapter 99E and except the tax shall not be imposed on the gross receipts from the sale or use of natural gas, natural gas service, electricity, or electric service in a city or county where the gross receipts from the sale of natural gas or electric energy are subject to a franchise fee or user fee during the period the franchise or user fee is imposed.

3. The tax is applicable to transactions within the county where it is imposed and shall be collected by all persons required to collect state gross receipts or local excise taxes. However, a person required to collect state retail sales tax under chapter 422, division IV, is not required to collect local sales and services tax on transactions delivered within the area where the local sales and services tax is imposed unless the person has physical presence in that taxing area. The amount of the sale, for purposes of determining the amount of the tax, does not include the amount of any state gross receipts or excise taxes or other local option sales or excise taxes. A tax permit other than the state tax permit required under section 422.53 or 423.10 shall not be required by local authorities.

4. The director of revenue and finance shall credit tax receipts and interest and penalties from the local sales and services tax for school infrastructure purposes to an account within the county's local sales and services tax fund, as created in section 422B.10, subsection 1, maintained in the name of the school district or school districts located within the county. If the director is unable to determine from which county any of the receipts were collected, those receipts shall be allocated among the possible counties based on allocation rules adopted by the director.

5. *a.* The director of revenue and finance within fifteen days of the beginning of each fiscal year shall send to each school district where the tax is imposed an estimate of the amount of tax moneys each school district will receive for the year and for each month of the year. At the end of each month, the director may revise the estimates for the year and remaining months.

b. The director shall remit ninety-five percent of the estimated tax receipts for the school district to the school district on or before August 31 of the fiscal year and on or before the last day of each following month.

c. The director shall remit a final payment of the remainder of tax moneys due for the fiscal year before November 10 of the next fiscal year. If an overpayment has resulted during the previous fiscal year, the November payment shall be adjusted to reflect any overpayment.

If more than one school district, or a portion of a school district, is located within the county, tax receipts shall be remitted to each school district or

portion of a school district in which the county tax is imposed in a pro rata share based upon the ratio which the percentage of actual enrollment for the school district that attends school in the county bears to the percentage of the total combined actual enrollments for all school districts that attend school in the county. The combined actual enrollment for a county, for purposes of this section, shall be determined for each county imposing a sales and services tax for school infrastructure purposes by the department of management based on the actual enrollment figures reported by October 1 to the department of management by the department of education pursuant to section 257.6, subsection 1. The combined actual enrollment count shall be forwarded to the director of the department of management by March 1, annually, for purposes of supplying estimated tax payment figures and making estimated tax payments pursuant to this section for the following fiscal year.

6. The local sales and services tax for school infrastructure purposes shall be administered as provided in section 422B.9.

7. Construction contractors may make application to the department for a refund of the additional local sales and services tax paid under this chapter by reason of taxes paid on goods, wares, or merchandise under the conditions specified in section 422B.11. The refund shall be paid by the department from the appropriate school district's account in the local sales and services tax fund. The penalty provisions contained in section 422B.11, subsection 3, shall apply regarding an erroneous application for refund of local sales and services tax paid under this chapter.

99 Acts, ch 151, §37–39, 89; 99 Acts, ch 156, §17–19, 23

1999 amendment to subsection 2 regarding imposition of a local sales and services tax on natural gas, natural gas service, electricity, or electric service is effective May 1, 1999; 99 Acts, ch 151, §37, 89

1999 amendment to subsection 3 requiring persons collecting local excise taxes to collect local sales and services tax if imposed is effective May 1, 1999; 99 Acts, ch 151, §39, 89

Subsection 7 applies retroactively to July 1, 1998; 99 Acts, ch 156, §19, 23

See Code editor's note to §10A.202

Subsections 2 and 3 amended

Subsection 5, paragraph c, unnumbered paragraph 1 amended

NEW subsection 7

422E.4 Bonding.

The board of directors of a school district shall be authorized to issue negotiable, interest-bearing school bonds, without election, and utilize tax receipts derived from the sales and services tax for school infrastructure purposes for principal and interest repayment. Proceeds of the bonds issued pursuant to this section shall be utilized solely for school infrastructure needs as school infrastructure is defined in section 422E.1, subsection 3. Issuance of bonds pursuant to this section shall be permitted only in a district which has imposed a local sales and services tax for school infrastructure purposes pursuant to section 422E.2. The provisions of sections 298.22 through 298.24 shall apply regarding the form, rate of interest, registration, redemption, and recording of bond issues pursuant

to this section, with the exception that the maximum period during which principal on the bonds is payable shall not exceed a ten-year period, or the date of repeal stated on the ballot proposition.

A school district in which a local option sales tax for school infrastructure purposes has been imposed shall be authorized to enter into a chapter 28E agreement with one or more cities or a county whose boundaries encompass all or a part of the area of the school district. A city or cities entering into a chapter 28E agreement shall be authorized to expend its designated portion of the local option sales and services tax revenues for any valid purpose permitted in this chapter or authorized by the governing body of the city. A county entering into a chapter 28E agreement with a school district in which a local option sales tax for school infrastructure purposes has been imposed shall be authorized to expend its designated portion of the local option sales and services tax revenues to provide property tax relief within the boundaries of the

school district located in the county. A school district where a local option sales and services tax is imposed is also authorized to enter into a chapter 28E agreement with another school district which is located partially or entirely in or is contiguous to the county where the tax is imposed. The school district shall only expend its designated portion of the local option sales and services tax for infrastructure purposes.

The governing body of a city may authorize the issuance of bonds which are payable from its designated portion of the revenues of the local option sales and services tax, and not from property tax, by following the authorization procedures set forth for cities in section 384.83. A city may pledge irrevocably any amount derived from its designated portions of the revenues of the local option sales and services tax to the support or payment of such bonds.

99 Acts, ch 156, §20, 23

1999 amendment to unnumbered paragraph 2 applies retroactively to July 1, 1998; 99 Acts, ch 156, §20, 23
Unnumbered paragraph 2 amended

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 or for manufactured housing under chapter 321.

2. "Department" and "director" shall have the same meaning as defined in section 422.3.

3. "Installed purchase price" is the amount charged, valued in money whether paid in money or otherwise, by a building contractor to convert manufactured housing from tangible personal property into realty. "Installed purchase price" includes, but is not limited to, amounts charged for installing a foundation and electrical and plumbing hookups. "Installed purchase price" excludes any amount charged for landscaping in connection with the conversion.

4. "Manufactured housing" means the same as defined in section 321.1.

5. "Mobile home" means mobile home as defined in section 321.1, subsection 39, paragraph "a".

6. "Person" and "taxpayer" shall have the same meaning as defined in section 422.42.

7. "Purchase" means any transfer, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, for a consideration.

8. "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.

9. “Retailer” means and includes every person engaged in the business of selling tangible personal property or services enumerated in section 422.43 for use within the meaning of this chapter. However, 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 those dealers, distributors, supervisors, employers, or persons, the director may regard them and the dealers, distributors, supervisors, employers, or persons as retailers for purposes of this chapter.

10. “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 representative operating within this state under the authority of the retailer or its subsidiary, irrespective of whether that place of business or representative is located here permanently or temporarily, or whether the retailer or subsidiary is admitted to do business within this state pursuant to chapter 490.

11. “Street railways” shall mean and include urban transportation systems.

12. “Tangible personal property” means tangible goods, wares, merchandise, optional service or warranty contracts, except residential service contracts regulated under chapter 523C, 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.

13. “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.

14. “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 any of the following:

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, recov-

ery or return of empty beverage containers subject to chapter 455C.

b. Fuel which is consumed in creating power, heat, or steam for processing or for generating electric current.

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. A retailer’s or building contractor’s sale of manufactured housing for use in this state, whether in the form of tangible personal property or of realty, is a use of that property for the purposes of this chapter.

15. “Vehicles subject to registration” means any vehicle subject to registration pursuant to section 321.18.

16. 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 15 and 16, shall not be subject to tax under this chapter.

99 Acts, ch 188, §17–19
 Subsection 1 amended
 NEW subsections 3 and 4 and former subsections 3–14 renumbered as 5–16
 Subsection 14 amended

423.2 Imposition of tax.

An excise tax is imposed on the use in this state of tangible personal property, including aircraft subject to registration under section 328.20, purchased for use in this state, at the rate of five percent of the purchase price of the property. An excise tax is imposed on the use of manufactured housing in this state at the rate of five percent of the purchase price if the manufactured housing is sold in the form of tangible personal property and at the rate of five percent of the installed purchase price if the manufactured housing is sold in the form of realty. An excise tax is imposed on the use of leased vehicles at the rate of five percent of the amount otherwise subject to tax as calculated pursuant to section 423.7A. The excise tax is imposed upon every person using the property within this state until the tax has been paid directly to the county treasurer or the state department of transportation, to a retailer, or to the department. An excise tax is imposed on the use in this state of services enumerated in section 422.43 at the rate of five percent. This tax is applicable where services are rendered, furnished, or performed in this state or where the product or result of the service is used in this state. This tax is imposed on every person using the services or the product of the services in this state un-

til the user has paid the tax either to an Iowa use tax permit holder or to the department.

99 Acts, ch 168, §2; 99 Acts, ch 188, §20
See Code editor's note to §10A.202
Section amended

423.4 Exemptions.

The use in this state of the following tangible personal property is hereby specifically exempted from the tax imposed by this chapter:

1. Tangible personal property and enumerated services, the gross receipts from the sale of which are required to be included in the measure of the tax imposed by division IV of chapter 422, if that tax has been paid to the department or paid to the retailer. This exemption does not include vehicles subject to registration or subject only to the issuance of a certificate of title.

2. All articles of tangible personal property brought into the state of Iowa by a nonresident individual thereof for the individual's use or enjoyment while within the state.

3. Services exempt from taxation by provisions of section 422.45.

4. Tangible personal property, the gross receipts from the sale of which are exempted from the retail sales tax by the terms of section 422.45, except subsection 4 and subsection 6 of section 422.45 as it relates to the sale of vehicles subject to registration or subject only to the issuance of a certificate of title and as it relates to aircraft subject to registration under section 328.20.

5. Advertisement and promotional material and matter, seed catalogs, envelopes for same, and other similar material temporarily stored in this state which are acquired outside of Iowa and which, subsequent to being brought into this state, are sent outside of Iowa, either singly or physically attached to other tangible personal property sent outside of Iowa.

6. Tangible personal property used or to be used as railroad rolling stock for transporting persons or property, or as materials or parts therefor.

7. Vehicles, as defined in subsections 41, 65, 71, 85 and 88 of section 321.1, except such vehicles subject to registration which are designed primarily for carrying persons, when purchased for lease and actually leased to a lessee for use outside the state of Iowa and the subsequent sole use in Iowa is in interstate commerce or interstate transportation. This subsection shall be retroactive to January 1, 1973.

8. Tangible personal property which, by means of fabrication, compounding, or manufacturing, become an integral part of vehicles, as defined in subsections 41, 65, 71, 85 and 88 of section 321.1, manufactured for lease and actually leased to a lessee for use outside the state of Iowa and the subsequent sole use in Iowa is in interstate commerce or interstate transportation. Vehicles subject to registration which are designed primarily for carrying

persons are excluded from this subsection. This subsection shall be retroactive to January 1, 1973.

9. Vehicles subject to registration which are transferred from a business or individual conducting a business within this state as a sole proprietorship or partnership to a corporation formed by the sole proprietorship or partnership for the purpose of continuing the business when all of the stock of the corporation so formed is owned by the sole proprietor and the sole proprietor's spouse or by all the partners in the case of a partnership. This exemption is equally available where the vehicles subject to registration are transferred from a corporation to a sole proprietorship or partnership formed by that corporation for the purpose of continuing the business when all of the incidents of ownership are owned by the same person or persons who were stockholders of the corporation.

10. Vehicles registered or operated under chapter 326 and used substantially in interstate commerce, section 423.5 notwithstanding. For purposes of this subsection, "*substantially in interstate commerce*" means that a minimum of twenty-five percent of the miles operated by the vehicle accrues in states other than Iowa. This subsection applies only to vehicles which are registered for a gross weight of thirteen tons or more.

For purposes of this subsection, trailers and semitrailers registered or operated under chapter 326 are deemed to be used substantially in interstate commerce and to be registered for a gross weight of thirteen tons or more.

For the purposes of this subsection, if a vehicle meets the requirement that twenty-five percent of the miles operated accrues in states other than Iowa in each year of the first four-year period of operation, the exemption from use tax shall continue until the vehicle is sold or transferred. If the vehicle is found to have not met the exemption requirements or the exemption was revoked, the value of the vehicle upon which the use tax shall be imposed is the book or market value, whichever is less, at the time the exemption requirements were not met or the exemption was revoked.

11. Mobile homes and manufactured housing the use of which has previously been subject to the tax imposed under this chapter and for which that tax has been paid.

12. Mobile homes to the extent of the portion of the purchase price of the mobile home which is not attributable to the cost of the tangible personal property used in the processing of the mobile home and manufactured housing to the extent of the purchase price or the installed purchase price of the manufactured housing which is not attributable to the cost of the tangible personal property used in the processing of the manufactured housing. 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 proces-

sing of the mobile home is forty percent and the portion of the purchase price or installed purchase price which is not attributable to the cost of the tangible personal property used in the processing of the manufactured housing is forty percent.

13. Tangible personal property used or to be used as a ship, barge, or waterborne vessel which is used or to be used primarily in or for the transportation of property or cargo for hire on the rivers bordering the state or as materials or parts of such ship, barge, or waterborne vessel.

14. Vehicles subject to registration in any state when purchased for rental or registered and titled by a motor vehicle dealer licensed pursuant to chapter 322 for rental use, and held for rental for a period of one hundred twenty days or more and actually rented for periods of sixty days or less by a person regularly engaged in the business of renting vehicles including, but not limited to, motor vehicle dealers licensed pursuant to chapter 322 who rent automobiles to users, if the rental of the vehicles is subject to taxation under chapter 422C.

15. Motor vehicles subject to registration which were registered and titled between July 1, 1982, and July 1, 1992, to a motor vehicle dealer licensed under chapter 322 and which were rented to a user as defined in section 422C.2 if the following occurred:

a. The dealer kept the vehicle on the inventory of vehicles for sale at all times.

b. The vehicle was to be immediately taken from the user of the vehicle when a buyer was found.

c. The user was aware of this situation.

16. Vehicles subject to registration under chapter 321, with a gross vehicle weight rating of less than sixteen thousand pounds, excluding motorcycles and motorized bicycles, when purchased for lease and titled by the lessor licensed pursuant to chapter 321F and actually leased for a period of twelve months or more if the lease of the vehicle is subject to taxation under section 423.7A.

A lessor may maintain the exemption from use tax under this subsection for a qualifying lease that terminates at the conclusion or prior to the contracted expiration date, if the lessor does not use the vehicle for any purpose other than for lease. Once the vehicle is used by the lessor for a purpose other than for lease, the exemption from use tax under this subsection no longer applies and, unless there is an exemption from the use tax, use tax is due on the fair market value of the vehicle determined at the time the lessor uses the vehicle for a purpose other than for lease, payable to the department. If the lessor holds the vehicle exclusively for sale, use tax is due and payable on the purchase price of the vehicle at the time of purchase pursuant to this chapter.

17. Aircraft for use in a scheduled interstate federal aviation administration certificated air carrier operation.

18. Aircraft; tangible personal property permanently affixed or attached as a component part of the aircraft, including but not limited to repair or replacement materials or parts; and all services used for aircraft repair, remodeling, and maintenance services when such services are performed on aircraft, aircraft engines, or aircraft component materials or parts. For the purposes of this exemption, "aircraft" means aircraft used in a scheduled interstate federal aviation administration certified air carrier operation.

19. Tangible personal property permanently affixed or attached as a component part of the aircraft, including but not limited to repair or replacement materials or parts; and all services used for aircraft repair, remodeling, and maintenance services when such services are performed on aircraft, aircraft engines, or aircraft component materials or parts. For the purposes of this exemption, "aircraft" means aircraft used in a nonscheduled interstate federal aviation administration certified air carrier operation operating under 14 C.F.R. ch. 1, pt. 135.

20. Aircraft sold to an aircraft dealer who in turn rents or leases the aircraft if all of the following apply:

a. The aircraft is kept in the inventory of the dealer for sale at all times.

b. The dealer reserves the right to immediately take the aircraft from the renter or lessee when a buyer is found.

c. The renter or lessee is aware that the dealer will immediately take the aircraft when a buyer is found.

If an aircraft exempt under this subsection is used for any purpose other than leasing or renting, or the conditions in paragraphs "a", "b", and "c" are not continuously met, the dealer 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.

99 Acts, ch 168, §3, 4; 99 Acts, ch 188, §21
Subsection 4 amended
Subsections 11 and 12 amended
NEW subsections 17-20

423.6 How collected.

The tax herein imposed shall be collected in the following manner:

1. The tax upon the use of all vehicles subject to registration or subject only to the issuance of a certificate of title or the tax upon the use of manufactured housing shall be collected by the county treasurer or the state department of transportation pursuant to sections 423.7 and 423.7A. The county treasurer shall retain one dollar from each tax payment collected, to be credited to the county general fund.

2. The tax upon the use of all tangible personal property other than that enumerated in subsection 1 hereof, which is sold by a retailer maintaining a

place of business in this state, or by such other retailer as the director shall authorize pursuant to section 423.10, shall be collected by such retailer and remitted to the department, pursuant to the provisions of sections 423.9 to 423.13.

3. The tax upon the use of all tangible personal property not paid pursuant to subsections 1 and 2 hereof shall be paid to the department directly by any person using such property within this state, pursuant to the provisions of section 423.14.

4. The tax on services imposed in section 423.2 shall be collected, remitted, and paid to the department of revenue and finance of this state in the corresponding manner as use tax on tangible personal property is collected, remitted and paid under provisions of this chapter.

99 Acts, ch 188, §22
Subsection 1 amended

423.7 Vehicles subject to registration or only to the issuance of title — manufactured housing.

The tax imposed upon the use of vehicles subject to registration or subject only to the issuance of a certificate of title or imposed upon the use of manufactured housing shall be paid by the owner of the vehicle or of the manufactured housing to the county treasurer or the state department of transportation from whom the registration receipt or certificate of title is obtained. A registration receipt for a vehicle subject to registration or certificate of title shall not be issued until the tax has been paid. The county treasurer or the state department of transportation shall require every applicant for a registration receipt for a vehicle subject to registration or certificate of title to supply information as the county treasurer or the director deems necessary as to the time of purchase, the purchase price, installed purchase price, and other information relative to the purchase of the vehicle or manufactured housing. On or before the tenth day of each month the county treasurer or the state department of transportation shall remit to the department the amount of the taxes collected during the preceding month.

99 Acts, ch 188, §23
Motor vehicles from other states, §423.25
Section amended

423.12 Tax as debt.

The tax herein required to be collected by any retailer pursuant to section 423.9 or 423.10, and any tax collected by any retailer pursuant to said sections, shall constitute a debt owed by the retailer to this state.

An increase or decrease in the excise tax rate in this section shall only be effective on January 1 or July 1, but not sooner than ninety days after enactment of the rate increase or decrease.

99 Acts, ch 156, §21, 23
Unnumbered paragraph 2 is effective January 1, 2000, for state sales and use taxes; 99 Acts, ch 156, §21, 23
NEW unnumbered paragraph 2

423.16 Determination by department.

If any return required by this chapter is not filed, or if any return when filed is incorrect or insufficient, and the maker or person from whom it is due fails to file a corrected or sufficient return within twenty days after the same is required by notice from the department, the department shall have the same power to determine the amount due, as is vested in the department by sections 422.54, 422.55, and 422.57, subject to all of the provisions, and restrictions, and rights to seek judicial review provided in the sections. If a return required by this chapter has been filed, the period of limitation specified in section 422.54, subsection 1, shall apply to the making of a determination by the department of the amount of tax due and to the giving of notice to the taxpayer of such determination. The right to waive the period of limitation as provided in section 422.54, subsection 3, is applicable to this chapter.

99 Acts, ch 156, §22, 23
1999 amendment is effective January 1, 2000, for state sales and use taxes; 99 Acts, ch 156, §22, 23
Section amended

423.18 Offenses — penalties — limitations.

1. In addition to the tax or additional tax, the taxpayer shall pay a penalty as provided in section 421.27. The taxpayer shall also pay interest on the tax or additional tax at the rate in effect under section 421.7, for each month counting each fraction of a month as an entire month, computed from the date the monthly deposit form or return was required to be filed. The penalty and interest shall be paid to the department and disposed of in the same manner as other receipts under this chapter. Unpaid penalties and interest may be collected in the same manner as the tax imposed by this chapter.

2. A person who willfully attempts in any manner to evade a tax imposed by this chapter or the payment of the tax, or a person who makes or causes to be made any false or fraudulent monthly deposit form or return with intent to evade the tax imposed by this chapter or the payment of the tax is guilty of a class "D" felony.

3. A person required to pay tax, or to make, sign or file a monthly deposit form or return, who willfully makes a false or fraudulent monthly deposit form or return, or who willfully fails at the time required by law to pay at least ninety percent of the tax or fails to make, sign or file the monthly deposit form or return, is guilty of a fraudulent practice.

4. A prosecution for an offense specified in this section shall be commenced within six years after its commission.

99 Acts, ch 152, §11, 40
Subsection 4 stricken and former subsection 5 renumbered as 4

423.24 Deposit of revenue — appropriations.

Except as otherwise provided in section 312.2, subsection 14, all revenues derived from the use

tax on motor vehicles, trailers, and motor vehicle accessories and equipment as collected pursuant to sections 423.7 and 423.7A shall be deposited and credited to the road use tax fund and shall be used exclusively for the construction, maintenance, and supervision of public highways.

1. Notwithstanding any provision of this section which provides that all revenues derived from the use tax on motor vehicles, trailers, and motor vehicle accessories and equipment as collected pursuant to section 423.7 and section 423.7A shall be deposited and credited to the road use tax fund, eighty percent of the revenues shall be deposited and credited as follows:

a. Twenty-five percent of all such revenue, up to a maximum of four million two hundred fifty 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 used to support value-added agricultural products and processes as follows:

(1) Ninety-one and one-quarter percent of these moneys shall be deposited in the value-added agricultural products and processes financial assistance fund as created in section 15E.112.

(2) Eight and three-quarters percent of these moneys shall be deposited in the renewable fuels and coproducts fund as created in section 159A.7.

Moneys deposited according to this paragraph "b" are a continuing appropriation for expenditure under sections 15E.112 and 159A.7.

c. Any such revenues remaining shall be credited to the road use tax fund.

2. Notwithstanding any other provision of this section that provides that 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 and credited to the road use tax fund, twenty percent of the revenues shall be credited and deposited as follows: one-half to the road use tax fund and one-half to the primary road fund to be used for the commercial and industrial highway network.

3. All other revenue arising under the operation of this chapter shall be credited to the general fund of the state.

95 Acts, ch 215, §29; 98 Acts, ch 1207, §19; 99 Acts, ch 202, §21
Road use tax fund, §312.1

Subsection 1, paragraph b, will be stricken effective July 1, 2000; 97 Acts, ch 207, §11, 13, 15

Internal reference change applied

Subsection 1, paragraph a, subparagraph (2) repealed and former subparagraph (1) redesignated as unnumbered paragraph 1
Subsection 2 amended

CHAPTER 424

ENVIRONMENTAL PROTECTION CHARGE ON PETROLEUM DIMINUTION

424.10 Failure to file return — incorrect return.

1. As soon as practicable after a return is filed and in any event within five years after the return is filed the department shall examine it, assess and determine the charge due if the return is found to be incorrect, and give notice to the depositor of such assessment and determination as provided in subsection 2. The period for the examination and determination of the correct amount of the charge is unlimited in the case of a false or fraudulent return made with the intent to evade the charge or in the case of a failure to file a return. If the determination that a return is incorrect is the result of an audit of the books and records of the depositor, the charge, or additional charge, if any is found due, shall be assessed and determined and the notice to the depositor shall be given by the department within one year after the completion of the examination of the books and records.

2. If a return required by this chapter is not filed, or if a return when filed is incorrect or insuffi-

cient and the maker fails to file a corrected or sufficient return within twenty days after the return is required by notice from the department, the department shall determine the amount of charge due from information as the department may be able to obtain and, if necessary, may estimate the charge on the basis of external indices or factors. The department shall give notice of the determination to the person liable for the charge. The determination shall fix the charge unless the person against whom it is assessed shall, within sixty days after the date of the notice of the determination, apply to the director for a hearing or unless the taxpayer contests the determination by paying the tax, interest, and penalty and timely filing a claim for refund. At the hearing evidence may be offered to support the determination or to prove that it is incorrect. After the hearing the director shall give notice of the decision to the person liable for the charge.

If a depositor's, receiver's, or other person's challenge relates to the diminution rate, the burden of

proof upon the challenger shall only be satisfied by clear and convincing evidence.

3. If the amount paid is greater than the correct charge, penalty, and interest due, the department shall refund the excess, with interest after sixty days from the date of payment at the rate in effect under section 421.7, pursuant to rules prescribed by the director. However, the director shall not allow a claim for refund that has not been filed with the department within five years after the charge payment upon which a refund is claimed became due, or one year after the charge payment was made, whichever time is later. A determination by the department of the amount of charge, penalty, and interest due, or the amount of refund for any excess amount paid, is final unless the person aggrieved by the determination appeals to the director for a revision of the determination within sixty days from the date of the notice of determination of charge, penalty, and interest due or refund owing. The director shall grant a hearing, and upon hearing the director shall determine the correct charge, penalty, and interest due or refund owing, and notify the appellant of the decision by mail. The decision of the director is final unless the appellant seeks judicial review of the director's decision under section 424.13.

99 Acts, ch 151, §40, 89

1994 amendments to subsection 2 are effective for notices of assessment issued on or after January 1, 1995; 94 Acts, ch 1133, §16
Subsections 2 and 3 amended

424.17 Penalties — offenses — limitation.

1. In addition to the charge or additional charge, the charge payer shall pay a penalty as provided in section 421.27. The charge payer shall also pay interest on the charge or additional charge at the rate in effect under section 421.7 for each month counting each fraction of a month as an entire month, computed from the date the return was required to be filed. The penalty and interest shall be paid to the department and disposed of in the same manner as the charge imposed under this chapter. Unpaid penalties and interest may be enforced in the same manner as the charge imposed by this chapter.

2. A person who willfully attempts to evade a charge imposed by this chapter or the payment of the charge or a person who makes or causes to be made a false or fraudulent return with intent to evade the charge imposed by this chapter or the payment of the charge is guilty of a class "D" felony.

3. The certificate of the director to the effect that a charge has not been paid, that a return has not been filed, or that information has not been supplied pursuant to this chapter, shall be prima facie evidence thereof.

4. A prosecution for an offense specified in this section shall be commenced within six years after its commission.

99 Acts, ch 152, §12, 40

Subsection 4 stricken and former subsection 5 renumbered as 4

CHAPTER 425

HOMESTEAD TAX CREDITS AND REIMBURSEMENT

425.11 Definitions.

For the purpose of this chapter and wherever used in this chapter:

1. The word "*homestead*" shall have the following meaning:

a. The homestead includes the dwelling house which the owner, in good faith, is occupying as a home on July 1 of the year for which the credit is claimed and occupies as a home for at least six months during the calendar year in which the fiscal year begins, except as otherwise provided.

When any person is inducted into active service under the Selective Training and Service Act of the United States or whose voluntary entry into active service results in a credit on the quota of persons required for service under the Selective Training and Service Act, or who, being a member of any component part of the military, naval, or air forces or nurse corps of this state or nation, is called or ordered into active service, such person shall be considered as occupying or living on the homestead during such service and, where equitable or legal title of the homestead is in the spouse of the person who is a member of or is inducted into the armed

services of the United States, the spouse shall be considered as occupying or living on the homestead during such service.

When any person is confined in a nursing home, extended-care facility, or hospital, such person shall be considered as occupying or living on a homestead where such person is the owner of such homestead and such person maintains such homestead and does not lease, rent, or otherwise receive profits from other persons for the use thereof.

b. It may contain one or more contiguous lots or tracts of land with the buildings or other appurtenances thereon habitually, and in good faith, used as a part of the homestead.

c. It must not embrace more than one dwelling house, but where a homestead has more than one dwelling house situated thereon, the credit provided for in this chapter shall apply to the home and buildings used by the owner, but shall not apply to any other dwelling house and buildings appurtenant.

d. The words "*dwelling house*" shall embrace any building occupied wholly or in part by the claimant as a home.

2. The word “owner” shall mean the person who holds the fee simple title to the homestead, and in addition shall mean the person occupying as a surviving spouse or the person occupying under a contract of purchase which contract has been recorded in the office of the county recorder of the county in which the property is located, or the person occupying the homestead under devise or by operation of the inheritance laws where the whole interest passes or where the divided interest is shared only by persons related or formerly related to each other by blood, marriage or adoption, or the person occupying the homestead is a shareholder of a family farm corporation that owns the property, or the person occupying the homestead under a deed which conveys a divided interest where the divided interest is shared only by persons related or formerly related to each other by blood, marriage or adoption or where the person occupying the homestead holds a life estate with the reversion interest held by a nonprofit corporation organized under chapter 504A, provided that the holder of the life estate is liable for and pays property tax on the homestead or where the person occupying the homestead holds an interest in a horizontal property regime under chapter 499B, regardless of whether the underlying land committed to the horizontal property regime is in fee or as a leasehold interest, provided that the holder of the interest in the horizontal property regime is liable for and pays property tax on the homestead. For the purpose of this chapter the word “owner” shall be construed to mean a bona fide owner and not one for the purpose only of availing the person of the benefits of this chapter. In order to qualify for the homestead tax credit, evidence of ownership shall be on file in the office of the clerk of the district court or recorded in the office of the county recorder at the time the owner files with the assessor a verified statement of the homestead claimed by the owner as provided in section 425.2.

3. The words “assessed valuation” shall mean the taxable valuation of the homestead as fixed by the assessor, or by the board of review, under the provisions of section 441.21, without deducting therefrom the exemptions authorized in section 426A.11.

Where not in conflict with the terms of the definitions above set out, the provisions of chapter 561 shall control.

Section not amended, internal reference change applied

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 or who is totally disabled and was totally disabled on or before December 31 of the 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 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. In the case of a claim for property taxes due, the claimant shall have occupied the property during any part of the fiscal year beginning July 1 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 each file a claim based upon each person’s income and rent constituting property taxes paid or property taxes due.

3. “Gross rent” means rental paid at arm’s length 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. 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.

4. “Homestead” means the dwelling owned or rented and actually used as a home by the claimant during the period specified in subsection 2, 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 and the claimant's spouse if 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 person living with the claimant 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 nongovernmental 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-three 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.

99 Acts, ch 152, §13, 40
Subsections 2 and 4-6 amended

425.19 Claim and credit or reimbursement.

Subject to the limitations provided in this division, a claimant may annually claim a credit for property taxes due during the fiscal year next following the base year or claim a reimbursement for rent constituting property taxes paid in the base year. The amount of the credit for property taxes due for a homestead shall be paid on June 15 of each year by the director to the county treasurer who shall credit the money received against the amount of the property taxes due and payable on the homestead of the claimant and the amount of

the reimbursement for rent constituting property taxes paid shall be paid to the claimant from the state general fund on or before December 31 of each year.

99 Acts, ch 152, §14, 40
Section amended

425.21 Satisfaction of outstanding tax liabilities.

The amount of any claim for credit or reimbursement payable under this division may be applied by the department of revenue and finance against any tax liability, delinquent accounts, charges, loans, fees, or other indebtedness due the state or state agency that have formal agreements with the department for central debt collection, outstanding on the books of the department against the claimant, or against a spouse who was a member of the claimant's household in the base year.

99 Acts, ch 152, §15, 40
Section amended

425.28 Waiver of confidentiality.

A claimant shall expressly waive any right to confidentiality relating to all income tax information obtainable through the department of revenue and finance, including all information covered by sections 422.20 and 422.72. This waiver shall apply to information available to the county treasurer

who shall hold the information confidential except that it may be used as evidence to disallow the credit.

The department of revenue and finance may release information pertaining to a person's eligibility or claim for or receipt of rent reimbursement to an employee of the department of inspections and appeals in the employee's official conduct of an audit or investigation.

99 Acts, ch 139, §1
NEW unnumbered paragraph 2

425.29 False claim — penalty.

A person who makes a false affidavit for the purpose of obtaining credit or reimbursement provided for in this division or who knowingly receives the credit or reimbursement without being legally entitled to it or makes claim for the credit or reimbursement in more than one county in the state without being legally entitled to it is guilty of a fraudulent practice. The claim for credit or reimbursement shall be disallowed in full and if the claim has been paid the amount shall be recovered in the manner provided in section 425.27. The director of revenue and finance shall send a notice of disallowance of the claim.

99 Acts, ch 152, §16, 40
Section amended

CHAPTER 426A

MILITARY SERVICE TAX CREDIT AND EXEMPTIONS

For requirements relating to state funding of military service property tax credits and exemptions, see §25B.7

426A.2 Military service tax credit.

The moneys shall be apportioned each year so as to replace all or a portion of the tax which would be due on property eligible for military service tax exemption in the state, if the property were subject to taxation, the amount of the credit to be not more than six dollars and ninety-two cents per thousand dollars of assessed value of property which would be subject to the tax, except for the military service tax exemption.

99 Acts, ch 180, §23, 24

1999 amendment applies to the military service property tax exemption claims allowed on or after January 1, 2000; 99 Acts, ch 180, §24
Section amended

426A.11 Military service — exemptions.

The following exemptions from taxation shall be allowed:

1. The property, not to exceed two thousand seven hundred seventy-eight dollars in taxable value of any veteran, as defined in section 35.1, of the First World War.
2. The property, not to exceed one thousand eight hundred fifty-two dollars in taxable value of an honorably separated, retired, furloughed to a re-

serve, placed on inactive status, or discharged veteran, as defined in section 35.1.

3. Where the word "veteran" appears in this chapter, it includes, without limitation, the members of the United States air force and the United States merchant marine.

4. For the purpose of determining a military tax exemption under this section, property includes a mobile home as defined in section 435.1.

99 Acts, ch 151, §88, 89; 99 Acts, ch 180, §18
Cooperative apartments, see §499A.14

For requirements relating to state funding of military service exemptions, see §25B.7

Section transferred from §427.3 pursuant to directive in 99 Acts, ch 151, §88, 89

Subsections 1–3 amended

426A.12 Exemptions to relatives.

In case any person in the foregoing classifications does not claim the exemption from taxation, it shall be allowed in the name of the person to the same extent on the property of any one of the following persons in the order named:

1. The spouse, or surviving spouse remaining unmarried, of a veteran, as defined in section 35.1,

where they are living together or were living together at the time of the death of the veteran.

2. The parent whose spouse is deceased and who remains unmarried, of a veteran, as defined in section 35.1, whether living or deceased, where the parent is, or was at the time of death of the veteran, dependent on the veteran for support.

3. The minor child, or children owning property as tenants in common, of a deceased veteran, as defined in section 35.1.

No more than one tax exemption shall be allowed under this section or section 426A.11 in the name of a veteran, as defined in section 35.1.

99 Acts, ch 151, §88, 89; 99 Acts, ch 180, §19

Section transferred from §427.4 pursuant to directive in 99 Acts, ch 151, §88, 89

Section amended

426A.13 Claim for military tax exemption — discharge recorded.

A person named in section 426A.11, who is a resident of and domiciled in the state of Iowa, shall receive a reduction equal to the exemption, to be made from any property owned by the person or owned by a family farm corporation of which the person is a shareholder and who occupies the property and so designated by proceeding as provided in the section. To be eligible to receive the exemption the person claiming it shall have recorded in the office of the county recorder of the county in which is located the property designated for the exemption, evidence of property ownership by that person or the family farm corporation of which the person is a shareholder and the military certificate of satisfactory service, order transferring to inactive status, reserve, retirement, order of separation from service, honorable discharge or a copy of any of these documents of the person claiming or through whom is claimed the exemption.

The person shall file with the appropriate assessor on forms obtained from the assessor the claim for exemption for the year for which the person is first claiming the exemption. The claim shall be filed not later than July 1 of the year for which the person is claiming the exemption. The claim shall set out the fact that the person is a resident of and domiciled in the state of Iowa, and a person within the terms of section 426A.11, and shall give the volume and page on which the certificate of satisfactory service, order of separation, retirement, furlough to reserve, inactive status, or honorable discharge or certified copy thereof is recorded in the office of the county recorder, and may include the designation of the property from which the exemption is to be made, and shall further state that the claimant is the equitable or legal owner of the property designated or if the property is owned by a family farm corporation, that the person is a shareholder of that corporation and that the person occupies the property.

Upon the filing and allowance of the claim, the claim shall be allowed to that person for successive years without further filing. Provided, that not-

withstanding the filing or having on file a claim for exemption, the person or person's spouse is the legal or equitable owner of the property on July 1 of the year for which the claim is allowed. When the property is sold or transferred or the person wishes to designate different property for the exemption, a person who wishes to receive the exemption shall refile for the exemption. A person who sells or transfers property which is designated for the exemption or the personal representative of a deceased person who owned such property shall provide written notice to the assessor that the property is no longer legally or equitably owned by the former claimant.

In case the owner of the property is in active service in any of the armed forces of the United States or of this state, including the nurses corps of the state or of the United States, or is sixty-five years of age or older, or is disabled, the claim may be filed by any member of the owner's family, by the owner's guardian or conservator, or by any other person who may represent the owner under power of attorney. In all cases where the owner of the property is married, the spouse may file the claim for exemption. A person may not claim an exemption in more than one county of the state, and if a designation is not made the exemption shall apply to the homestead, if any.

99 Acts, ch 151, §88, 89

Section transferred from §427.5 pursuant to directive in 99 Acts, ch 151, §88, 89

426A.14 Allowance — continuing effectiveness.

The assessor shall retain a permanent file of current military service tax exemption claims filed in the assessor's office. The assessor shall file a notice of transfer of property for which a claim is filed when notice is received from the office of the county recorder, from the person who sold or transferred the property, or from the personal representative of a deceased claimant.

The county recorder shall give notice to the assessor of each transfer of title filed in the recorder's office. The notice shall describe the property transferred, the name of the person transferring the title to the property, and the name of the person to whom title to the property has been transferred.

Not later than July 6 of each year, the assessor shall remit the claims and designations of property to the county auditor with the assessor's recommendation for allowance or disallowance. If the assessor recommends disallowance of a claim, the assessor shall submit the reasons for the recommendation, in writing, to the county auditor.

The county auditor shall forward the claims to the board of supervisors. The board shall allow or disallow the claims. If the board disallows a claim, it shall send written notice, by mail, to the claimant at the claimant's last known address. The notice shall state the reasons for disallowing the claim for the exemption. The board is not required to send

notice that a claim is disallowed if the claimant voluntarily withdraws the claim.

Any person whose claim is denied under the provisions of this chapter may appeal from the action of the board of supervisors in the district court of the county in which said claimed military service tax exemption is situated by giving written notice of such appeal to the county auditor of said county within twenty days from the date of mailing of notice of such action by the board of supervisors.

Upon adoption of a resolution by the county board of supervisors, any person may request, in writing, from the appropriate assessor forms for the filing for a military service tax exemption. The person may complete the form, which shall include a statement claiming the military service tax exemption and designating the property upon which the tax exemption is claimed, and mail or return it

to the appropriate assessor. The signature of the claimant on the claim shall be considered the claimant's acknowledgment that all statements and facts entered on the form are correct to the best of the claimant's knowledge.

99 Acts, ch 151, §88, 89
Section transferred from §427.6 pursuant to directive in 99 Acts, ch 151, §88, 89

426A.15 Penalty.

Any person making a false affidavit for the purpose of obtaining the exemption provided for in sections 426A.11 to 426A.14 or who knowingly receives such exemption without being legally entitled thereto, or who makes claim for exemption in more than one county in the state shall be guilty of a fraudulent practice.

99 Acts, ch 151, §88, 89
Section transferred from §427.7 pursuant to directive in 99 Acts, ch 151, §88, 89

CHAPTER 427

PROPERTY EXEMPT AND TAXABLE

427.1 Exemptions.

The following classes of property shall not be taxed:

1. *Federal and state property.* The property of the United States and this state, including state university, university of science and technology, and school lands. The exemption herein provided shall not include any real property subject to taxation under any federal statute applicable thereto, but such exemption shall extend to and include all machinery and equipment owned exclusively by the United States or any corporate agency or instrumentality thereof without regard to the manner of the affixation of such machinery and equipment to the land or building upon or in which such property is located, until such time as the Congress of the United States shall expressly authorize the taxation of such machinery and equipment.

2. *Municipal and military property.* The property of a county, township, city, school corporation, levee district, drainage district or military company of the state of Iowa, when devoted to public use and not held for pecuniary profit, except property of a municipally owned electric utility held under joint ownership and property of an electric power facility financed under chapter 28F which shall be subject to taxation under chapter 437A and facilities of a municipal utility that are used for the provision of local exchange services pursuant to chapter 476, but only to the extent such facilities are used to provide such services, which shall be subject to taxation under chapter 433, except that section 433.11 shall not apply. 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, con-

servatory, 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 company buildings and grounds.* The publicly owned buildings and grounds used exclusively for keeping fire engines and implements for extinguishing fires and for meetings of fire companies.

5. *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.

6. *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.

7. *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.

8. *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.

9. *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 lo-

cated on the campus grounds and used for student union purposes may serve food and beverages without affecting its exemption received pursuant to subsection 8 or this subsection.

10. *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.

11. *Agricultural produce.* Growing agricultural and horticultural crops except commercial orchards and vineyards.

12. *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.

13. *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.

14. *Statement of objects and uses filed.* A society or organization claiming an exemption under subsection 5 or subsection 8 shall file with the assessor not later than April 15 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.

15. *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.

16. *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 taxpayer or taxing district applicant and 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 shall hold a hearing prior to issuing any order for revocation. An order made by the director of revenue and finance revoking or modifying an exemption shall be applicable to the tax year commencing with the tax year in which the application is made to the director of revenue and finance. An order made by the director of revenue and finance revoking or modifying an exemption is subject to judicial review in accordance with chapter 17A, 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.

17. *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.

18. *Assessed value of exempt property.* Each county and city assessor shall determine the assessment value that would be assigned to the property if it were taxable and value all tax exempt property within the assessor's jurisdiction. A summary report of tax exempt property shall be filed with the director of revenue and finance and the local board of review on or before April 16 of each year

on forms prescribed by the director of revenue and finance.

19. *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.

20. *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.

21. *Low-rent housing.* The property owned and operated by a nonprofit organization providing low-rent housing for persons who are elderly and persons with physical and mental disabilities. 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 subsection 14.

22. *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 commis-

sioners 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 exemption because of the existence upon the property of an abandoned building or structure which is not used for economic gain. If the real property is located within a city, the approval of the governing body must be obtained before the real property is eligible for an exemption. For purposes of this subsection:

a. *"Open prairies"* includes hillsides and gully areas which have a permanent grass cover but does not include native prairies meeting the criteria of the natural resource commission.

b. *"Forest cover"* means land which is predominantly wooded.

c. *"Recreational lake"* means a body of water, which is not a river or stream, owned solely by a nonprofit 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.

23. *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.

24. *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 not later than February 1 of the assessment year for which the exemption is requested. The department of natural resources may subsequently withdraw certification of the designated land if it fails to meet the established standards for a wild-

life habitat and the assessor shall be given written notice of the decertification.

25. *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.

26. *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.

27. *Speculative shell buildings of certain organizations.* New construction of shell buildings by community development organizations, not-for-profit cooperative associations under chapter 499, or for-profit entities for speculative purposes or the portion of the value added to buildings being reconstructed or renovated by community development organizations, not-for-profit cooperative associations under chapter 499, 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, not-for-profit cooperative associations under chapter 499, or for-profit entities 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 not-for-profit cooperative association under chapter 499 or a for-profit entity if the building is used by the cooperative association or for-profit entity, or a subsidiary or majority owners thereof 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 multicomunity 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, not-for-profit cooperative associations under chapter 499, 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, a not-for-profit cooperative association under chapter 499, 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.

28. *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.

29. *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.

30. *Mobile home park storm shelter.* A structure constructed as a storm shelter at a mobile home park as defined in section 435.1. An application for this exemption shall be filed with the assessing authority not later than April fifteenth 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 storm shelter to be exempted. If the storm shelter structure is used exclusively as a storm shelter, all of the structure's assessed value shall be exempt from taxation. If the storm shelter structure is not used exclusively as a storm shelter, the storm shelter structure shall be assessed for taxation at seventy-five percent of its value as commercial property.

99 Acts, ch 63, §5, 8; 99 Acts, ch 151, §41, 42, 89; 99 Acts, ch 152, §17, 40; 99 Acts, ch 186, §3-5; 99 Acts, ch 208, §56

1999 amendment to subsection 2 applies retroactively to July 1, 1993; 99 Acts, ch 63, §8

Subsection 30 applies to property tax assessment years beginning on or after January 1, 2000; 99 Acts, ch 186, §4

Subsection 2 amended

Subsection 14, unnumbered paragraph 1 amended

Subsections 16 and 24 amended

NEW subsection 30

427.3 Military service — exemptions.
Transferred to § 426A.11; 99 Acts, ch 151, § 88, 89.

427.4 Exemptions to relatives. Transferred to § 426A.12; 99 Acts, ch 151, § 88, 89.

427.5 Claim for military tax exemption — discharge recorded. Transferred to § 426A.13; 99 Acts, ch 151, § 88, 89.

427.6 Allowance — continuing effectiveness. Transferred to § 426A.14; 99 Acts, ch 151, § 88, 89.

427.7 Penalty. Transferred to § 426A.15; 99 Acts, ch 151, § 88, 89.

CHAPTER 427A

PERSONAL PROPERTY TAX REPLACEMENT

427A.12 Replacement fund.

1. A personal property tax replacement fund is established as a permanent fund in the office of the treasurer of state, for the purpose of reimbursing the taxing districts for their loss of revenue from personal property taxes due to the provisions of this chapter, determined as provided in this section.

2. On or before January 15, 1974, the county auditor of each county shall prepare a statement listing for each taxing district in the county:

a. The total assessed value of all personal property assessed for taxation as of January 1, 1973, excluding livestock but including other personal property eligible for tax credits granted by this chapter.

b. The millage rate of each taxing district levied in 1972 and payable in 1973.

c. The personal property tax replacement base for each taxing district, which shall be equal to the amount determined pursuant to paragraph “*a*” of this subsection multiplied by the millage rate specified in paragraph “*b*”.

3. The county auditor shall certify and forward one copy each of the statement to the state comptroller and to the director of revenue not later than January 15, 1974. The director of revenue shall make any necessary corrections and certify to the state comptroller the amount of the personal property tax replacement base for each taxing district in the state, determined pursuant to subsection 2.

4. The personal property tax replacement base for each taxing district is permanent and shall not be adjusted, except that the department of management shall make any necessary corrections and shall make appropriate adjustments to reflect mergers, annexations, and other changes in taxing districts or their boundaries.

5. For each state fiscal year ending with or before the year in which the ninth increase in the additional personal property tax credit under this division becomes effective, each taxing district shall be reimbursed from the personal property tax replacement fund in an amount equal to its personal property tax replacement base multiplied by a

fraction the numerator of which is the total assessed value of all personal property, excluding livestock, in the taxing district, on which taxes are not payable during the fiscal year because of the various tax credits granted by this chapter, and the denominator of which is the total assessed value of all personal property in the taxing district, excluding livestock but including other personal property eligible for tax credits granted by this chapter. The county auditor shall certify and forward to the director of the department of management and the director of revenue and finance, at the times and in the form directed by the director of the department of management, any information needed for the purposes of this subsection. The director of the department of management shall make any necessary corrections and certify the appropriate information to the director of revenue and finance.

6. For each fiscal year the amount due each taxing district shall be paid in the form of warrants payable to the respective county treasurers by the director of revenue and finance on July 15 and May 15 of that fiscal year, taking into consideration the relative budget and cash position of the state resources. The July 15 payment shall be equal to the amount paid on May 15 of the preceding fiscal year and the payments received shall be an account receivable for each taxing district for the preceding fiscal year. The May 15 payment is equal to one-half of the amount of the additional personal property tax credit payable for the fiscal year. The county treasurer shall pay the proceeds to the various taxing districts in the county.

7. It is the intent of the general assembly that the amounts appropriated by this division shall be sufficient to pay in full the amounts due to all taxing districts. If, for any fiscal year the amount appropriated to the personal property tax replacement fund is insufficient to pay in full the amounts due to all taxing districts, then the amount of each payment shall be reduced by the same percentage, so that the aggregate payments to all taxing districts shall be equal to the amount appropriated for such payments.

99 Acts, ch 152, §18, 40
Subsection 6 amended

427A.14 Computing debt limitations.

Repealed by 99 Acts, ch 152, § 39, 40.

CHAPTER 428

LISTING PROPERTY FOR TAXATION

428.1 Listing of property.

Every person shall list for the assessor all property subject to taxation in the state, of which the person is the owner, or has the control or management, including but not limited to the following:

1. The property of one under disability, by the person having charge thereof.
2. The property of a married person, by either party.
3. The property of a beneficiary for whom the property is held in trust, by the trustee.
4. The property of a body corporate, company, society or partnership, by its principal accountant, officer, agent, or partner, as the assessor may demand.
5. Property under mortgage or lease is to be listed by and taxed to the mortgagor or lessor, unless listed by the mortgagee or lessee.

99 Acts, ch 151, §43, 89
Unnumbered paragraph 1 amended

428.9 Definition of owner. Repealed by 99 Acts, ch 114, § 54.

428.11 Business in different districts. Repealed by 99 Acts, ch 114, § 54.

428.13 How assessment made. Repealed by 99 Acts, ch 114, § 54.

428.14 Stipulation for payment. Repealed by 99 Acts, ch 114, § 54.

428.15 Partners. Repealed by 99 Acts, ch 114, § 54.

428.34 Real estate of corporations. Repealed by 99 Acts, ch 114, § 54.

428.36 Listing property of financial institutions. Repealed by 99 Acts, ch 114, § 54.

CHAPTER 428A

REAL ESTATE TRANSFER TAX

428A.1 Amount of tax on transfers — declaration of value.

There is imposed on each deed, instrument, or writing by which any lands, tenements, or other realty in this state are granted, assigned, transferred, or otherwise conveyed, a tax determined in the following manner: When there is no consideration or when the deed, instrument, or writing is executed and tendered for recording as an instrument corrective of title, and so states, there is no tax. When there is consideration and the actual market value of the real property transferred is in excess of five hundred dollars, the tax is eighty cents for each five hundred dollars or fractional part of five hundred dollars in excess of five hundred dollars. The term “*consideration*”, as used in this chapter, means the full amount of the actual sale price of the real property involved, paid or to be paid, including the amount of an encumbrance or lien on the property, if assumed by the grantee. It is presumed that the sale price so stated includes the value of all personal property transferred as part of the sale unless the dollar value of personal property is stated on the instrument of conveyance. When

the dollar value of the personal property included in the sale is so stated, it shall be deducted from the consideration shown on the instrument for the purpose of determining the tax.

When each deed, instrument, or writing by which any real property in this state is granted, assigned, transferred, or otherwise conveyed is presented for recording to the county recorder, a declaration of value signed by at least one of the sellers or one of the buyers or their agents shall be submitted to the county recorder. However, if the deed, instrument, or writing contains multiple parcels some of which are located in more than one county, separate declarations of value shall be submitted on the parcels located in each county and submitted to the county recorder of that county when paying the tax as provided in section 428A.5. A declaration of value is not required for those instruments described in section 428A.2, subsections 2 to 5, 7 to 13, and 16 to 21, or described in section 428A.2, subsection 6, except in the case of a federal agency or instrumentality, or if a transfer is the result of acquisition of lands, whether by contract or

condemnation, for public purposes through an exercise of the power of eminent domain.

The declaration of value shall state the full consideration paid for the real property transferred. If agricultural land, as defined in section 9H.1, is purchased by a corporation, limited partnership, trust, alien or nonresident alien, the declaration of value shall include the name and address of the buyer, the name and address of the seller, a legal description of the agricultural land, and identify the buyer as a corporation, limited partnership, trust, alien, or nonresident alien. The county recorder shall not record the declaration of value, but shall enter on the declaration of value information the director of revenue and finance requires for the production of the sales/assessment ratio study and transmit all declarations of value to the city or county assessor in whose jurisdiction the property is located. The city or county assessor shall enter on the declaration of value the information the director of revenue and finance requires for the production of the sales/assessment ratio study and transmit one copy of each declaration of value to the director of revenue and finance, at times as directed by the director of revenue and finance. The assessor shall

retain one copy of each declaration of value for three years from December 31 of the year in which the transfer of realty for which the declaration was filed took place. The director of revenue and finance shall, upon receipt of the information required to be filed under this chapter by the city or county assessor, send to the office of the secretary of state that part of the declaration of value which identifies a corporation, limited partnership, trust, alien, or nonresident alien as a purchaser of agricultural land as defined in section 9H.1.

99 Acts, ch 175, §1
Unnumbered paragraph 2 amended

428A.5 Evidence of payment.

The amount of tax imposed by this chapter shall be paid to the county recorder in the county where the real property is located and the amount received and the initials of the county recorder shall appear on the face of the document or instrument. The department of revenue and finance shall provide each county recorder with a device to be used by the recorder to evidence this information on the document or instrument.

99 Acts, ch 175, §2
Section amended

CHAPTER 429

NOTIFICATION OF TAXPAYERS

429.2 Appeal.

1. Notwithstanding the provisions of chapter 17A, the taxpayer shall have thirty days from the date of the notice of assessment to appeal the assessment to the state board of tax review. Thereafter, the proceedings before the state board of tax review shall conform to the provisions of subsection 2, section 421.1, subsection 4, and chapter 17A.

2. The following rules shall apply to the appeal proceedings in addition to those stated in section 421.1, subsection 4, and chapter 17A.

a. The department's assessment shall be presumed correct and the burden of proof shall be on the taxpayer with respect to all issues raised on appeal, including any challenge of the director's valuation.

b. The burden of proof must be carried by a preponderance of the evidence.

c. The board shall consider all evidence and witnesses offered by the taxpayer and the department, including, but not limited to, evidence relating to the proper valuation of the property involved.

d. The board shall make an independent determination of the value of the property based solely upon its review of the evidence presented.

e. Upon the request of a party the board shall set the case for hearing within one year of the date of the request, unless for good cause shown, by application and ruling thereon after notice and not ex parte, the hearing date is continued by the board.

99 Acts, ch 151, §44, 89
Subsection 1 amended

CHAPTER 432

INSURANCE COMPANIES TAX

432.13 Premium tax exemption — HAWK-I program — state employee benefits.

Premiums collected by participating insurers under chapter 514I are exempt from premium tax.

Premiums received for benefits acquired by the department of personnel on behalf of state em-

ployees pursuant to section 19A.1, subsection 2, are exempt from premium tax.

99 Acts, ch 200, §19, 23
Unnumbered paragraph 2 applies retroactively to January 1, 1999; 99 Acts, ch 200, §19, 23
NEW unnumbered paragraph 2

CHAPTER 433

TELEGRAPH AND TELEPHONE COMPANIES TAX

433.12 “Company” defined.

“Company” as used in this chapter means any person, copartnership, association, corporation, or syndicate that owns or operates, or is engaged in operating, any telegraph or telephone line, whether formed or organized under the laws of this state

or elsewhere. “Company” includes a city that owns or operates a municipal utility providing local exchange services pursuant to chapter 476.

99 Acts, ch 63, §6, 8
1999 amendment applies retroactively to July 1, 1993; 99 Acts, ch 63, §8
Section amended

CHAPTER 435

TAX ON HOMES IN MOBILE HOME PARKS

435.22 Annual tax — credit.

The owner of each mobile home or manufactured home located within a mobile home park shall pay to the county treasurer an annual tax. However, when the owner is any educational institution and the home is used solely for student housing or when the owner is the state of Iowa or a subdivision of the state, the owner shall be exempt from the tax. The annual tax shall be computed as follows:

1. Multiply the number of square feet of floor space each home contains when parked and in use by twenty cents. In computing floor space, the exterior measurements of the home shall be used as shown on the certificate of title, but not including any area occupied by a hitching device.

2. If the owner of the home is an Iowa resident, has attained the age of twenty-three years on or before December 31 of the base year, and has an income when included with that of a spouse which is less than eight thousand five hundred dollars per year, the annual tax shall not be imposed on the home. If the income is eight thousand five hundred dollars or more but less than sixteen thousand five hundred dollars, the annual tax shall be computed as follows:

If the Household Income is:	Annual Tax Per Square Foot:
\$ 8,500 — 9,499.99	3.0 cents
9,500 — 10,499.99	6.0
10,500 — 12,499.99	10.0
12,500 — 14,499.99	13.0
14,500 — 16,499.99	15.0

For purposes of this subsection “income” means income as defined in section 425.17, subsection 7, and “base year” means the calendar year preceding the year in which the claim for a reduced rate of tax is filed. The home reduced rate of tax shall only be allowed on the home in which the claimant is residing at the time the claim for a reduced rate of tax is filed or was residing at the time of the claimant’s death in the case of a claim filed on behalf of a de-

ceased claimant by the claimant’s legal guardian, spouse, or attorney, or by the executor or administrator of the claimant’s estate.

Beginning with the 1998 base year, the income dollar amounts set forth in this subsection shall be multiplied by the cumulative adjustment factor for that base year as determined in section 425.23, subsection 4.

3. The amount thus computed shall be the annual tax for all homes, except as follows:

a. For the sixth through ninth years after the year of manufacture the annual tax is ninety percent of the tax computed according to subsection 1 or 2 of this section, whichever is applicable.

b. For all homes ten or more years after the year of manufacture the annual tax is eighty percent of the tax computed according to subsection 1 or 2 of this section, whichever is applicable.

4. The tax shall be figured to the nearest even whole dollar.

5. A claim for credit for mobile home tax due shall not be paid or allowed unless the claim is actually filed with the county treasurer between January 1 and June 1, both dates inclusive, immediately preceding the fiscal year during which the home taxes are due. However, in case of sickness, absence, or other disability of the claimant, or if in the judgment of the county treasurer good cause exists, the county treasurer may extend the time for filing a claim for credit through September 30 of the same calendar year. The county treasurer shall certify to the director of revenue and finance on or before November 15 each year the total dollar amount due for claims allowed.

The forms for filing the claim shall be provided by the department of revenue and finance. The forms shall require information as determined by the department.

In case of sickness, absence, or other disability of the claimant or if, in the judgment of the director of revenue and finance, good cause exists and the claimant requests an extension, the director may extend the time for filing a claim for credit or reim-

bursment. However, any further time granted shall not extend beyond December 31 of the year in which the claim was required to be filed. Claims filed as a result of this paragraph shall be filed with the director who shall provide for the reimbursement of the claim to the claimant.

The director of revenue and finance shall certify the amount due to each county, which amount shall be the dollar amount which will not be collected due to the granting of the reduced tax rate under subsection 2.

The amounts due each county shall be paid by the department of revenue and finance on December 15 of each year, drawn upon warrants payable to the respective county treasurers. The county treasurer in each county shall apportion the payment in accordance with section 435.25.

There is appropriated annually from the general fund of the state to the department of revenue and finance an amount sufficient to carry out this subsection.

99 Acts, ch 152, §19, 20, 40
Subsection 2, unnumbered paragraph 2 amended
Subsection 5, unnumbered paragraph 1 amended

435.24 Collection of tax.

1. The annual tax is due and payable to the county treasurer on or after July 1 in each fiscal year and is collectible in the same manner and at the same time as ordinary taxes as provided in sections 445.36, 445.37, and 445.39. Interest at the rate prescribed by law shall accrue on unpaid taxes. Both installments of taxes may be paid at one time. The September installment represents a tax period beginning July 1 and ending December 31. The March installment represents a tax period beginning January 1 and ending June 30. A mobile home, manufactured home, or modular home* coming into this state from outside the state, put in use from a dealer's inventory, or put in use at any time after July 1 or January 1, and located in a mobile home park, is subject to the taxes prorated for the remaining unexpired months of the tax period, but the purchaser is not required to pay the tax at the time of purchase. Interest attaches the following April 1 for taxes prorated on or after October 1. Interest attaches the following October 1 for taxes prorated on or after April 1. If the taxes are not paid, the county treasurer shall send a statement of delinquent taxes as part of the notice of tax sale as provided in section 446.9. The owner of a home who sells the home between July 1 and December 31 and obtains a tax clearance statement is responsible only for the September tax payment and is not required to pay taxes for subsequent tax periods. If the owner of a home located in a mobile home park sells the home, obtains a tax clearance statement, and obtains a replacement home to be located in a mobile home park, the owner shall not pay taxes under this chapter for the newly acquired home for the same tax period that the owner has paid taxes on the home sold. Interest for delinquent taxes

shall be calculated to the nearest whole dollar. In calculating interest each fraction of a month shall be counted as an entire month.

2. The home owners upon issuance of a certificate of title or upon transporting to a new site shall file the address, township, and school district, of the location where the home is parked with the county treasurer's office. Failure to comply is punishable as set out in section 435.18. When the new location is outside of a mobile home park, the county treasurer shall provide to the assessor a copy of the tax clearance statement for purposes of assessment as real estate on the following January 1.

3. Each mobile home park owner shall notify monthly the county treasurer concerning any home arriving in or departing from the park without a tax clearance statement. The records of the owner shall be open to inspection by a duly authorized representative of any law enforcement agency. Any property owner, manager or tenant shall report to the county treasurer homes parked upon any property owned, managed, or rented by that person.

4. The tax is a lien on the vehicle senior to any other lien upon it except a judgment obtained in an action to dispose of an abandoned home under section 555B.8. The home bearing a current registration issued by any other state and remaining within this state for an accumulated period not to exceed ninety days in any twelve-month period is not subject to Iowa tax. However, when one or more persons occupying a home bearing a foreign registration are employed in this state, there is no exemption from the Iowa tax. This tax is in lieu of all other taxes general or local on a home.

5. Before a home may be moved from its present site by any person, a tax clearance statement in the name of the owner must be obtained from the county treasurer of the county where the present site is located certifying that taxes are not owing under this section for previous years and that the taxes have been paid for the current tax period. When a person moves a home from real property to a dealer's stock or to a mobile home park, as defined in section 435.1, a tax clearance statement shall be applied for, and issued, from the county treasurer of the county where the present site is located. When the home is moved to another county in this state, the county treasurer shall forward a copy of the tax clearance statement to the county treasurer of the county in which the home is being relocated. However, a tax clearance statement is not required for a home in a manufacturer's or dealer's stock which has not been used as a place for human habitation. A tax clearance form is not required to move an abandoned home. A tax clearance form is not required in eviction cases provided the mobile home park owner or manager advises the county treasurer that the tenant is being evicted. If a dealer acquires a home from a person other than a manufacturer, the person shall provide a tax clearance

statement in the name of the owner of record to the dealer. The tax clearance statement shall be provided by the county treasurer in a method prescribed by the department of transportation.

6. *a.* As an alternative to the semiannual or annual payment of taxes, the county treasurer may accept partial payments of current year home taxes. A minimum payment amount shall be established by the treasurer. The treasurer shall transfer amounts from each taxpayer's account to be applied to each semiannual tax installment prior to the delinquency dates specified in section 445.37 and the amounts collected shall be apportioned by the tenth of the month following transfer. If, prior to the due date of each semiannual installment, the account balance is insufficient to fully satisfy the installment, the treasurer shall transfer and apply the entire account balance, leaving an unpaid balance of the installment. Interest shall attach on the unpaid balance in accordance with section 445.39. Unless funds sufficient to fully satisfy the delinquency are received, the treasurer shall collect the unpaid balance as provided in sections 445.3 and 445.4 and chapter 446. Any remaining balance in a taxpayer's account in excess of the amount needed to fully satisfy an installment shall remain in the account to be applied toward the next semiannual installment. Any interest income derived from the account shall be deposited in the county's general fund to cover administrative costs. The treasurer shall send a notice with the tax statement or by separate mail to each taxpayer stating that, upon request to the treasurer, the taxpayer may make partial payments of current year home taxes.

b. Partial payment of taxes which are delinquent may be made to the county treasurer. A minimum payment amount shall be established by the treasurer. The minimum payment must be equal to or exceed the interest, fees, and costs attributed to the oldest delinquent installment of the tax and shall be apportioned in accordance with section 445.57. If the payment does not include the whole of any installment of the delinquent tax, the unpaid tax shall continue to accrue interest pursuant to section 445.39. Partial payment shall not be permitted in lieu of redemption if the property has been sold for taxes under chapter 446 and under any circumstances shall not constitute an extension of the time period for a sale under chapter 446.

7. Current year taxes may be paid at any time regardless of any outstanding prior year delinquent taxes.

99 Acts, ch 83, §7
*See §435.34
Subsection 5 amended

435.26 Conversion to real property.

1. *a.* A mobile home or manufactured home which is located outside a mobile home park shall be converted to real estate by being placed on a permanent foundation and shall be assessed for real estate taxes. A home, after conversion to real estate, is eligible for the homestead tax credit and the military tax exemption as provided in sections 425.2 and 426A.11.

b. If a security interest is noted on the certificate of title, the home owner shall tender to the secured party a mortgage on the real estate upon which the home is to be located in the unpaid amount of the secured debt, and with the same priority as or a higher priority than the secured party's security interest, or shall obtain the written consent of the secured party to the conversion, in which latter case the lien notation on the certificate of title shall suffice to preserve the lienholder's security in the home separate from any interest in the land.

2. After complying with subsection 1, the owner shall notify the assessor who shall inspect the new premises for compliance. If a security interest is noted on the certificate of title, the assessor shall require an affidavit, as defined in section 622.85, from the home owner, declaring that the owner has complied with subsection 1, paragraph "b", and setting forth the method of compliance.

a. If compliance with subsection 1, paragraph "b", has been accomplished by the secured party accepting the tender of a mortgage, the assessor shall collect the home vehicle title and enter the property upon the tax rolls.

b. If compliance with subsection 1, paragraph "b", has been accomplished by the secured party consenting to the conversion without accepting a mortgage, the secured party shall retain the home vehicle title and the assessor shall note the conversion on the assessor's records and enter the property upon the tax rolls. So long as a security interest is noted on the certificate of title, the title to the home will not be merged with title to the land, and the sale or foreclosure of an interest in the land shall not affect title to the home or any security interest in the home.

3. When the property is entered on the tax rolls, the assessor shall also enter on the tax rolls the title number last assigned to the mobile home or manufactured home and the manufacturer's identification number.

99 Acts, ch 114, §26
Internal reference change applied
Subsection 3 amended

CHAPTER 437A

TAXES ON ELECTRICITY AND NATURAL GAS PROVIDERS

Chapter is effective January 1, 1999, and applies to property tax assessment years and replacement tax years beginning on or after that date; section 437A.15, subsection 7, became effective May 14, 1998; 98 Acts, ch 1194, §40

Special reporting requirements for certain electricity and natural gas providers regarding information necessary to compute tax rates; 98 Acts, ch 1194, §38, 40; 99 Acts, ch 152, §38, 40

437A.3 Definitions.

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

1. *“Assessed value”* means the base year assessed value, as adjusted by section 437A.19, subsection 2. *“Base year assessed value”*, for a taxpayer other than an electric company, natural gas company, or electric cooperative, means the value attributable to property identified in section 427A.1, subsection 1, paragraph “h”, certified by the department of revenue and finance to the county auditors for the assessment date of January 1, 1997, and the value attributable to property identified in section 427A.1 and section 427B.17, subsection 5, as certified by the local assessors to the county auditors for the assessment date of January 1, 1997.

For taxpayers that are electric companies, natural gas companies, and electric cooperatives, *“base year assessed value”* means the average of the total of these values for each taxpayer for the assessment dates of January 1, 1993, through January 1, 1997, allocated among taxing districts in proportion to the allocation of the taxpayer’s January 1, 1998, assessed value among taxing districts. *“Base year assessed value”* does not include value attributable to steam-operating property.

2. *“Centrally assessed property tax”* means property tax imposed with respect to the value of property determined by the director pursuant to section 427.1, subsection 2, section 428.29, chapter 437, and chapter 438, Code 1997, and allocated to electric service and natural gas service. For purposes of this subsection, *“natural gas service”* means such service provided by natural gas pipelines permitted pursuant to chapter 479.

3. *“Consumer”* means an end user of electricity or natural gas used or consumed within this state. *“Consumer”* includes any master-metered facility even though the electricity or natural gas delivered to such facility may ultimately be used by another person. A person to whom electricity or natural gas is delivered by a master-metered facility is not a consumer. A *“master-metered facility”* means any multi-occupancy premises where units are separately rented or owned and where electricity or natural gas is used in centralized heating, cooling, water-heating, or ventilation systems, where individual metering is impractical, where the facility is designated for elderly or handicapped persons and utility costs constitute part of the operating cost and are not apportioned to individual units, or

where submetering or resale of service was permitted prior to 1966.

4. *“Delivery”* means the physical transfer of electricity or natural gas to a consumer. Physical transfer to a consumer occurs when transportation of electricity or natural gas ends and such electricity or natural gas becomes available for use or consumption by a consumer.

5. *“Director”* means the director of revenue and finance.

6. *“Electric company”* means a person engaged primarily in the production, delivery, service, or sales of electric energy whether formed or organized under the laws of this state or elsewhere. *“Electric company”* includes a combination natural gas company and electric company. *“Electric company”* does not include an electric cooperative or a municipal utility.

7. *“Electric competitive service area”* means an electric service area assigned by the utilities board under chapter 476 as of January 1, 1999, including utility property and facilities described in section 476.23, subsection 3, which were owned and served by the electric company, electric cooperative, or municipal utility serving such area on January 1, 1999.

8. *“Electric cooperative”* means an electric utility provider formed or organized as an electric cooperative under the laws of this state or elsewhere. An electric cooperative shall also include an incorporated city utility provider. *“Generation and transmission electric cooperative”* means an electric cooperative which owns both transmission lines and property which is used to generate electricity. *“Distribution electric cooperative”* means an electric cooperative other than a generation and transmission electric cooperative or a municipal electric cooperative association.

9. *“Electric power generating plant”* means a nameplate rated electric power generating plant, which produces electric energy from other forms of energy, including all taxable land, buildings, and equipment used in the production of such electric energy.

10. *“Incorporated city utility provider”* means a corporation with assets worth one million dollars or more which has one or more platted villages located within the territorial limits of the tract of land which it owns, and which provides electricity to ten thousand or fewer customers.

11. “Lease” means a contract between a lessor and lessee pursuant to which the lessee obtains a present possessory interest in tangible property without obtaining legal title in such property. A contract to transmit or deliver electricity or natural gas using operating property within this state is not a lease. “Capital lease” means a lease classified as a capital lease under generally accepted accounting principles.

12. “Local amount” means the first forty-four million four hundred forty-four thousand four hundred forty-five dollars of the acquisition cost of any major addition which is an electric power generating plant and the total acquisition cost of any other major addition.

13. “Local taxing authority” means a city, county, community college, school district, or other taxing authority located in this state and authorized to certify a levy on property located within such authority for the payment of bonds and interest or other obligations of such authority.

14. “Local taxing district” means a geographic area with a common consolidated property tax rate.

15. “Low capacity factor electric power generating plant” means, for any tax year, an electric power generating plant, with the exception of an electric power generating plant owned or leased by an electric company, an electric cooperative, or a municipal utility, which operated during the preceding calendar year at a net capacity factor of twenty percent or less. “Net capacity factor” means net actual generation during the preceding calendar year divided by the product of nameplate capacity times the number of hours the plant was in the active state during the preceding calendar year. Upon commissioning, a plant is in the active state until it is decommissioned. “Net actual generation” means net electrical megawatt hours produced by a plant during the preceding calendar year.

16. “Major addition” means any acquisition on or after January 1, 1998, by a taxpayer, by transfer of ownership, self-construction, or capital lease of any interest in any of the following:

a. A building in this state where the acquisition cost of all interests acquired exceeds ten million dollars.

b. An electric power generating plant where the acquisition cost of all interests acquired exceeds ten million dollars. For purposes of this paragraph, “electric power generating plant” means each nameplate rated electric power generating plant owned solely or jointly by any person or electric power facility financed under the provisions of chapter 28F in which electrical energy is produced from other forms of energy, including all equipment used in the production of such energy through its step-up transformer.

c. Natural gas operating property within a local taxing district where the acquisition cost of all interests acquired exceeds one million dollars.

d. Any operating property in this state by a person not previously subject to taxation under this chapter.

For purposes of this chapter, the acquisition cost of an asset acquired by capital lease is its capitalized value determined under generally accepted accounting principles.

17. “Municipal electric cooperative association” means an electric cooperative, the membership of which is composed entirely of municipal utilities.

18. “Municipal utility” means all or part of an electric light and power plant system or a natural gas system, either of which is 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 municipal utility.

19. “Natural gas company” means a person that owns, operates, or is engaged primarily in operating or utilizing pipelines for the purpose of distributing natural gas to consumers located within this state, excluding a gas distributing plant or company located entirely within any city and not a part of a pipeline transportation company. “Natural gas company” includes a combination natural gas company and electric company. “Natural gas company” does not include a municipal utility.

20. a. “Natural gas competitive service area” means any of the fifty-two natural gas competitive service areas described as follows:

(1) Each of the following municipal natural gas competitive service areas:

(a) Taylor county, except for those areas of Taylor county which are contained within another municipal natural gas competitive service area as described in this subsection.

(b) The city of Brighton in Washington county and the area within two miles of the city limits plus sections 5, 6, 7, 8, 17, 18, 19, 20, 29, and 30 in Brighton township; sections 19, 30, and 33 in Franklin township; sections 1, 2, 11, 12, 13, 14, 23, 24, 25, and 36 in Dutch Creek township; and sections 25, 26, 35, and 36 in Seventy-Six township.

(c) Davis county.

(d) The city of Brooklyn in Poweshiek county and the area within two miles of the city limits.

(e) The city of Cascade in Dubuque county and the area within two miles of the city limits.

(f) The city of Cedar Falls in Black Hawk county and the area within one mile of the city limits, not including any part of the city of Waterloo.

(g) The city of Clearfield in Taylor county and the area within two miles of the city limits and sections 20, 21, 26, and 27 of Platte township, Grant township in Taylor county, and Grant township in Ringgold county.

(h) The south half of Carroll county and sections 3 and 4 of Orange township in Guthrie county.

(i) Adams county, except those areas of Adams county which are contained within another municipi-

pal natural gas competitive service area as defined in this subsection.

(j) The city of Emmetsburg in Palo Alto county and the area within two miles of the city limits.

(k) The city of Everly in Clay county and the area within two miles of the city limits.

(l) The city of Fairbank and the area within two miles of the city limits plus the area one-quarter mile on either side of the county line road, Highway 281, from Fairbank to the intersection of Outer road and Tenth street, proceeding twenty-eight hundredths of a mile north in Buchanan and Fayette counties.

(m) The city of Gilmore City in Pocahontas and Humboldt counties and the area within two miles of the city limits.

(n) The city of Graettinger in Palo Alto county and the area within two miles of the city limits.

(o) The city of Guthrie Center in Guthrie county and the area within one mile of the city limits.

(p) The city of Harlan in Shelby county and the area within two miles of the city limits.

(q) The city of Hartley in O'Brien county and the area within one mile of the city limits, except the eastern one-half of section four in Omega township.

(r) The city of Hawarden in Sioux county and the area within two miles of the city limits.

(s) The city of Lake Park plus Silver Lake township in Dickinson county.

(t) Fayette and New Buda townships in Decatur county.

(u) The city of Lenox in Taylor county including section 1 of Platte township in Taylor county and the townships of Carl, Grant, Mercer, Colony, Union, and Prescott in Adams county.

(v) Grand River township in Wayne county.

(w) New Hope township in Union county and Monroe township in Madison county.

(x) Ewoldt and Eden townships in Carroll county and Iowa township in Crawford county.

(y) The city of Montezuma in Poweshiek county and the area within two miles of the city limits plus Jackson township in Poweshiek county except the city of Barnes City, Pleasant Grove and Monroe townships in Mahaska county except the city of Barnes City.

(z) Morning Sun township in Louisa county.

(aa) Wells and Washington townships in Appanoose county.

(ab) The city of Osage in Mitchell county and the area within two miles of the city limits.

(ac) The city of Prescott in Adams county and the area within two miles of the city limits.

(ad) The city of Preston in Jackson county and the area within two miles of the city limits.

(ae) The city of Remsen in Plymouth county and the area within two miles of the city limits.

(af) The city of Rock Rapids in Lyon county and the area within two miles of the city limits.

(ag) The city of Rolfe in Pocahontas county and the area within two miles of the city limits.

(ah) The city of Sabula in Jackson county and the area within two miles of the city limits.

(ai) The city of Sac City in Sac county and the area within two miles of the city limits.

(aj) The city of Sanborn in O'Brien county and the area within two miles of the city limits.

(ak) The city of Sioux Center in Sioux county and the area within two miles of the city limits.

(al) The city of Tipton in Cedar county and the area within two miles of the city limits.

(am) The city of Waukee in Dallas county.

(an) The city of Wayland plus Jefferson and Trenton townships in Henry county.

(ao) Seventy-Six and Lime Creek townships in Washington county except for those areas of Seventy-Six township which are contained within another municipal natural gas competitive service area as defined in this subsection.

(ap) The city of West Bend in Kossuth and Palo Alto counties and the area within two miles of the city limits.

(aq) The city of Whittemore in Kossuth county and the area within two miles of the city limits.

(ar) Scott, Canaan, and Wayne townships in Henry county.

(as) The city of Woodbine in Harrison county and the area within two miles of the city limits.

(at) Nishnabotna township in Crawford county.

(2) The natural gas competitive service area, excluding any municipal natural gas competitive service area described in subparagraph (1) and consisting of Sioux county; Plymouth county; Woodbury county; Ida county; Harrison county; Shelby county; Audubon county; Palo Alto county; Humboldt county; Mahaska county; Scott county; Lyon county except Wheeler, Dale, Liberal, Grant, Midland, and Elgin townships; O'Brien county except Union, Dale, Summit, Highland, Franklin, and Center townships; Cherokee county except Cherokee and Pilot townships; Monona county except Franklin township and the south half of Ashton township; Pottawattamie county except Crescent, Hazel Dell, Lake, Garner, Kane, and Lewis townships; Mills county except Glenwood and Center townships; Montgomery county except Douglas, Washington, and East townships; Page county except Valley, Douglas, Nodaway, Nebraska, Harlan, East River, Amity, and Buchanan townships; Fremont county except Green, Scott, Sidney, Benton, Washington, and Madison townships; Brighton and Pleasant townships in Cass county; Sac county except Clinton, Wall Lake, Coon Valley, Levey, Viola, and Sac townships; Newell township in Buena Vista county; Calhoun county except Reading township; Denmark township in Emmet county; Kossuth county except Eagle, Grant, Springfield, Hebron, Swea, Harrison, Ledyard, Lincoln, Seneca, Greenwood, Ramsey, and German townships;

Webster county except Roland, Clay, Burnside, Yell, Webster, Gowrie, Lost Grove, Dayton, and Hardin townships; Guthrie county except Grant, Thompson, and Beaver townships; Union township in Union county; Madison county except Ohio and New Hope townships; Warren county except Virginia, Squaw, Liberty, and White Breast townships; Cedar, Union, Bluff Creek, and Pleasant townships in Monroe county; Marion county except Lake Prairie, Knoxville, Summit, and Union townships; Dallas county except Des Moines and Grant townships; Polk county except sections 4, 5, 6, 7, 8, 9, 16, 17, and 18 in Lincoln township and the city of Grimes, and sections 1, 2, 3, 10, 11, 12, 13, 14, and 15 in Union township; Poweshiek, Washington, Mound Prairie, Des Moines, Elk Creek, and Fairview townships in Jasper county; Wright county except Belmond and Pleasant townships; Geneseo township in Cerro Gordo county; Franklin county except Wisner and Scott townships and the city of Coulter; Butler county except Bennezette, Coldwater, Dayton, and Fremont townships; Floyd county except Rock Grove, Rudd, Rockford, Ulster, Scott, and Union townships; Branford township in Chickasaw county; Bremer county except Frederika, LeRoy, Sumner No. 2, Fremont, Dayton, Maxfield, and Franklin townships; Perry, Washington, Westburg, and Sumner townships in Buchanan county; Black Hawk county except Big Creek township; Fremont township in Benton county; Wapello county except Washington township; Benton and Steady Run townships in Keokuk county; the city of Barnes City in Poweshiek county; Iowa township in Washington county; Johnson county except Fremont township; Linn county except Franklin, Grant, Spring Grove, Jackson, Boulder, Washington, Otter Creek, Maine, Buffalo, and Fayette townships; Monroe township west and north of Otter Creek to its intersection with County Home road, and north of County Home road in Linn county; the city of Walford in Linn county; Farmington township in Cedar county; Wapsinoc, Goshen, Moscow, Wilton, and Fulton townships in Muscatine county; and Lee county except Des Moines, Montrose, Keokuk, and Jackson townships.

(3) The natural gas competitive service area, excluding any municipal natural gas competitive service areas described in subparagraph (1) and consisting of that part of Kossuth county not described in subparagraph (2); Lincoln and Buffalo townships in Winnebago county; Worth county except Silver Lake, Hartland, Bristol, Brookfield, Fertile, and Danville townships; Cerro Gordo county except Grimes, Pleasant Valley, and Dougherty townships; Rock Grove and Rudd townships in Floyd county; Eden, Camanche, and Hampshire townships and the city of Clinton in Clinton county; and Stacyville and Union townships in Mitchell county.

(4) The natural gas competitive service area, excluding any municipal natural gas service areas described in subparagraph (1) and consisting of Franklin township and the south half of Ashton township in Monona county; Crescent, Hazel Dell, Lake, Garner, Kane, and Lewis townships in Pottawattamie county; Glenwood and Center townships in Mills county; Green, Scott, Sidney, Benton, Washington, and Madison townships in Fremont county; Cass, Bear Grove, Union, Noble, Edna, Victoria, Massena, Lincoln, and Grant townships in Cass county; Glidden township in Carroll county; Summit township in Adair county; Grant township in Guthrie county; Crawford county except Nishnabotna township; Clinton, Wall Lake, Coon Valley, Levey, Viola, and Sac townships in Sac county; Reading township in Calhoun county; Marshall, Sherman, Roosevelt, Dover, Grant, Lincoln, and Cedar townships in Pocahontas county; Union, Dale, Summit, Highland, Franklin, and Center townships in O'Brien county; the north half of Clay county plus Clay township; Dickinson county; Emmet county except Denmark, Armstrong Grove, and Iowa Lake townships; Greene county except Bristol, Hardin, Jackson, and Grant townships; Boone county except Worth, Colfax, Des Moines, Jackson, Dodge, and Harrison townships; Des Moines and Grant townships in Dallas county; Roland, Clay, Burnside, Yell, Webster, Gowrie, Lost Grove, Dayton, and Newark townships in Webster county; Clear Lake, Hamilton, Webster, Freedom, Independence, Cass, and Fremont townships in Hamilton county; Ell, Madison, and Ellington townships in Hancock county; Winnebago county except Lincoln and Buffalo townships; Silver Lake, Hartland, Bristol, Brookfield, Fertile, and Danville townships in Worth county; Etna township in Hardin county; Lafayette township and the west one-half of Howard township in Story county; the city of Grimes in Polk county; Independence, Malaka, Mariposa, Hickory Grove, Rock Creek, Kellogg, Newton, Sherman, Palo Alto, Buena Vista, and Richland townships in Jasper county; Palermo, Grant, and Fairfield townships in Grundy county; Bennezette, Coldwater, Dayton, and Fremont townships in Butler county; Rockford, Ulster, Scott, and Union townships in Floyd county; St. Ansgar and Mitchell townships in Mitchell county; Howard county; Chickasaw county except Branford township; Frederika, LeRoy, Sumner No. 2, Fremont, Dayton, Maxfield, and Franklin townships in Bremer county; Big Creek township in Black Hawk county; Brown township in Linn county; Madison township and the east half of Buffalo township in Buchanan county; Fayette county except Harlan, Fremont, Oran, and Jefferson townships; Winneshie county; Alamakee county; Clayton county; Delaware county except Adams and Hazel Green townships; Dubuque county; Jones county except

Rome, Hale, Oxford, and the east half of Greenfield townships; and Jackson county.

(5) The natural gas competitive service area consisting of Des Moines, Montrose, Keokuk, and Jackson townships in Lee county.

(6) The natural gas competitive service area consisting of the city of Allerton and the area within two miles of the city limits.

(7) The natural gas competitive service area consisting of all of Iowa not contained in any of the other natural gas competitive service areas described in this paragraph.

b. "Township" includes any city or part of a city located within the exterior boundaries of that township.

c. References to city limits contained in this subsection mean those city limits as they existed on January 1, 1999.

21. "Operating property" means all property owned by or leased to an electric company, electric cooperative, municipal utility, or natural gas company, not otherwise taxed separately, which is necessary to and without which the company could not perform the activities of an electric company, electric cooperative, municipal utility, or natural gas company.

22. "Pole miles" means miles measured along the line of poles, structures, or towers carrying electric conductors regardless of the number of conductors or circuits carried, and miles of conduit bank, regardless of number of conduits or ducts, of all sizes and types, including manholes and handholes. "Conduit bank" means a length of one or more underground conduits or ducts, whether or not enclosed in concrete, designed to contain underground cables, including a gallery or cable tunnel for power cables.

23. "Purchasing member" means a municipal utility which purchases electricity from a municipal electric cooperative association of which it is a member.

24. "Replacement tax" means the excise tax imposed on the generation, transmission, delivery, consumption, or use of electricity or natural gas under section 437A.4, 437A.5, 437A.6, or 437A.7.

25. "Self-generator" means a person, other than an electric company, natural gas company, electric cooperative, or municipal utility, who generates, by means of an on-site facility wholly owned by or leased in its entirety to such person, electricity solely for its own consumption, except for inadvertent unscheduled deliveries to the electric utility furnishing electric service to that self-generator. A person who generates electricity which is consumed by any other person, including any owner, shareholder, member, beneficiary, partner, or associate of the person who generates electricity, is not a self-generator. For purposes of this subsection, "on-site facility" means an electric power generating plant that is wholly owned by or leased in its entirety to a person and used to generate electricity

solely for consumption by such person on the same parcel of land on which such plant is located or on a contiguous parcel of land. For purposes of this subsection, "parcel of land" includes each separate parcel of land shown on the tax list.

26. "Statewide amount" means the acquisition cost of any major addition which is not a local amount.

27. "Taxpayer" means an electric company, natural gas company, electric cooperative, municipal utility, or other person subject to the replacement tax imposed under section 437A.4, 437A.5, 437A.6, or 437A.7.

28. "Tax year" means a calendar year beginning January 1 and ending December 31.

29. "Transfer replacement tax" means the excise tax imposed in a competitive service area of a municipal utility which replaces transfers made by the municipal utility in accordance with section 384.89.

30. "Transmission line" means a line, wire, or cable which is capable of operating at an electric voltage of at least thirty-four and one-half kilovolts.

31. "Utilities board" means the utilities board created in section 474.1.

99 Acts, ch 114, §27; 99 Acts, ch 152, §21–23, 40

See Code editor's note to §10A.202

Subsection 13 amended

NEW subsection 14 and former subsections 14–30 renumbered as 15–31

Subsection 20, paragraph a, subparagraph (2) amended

Subsection 29 amended

437A.7 Replacement tax imposed on electric transmission.

1. A replacement transmission tax is imposed on every person owning or leasing transmission lines within this state and shall be equal to the sum of all of the following:

a. Five hundred fifty dollars per pole mile of transmission line owned or leased by the taxpayer not exceeding one hundred kilovolts.

b. Three thousand dollars per pole mile of transmission line owned or leased by the taxpayer greater than one hundred kilovolts but not exceeding one hundred fifty kilovolts.

c. Seven hundred dollars per pole mile of transmission line owned or leased by the taxpayer greater than one hundred fifty kilovolts but not exceeding three hundred kilovolts.

d. Seven thousand dollars per pole mile of transmission line owned or leased by the taxpayer greater than three hundred kilovolts.

The replacement transmission tax shall be calculated on the basis of pole miles of transmission line owned or leased by the taxpayer on the last day of the tax year.

2. The following shall not be subject to the replacement transmission tax:

a. Transmission lines owned by or leased to a municipal utility when devoted to public use and not for pecuniary profit, except transmission lines of a municipally owned electric utility held under

joint ownership and transmission lines of an electric power facility financed under chapter 28F.

b. Transmission lines owned by or leased to a lessor when the transmission lines are subject to the replacement transmission tax payable by the lessee or sublessee.

c. Any electric cooperative which owns, leases, or owns and leases in total more than fifty pole miles and less than seven hundred fifty pole miles of transmission lines in this state. Chapter 437 shall apply to such electric cooperatives.

d. Transmission lines owned by or leased to a state university or university of science and technology, provided such transmission lines are used exclusively for the transmission of electricity consumed by such state university or university of science and technology.

e. Transmission lines owned by or leased to a person, other than a public utility, for which a franchise is not required under chapter 478.

3. For purposes of this section, if a transmission line is jointly owned or leased, the taxpayer shall compute the number of pole miles subject to the replacement transmission tax by multiplying the taxpayer's percentage interest in the jointly held transmission lines by the number of pole miles of such lines.

99 Acts, ch 152, §24, 40
Subsection 2, paragraph b stricken and rewritten

437A.10 Judicial review.

1. Judicial review of the actions of the director may be sought pursuant to chapter 17A, the Iowa administrative procedure Act.

2. For cause and upon a showing by the director that collection of the tax in dispute is in doubt, the court may order the petitioner to file with the clerk of the district court a bond for the use of the appropriate local taxing authorities, with sureties approved by the clerk of the district court, in the amount of the tax appealed from, conditioned upon the performance by the petitioner of any orders of the court.

3. An appeal may be taken by the taxpayer or the director to the supreme court irrespective of the amount involved.

4. A person aggrieved by a decision of the chief financial officer of a city under this chapter may seek review by writ of certiorari within thirty days of the decision sought to be reviewed.

99 Acts, ch 152, §25, 40
Subsection 2 amended

437A.14 Correction of errors — refunds or credits of replacement tax paid — information confidential — penalty.

1. a. If an amount of replacement tax, penalty, or interest has been paid which was not due under this chapter, a city's chief financial officer or county treasurer to whom such erroneous payment was made shall do one of the following:

(1) Credit the amount of the erroneous payment against any replacement tax due, or to become due, from the taxpayer on the books of the city or county.

(2) Refund the amount of the erroneous payment to the taxpayer.

b. Claims for refund or credit of replacement taxes paid shall be filed with the director. A claim for refund or credit that is not filed with the director within three years after the replacement tax payment upon which a refund or credit is claimed became due, or one year after the replacement tax payment was made, whichever time is later, shall not be allowed. A claim for refund or credit of tax alleged to be unconstitutional not filed with the director within ninety days after the replacement tax payment upon which a refund or credit is claimed became due shall not be allowed. As a precondition for claiming a refund or credit of alleged unconstitutional taxes, such taxes must be paid under written protest which specifies the particulars of the alleged unconstitutionality. Claims for refund or credit may only be made by, and refunds or credits may only be made to, the person responsible for paying the replacement tax, or such person's successors. The director shall notify affected county treasurers of the acceptance or denial of any refund claim. Section 421.10 applies to claims denied by the director.

2. It is unlawful for any present or former officer or employee of the state to divulge or to make known in any manner to any person the kilowatt-hours of electricity or therms of natural gas delivered by a taxpayer in a competitive service area disclosed on a tax return, return information, or investigative or audit information. A person who violates this section is guilty of a serious misdemeanor. If the offender is an officer or employee of the state, such person, in addition to any other penalty, shall also be dismissed from office or discharged from employment. This section does not prohibit turning over to duly authorized officers of the United States or tax officials of other states such kilowatt-hours or therms pursuant to agreement between the director and the secretary of the treasury of the United States or the secretary's delegate or pursuant to a reciprocal agreement with another state.

3. Unless otherwise expressly permitted by a section referencing this chapter, the kilowatt-hours of electricity or therms of natural gas delivered by a taxpayer in a competitive service area shall not be divulged to any person or entity, other than the taxpayer, the department, or the internal revenue service for use in a matter unrelated to tax administration.

This prohibition precludes persons or entities other than the taxpayer, the department, or the internal revenue service from obtaining such information from the department. A subpoena, order, or

process which requires the department to produce such information to a person or entity, other than the taxpayer, the department, or internal revenue service, for use in a nontax proceeding is void.

4. Notwithstanding subsections 2 and 3, the chief financial officer of any local taxing authority and any designee of such officer shall have access to any computations made by the director pursuant to the provisions of this chapter, and any tax return or other information used by the director in making such computations, which affect the replacement tax owed by any such taxpayer.

Notwithstanding this section, providing information relating to the kilowatt-hours of electricity or therms of natural gas delivered by a taxpayer in a competitive service area to the task force established in section 437A.15, subsection 7, or to the study committee established in section 476.6, subsection 23, is not a violation of this section.

5. Local taxing authority employees are deemed to be officers and employees of the state for purposes of subsection 2.

6. Claims for refund or credit of municipal transfer replacement tax shall be filed with the appropriate city's chief financial officer. Subsection 1 applies with respect to the transfer replacement tax and the city's chief financial officer shall have the same authority as is granted to the director under this section with respect to a return filed pursuant to section 437A.8, subsection 2.

7. Claims for refund or credit of special utility property tax levies shall be filed with the appropriate county treasurer. Subsection 1 applies with respect to the special utility property tax levy and the county treasurer shall have the same authority as is granted to the director under this section.

99 Acts, ch 152, §26, 27, 40
 Subsection 4, unnumbered paragraph 1 amended
 Subsection 5 amended

437A.15 Allocation of revenue.

1. The director and the department of management shall compute the allocation of all replacement tax revenues other than transfer replacement tax revenues among the local taxing districts in accordance with this section and shall report such allocation by local taxing districts to the county treasurers on or before August 15 following a tax year.

2. The director shall determine and report to the department of management the total replacement taxes to be collected from each taxpayer for the tax year on or before July 30 following such tax year.

3. All replacement taxes owed by a taxpayer shall be allocated among the local taxing districts in which such taxpayer's property is located in accordance with a general allocation formula determined by the department of management on the basis of general property tax equivalents. General property tax equivalents shall be determined by applying the levy rates reported by each local tax-

ing district to the department of management on or before June 30 following a tax year to the assessed value of taxpayer property allocated to each such local taxing district as adjusted and reported to the department of management in such tax year by the director pursuant to section 437A.19, subsection 2. The general allocation formula for a tax year shall allocate to each local taxing district that portion of the replacement taxes owed by each taxpayer which bears the same ratio as such taxpayer's general property tax equivalents for each local taxing district bears to such taxpayer's total general property tax equivalents for all local taxing districts in Iowa.

4. On or before August 31 following tax years 1999, 2000, and 2001, each county treasurer shall compute a special utility property tax levy or tax credit for each taxpayer for which a replacement tax liability for each such tax year is reported to the county treasurer pursuant to subsection 1, and shall notify the taxpayer of the amount of such tax levy or tax credit. The amount of the special utility property tax levy or credit shall be determined for each taxpayer by the county treasurer by comparing the taxpayer's total replacement tax liability allocated to taxing districts in the county pursuant to this section with the anticipated tax revenues from the taxpayer for all taxing districts in the county. If the taxpayer's total replacement tax liability allocated to taxing districts in the county is less than the anticipated tax revenues from the taxpayer for all taxing districts in the county, the county treasurer shall levy a special utility property tax equal to the shortfall which shall be added to and collected with the replacement tax owed by the taxpayer to the county treasurer for the tax year pursuant to section 437A.8, subsection 4. If the taxpayer's total replacement tax liability allocated to taxing districts in the county exceeds the anticipated tax revenues from the taxpayer for all taxing districts in the county, the county treasurer shall issue a credit to the taxpayer which shall be applied to reduce the taxpayer's replacement tax liability to the county treasurer for the tax year. If the taxpayer's total replacement tax liability allocated to taxing districts in the county equals the anticipated tax revenues from the taxpayer for all taxing districts in the county, no levy or credit is required. Replacement tax liability for purposes of this subsection means replacement tax liability before credits allowed by section 437A.8, subsection 7. A recalculation of a special utility property tax levy or credit shall not be made as a result of a subsequent recalculation of replacement tax liability under section 437A.8, subsection 7, or adjustment to assessed value under section 437A.19, subsection 2, paragraph "f". "Anticipated tax revenues from a taxpayer" means the product of the total levy rates imposed by the taxing districts and the value of taxpayer property allocated to the taxing districts and reported to the county auditor. Special utility prop-

erty tax levies and credits shall be treated as replacement taxes for purposes of section 437A.11.

It is the intent of the general assembly that the general assembly evaluate the impact of the imposition of the replacement tax for purposes of determining whether this subsection shall remain in effect and whether a determination shall be made as to the necessity of a recalculation as provided in this subsection for tax years beginning after tax year 2000.

5. The replacement tax, as adjusted by any special utility property tax levy or credit and remitted to a county treasurer by each taxpayer, shall be treated as a property tax when received and shall be disposed of by the county treasurer as taxes on real estate. Notwithstanding the allocation provisions of this section, nothing in this section shall deny any affected taxing entity, as defined in section 403.17, subsection 1, which has enacted an ordinance or entered into an agreement for the division and allocation of taxes authorized under section 403.19 and under which ordinance or agreement the taxes collected in respect of properties owned by any of the taxpayers remitting replacement taxes pursuant to the provisions of this chapter are being divided and allocated, the right to receive its share of the replacement tax revenues collected for any year which would otherwise be paid to such affected taxing entity under the terms of any such ordinance or agreement had this chapter not been enacted. To the extent that adjustment must be made to the allocation described in this section to give effect to the terms of such ordinances or agreements, the department of management and the county treasurer shall make such adjustments.

6. In lieu of the adjustment provided for in subsection 5, the assessed value of property described in section 403.19, subsection 1, may be reduced by the city or county by the amount of the taxable value of the property described in section 437A.16 included in such area on January 1, 1997, pursuant to amendment of the ordinance adopted by such city or county pursuant to section 403.19.

7. On or before July 1, 1998, the department of management, in consultation with the department of revenue and finance, shall initiate and coordinate the establishment of a task force and provide staffing assistance to the task force. It is the intent of the general assembly that the task force include representatives of the department of management, department of revenue and finance, electric companies, natural gas companies, municipal utilities, electric cooperatives, counties, cities, school boards, and industrial, commercial, and residential consumers, and other appropriate stakeholders.

The task force shall study the effects of the replacement tax on local taxing authorities, local taxing districts, consumers, and taxpayers and the department of management shall report to the general assembly by January 1 of each year

through January 1, 2003, the results of the study and the specific recommendations of the task force for modifications to the replacement tax, if any, which will further the purposes of tax neutrality for local taxing authorities, local taxing districts, taxpayers, and consumers, consistent with the stated purposes of this chapter. The department of management shall also report to the legislative council by November 15 of each year through 2002, the status of the task force study and any recommendations.

99 Acts, ch 152, §28, 40
Subsection 7, unnumbered paragraph 2 amended

437A.16 Assessment exclusive.

All operating property and all other property that is primarily and directly used in the production, generation, transmission, or delivery of electricity or natural gas subject to replacement tax or transfer replacement tax is exempt from taxation except as otherwise provided by this chapter. This exemption shall not extend to taxes imposed under chapters 437, 438, and 468, taxpayers described in section 437A.8, subsection 6, or facilities or property described in section 437A.6, subsection 1, paragraphs "a" through "f", and section 437A.7, subsection 2.

99 Acts, ch 152, §29, 40
Section amended

437A.17A Centrally assessed property tax adjustment.

A municipal utility whose property tax assessment for the 1998 assessment year was adjusted by the department of revenue and finance to include depreciation and whose property tax assessment for the 1997 assessment year did not include depreciation in determining its assessment shall be entitled to file a property tax adjustment form provided by the department. The tax adjustment form shall be filed by July 1, 1999. The tax adjustment form shall include an adjusted centrally assessed property tax computation determined by multiplying the centrally assessed property tax which was payable in the fiscal year beginning July 1, 1998, based upon valuation determined for the 1997 assessment year allocated to electric service and natural gas service by the percentage of adjustment for depreciation made by the department for the 1998 assessment year. The adjusted centrally assessed property tax allocated to electric service and natural gas service shall be used to determine the replacement delivery tax rates in accordance with sections 437A.4 and 437A.5.

99 Acts, ch 152, §30, 40
NEW section

437A.19 Adjustment to assessed value — reporting requirements.

1. *a.* A taxpayer whose property is subject to the statewide property tax shall report to the director by July 1, 1999, and by May 1 of each subsequent tax year, on forms prescribed by the director,

the book value, as of the beginning and end of the preceding calendar year, of all of the following:

(1) The local amount of any major addition by local taxing district.

(2) The statewide amount of any major addition without notation of location.

(3) Any building in Iowa at acquisition cost of more than ten million dollars which was originally placed in service by the taxpayer prior to January 1, 1998, and which was transferred or disposed of in the preceding calendar year, without notation of location.

(4) Any electric power generating plant in Iowa at acquisition cost of more than ten million dollars which was originally placed in service by the taxpayer prior to January 1, 1998, and which was transferred or disposed of in the preceding calendar year, without notation of location.

(5) All other taxpayer property without notation of location.

(6) The local amount of any major addition eligible for the urban revitalization exemption provided for in chapter 404, by situs.

b. For purposes of this section:

(1) "*Book value*" means acquisition cost less accumulated depreciation determined under generally accepted accounting principles.

(2) "*Taxpayer property*" means property described in section 437A.16.

(3) "*To dispose of*" means to sell, abandon, de-commission, or retire an asset.

(4) "*Transfer*" means a transaction which results in a change of ownership of taxpayer property and includes a capital lease transaction.

c. For purposes of this subsection, "*taxpayer*" includes a person who would have been a taxpayer in calendar year 1998 had the provisions of this chapter been in effect for the 1998 assessment year.

d. If a taxpayer owns or leases pursuant to a capital lease less than the entire interest in a major addition, the local amount and statewide amount, if any, of such major addition shall be apportioned to the taxpayer on the basis of its percentage interest in such major addition.

2. Beginning January 1, 1999, the assessed value of taxpayer property shall be adjusted annually as provided in this section. The director, with respect to each taxpayer, shall do all of the following:

a. Adjust the assessed value of taxpayer property in each local taxing district by the change in book value during the preceding calendar year of the local amount of any major addition reported within such local taxing district.

b. (1) Adjust the assessed value of taxpayer property in each local taxing district by allocating the change in book value during the preceding calendar year of the statewide amount and all other taxpayer property described in subsection 1, paragraph "a", subparagraph (5), to the assessed value

of all taxpayer property in the state pro rata according to its preadjustment value.

(2) If, during the preceding calendar year, a taxpayer transferred an electric power generating plant to a taxpayer who owned no other taxpayer property in this state as of the end of such preceding calendar year, in lieu of the adjustment provided in subparagraph (1), the director shall allocate the transferee taxpayer's change in book value of the statewide amount during such preceding calendar year, if any, among local taxing districts in proportion to the allocation of the transferor's assessed value among local taxing districts as of the end of such preceding calendar year.

c. In the case of taxpayer property described in subsection 1, paragraph "a", subparagraphs (3) and (4), decrease the assessed value of taxpayer property in each local taxing district by the taxable value of such property within each such local taxing district on January 1, 1998.

d. In the event of a merger or consolidation of two or more taxpayers, to determine the assessed value of the surviving taxpayer, combine the assessed values of such taxpayers immediately prior to the merger or consolidation.

e. In the event any taxpayer property is eligible for the urban revitalization tax exemption described in chapter 404, adjust the assessed value of taxpayer property within each affected local taxing district to reflect such exemption.

f. In the event the base year assessed value of taxpayer property is adjusted as a result of taxpayer appeals, reduce the assessed value of taxpayer property in each local taxing district to reflect such adjustment. The adjustment shall be allocated in proportion to the allocation of the taxpayer's assessed value among the local taxing districts determined without regard to this adjustment. If an adjustment to the base year assessed value of taxpayer property is finally determined on or before September 30, 1999, it shall be reflected in the January 1, 1999, assessed value. Otherwise, any such adjustment shall be made as of January 1 of the year following the date on which the adjustment is finally determined.

In no event shall the adjustments set forth in this subsection reduce the assessed value of taxpayer property in any local taxing district below zero.

The director, on or before October 31, 1999, in the case of January 1, 1999, assessed values, and on or before August 31 of each subsequent assessment year, shall report to the department of management and to the auditor of each county the adjusted assessed value of taxpayer property as of January 1 of such assessment year for each local taxing district. For purposes of this subsection, the assessed value of taxpayer property in each local taxing district subject to adjustment under this section by the director means the assessed value of such property as of the preceding January 1 as determined

and allocated among the local taxing districts by the director.

Nothing in this chapter shall be interpreted to authorize local taxing authorities to exclude from the calculation of levy rates the adjusted assessed value of taxpayer property reported to county auditors pursuant to this subsection.

99 Acts, ch 152, §31, 40
Subsection 2, unnumbered paragraph 4 amended

437A.23 Deposit of tax proceeds.

All revenues received from imposition of the statewide property tax shall be deposited in the

general fund of the state. Fifty percent of the revenues shall be available, as appropriated by the general assembly, to the department of management for salaries, support, services, and equipment to administer the replacement tax. The balance of the revenues shall be available, as appropriated by the general assembly, to the department of revenue and finance for salaries, support, services, and equipment to administer and enforce the replacement tax and the statewide property tax.

99 Acts, ch 208, §17
Section amended

CHAPTER 440

ASSESSMENT OF OMITTED PROPERTY

440.1 Assessment of omitted property.

When the director of revenue and finance is vested with the power and duty to assess property and an assessment has, for any reason, been omitted, the director shall proceed to assess the property at any time within two years from the date at which such assessment should have been made. The omitted assessment may apply to not more than the assessment year in which the omitted assessment is made and the prior assessment year. Chapter 429 shall apply to assessments of omitted property.

99 Acts, ch 174, §1, 7
Section amended

440.5 Procedure — penalty.

If it is made to appear that the property is assessable by the director of revenue and finance as omitted property, the director shall proceed in the manner in which the director would have proceeded had the assessment not been omitted, except that the director shall find the value of the omitted property for each year during which it has been omitted but for not more than the two previous assessment years and shall add ten percent to each yearly value as a penalty.

99 Acts, ch 174, §2, 7
Section amended

CHAPTER 441

ASSESSMENT AND VALUATION OF PROPERTY

441.21 Actual, assessed and taxable value.

1. *a.* All property subject to taxation shall be valued at its actual value which shall be entered opposite each item, and, except as otherwise provided in this section, shall be assessed at one hundred percent of its actual value, and the value so assessed shall be taken and considered as the assessed value and taxable value of the property upon which the levy shall be made.

b. The actual value of all property subject to assessment and taxation shall be the fair and reasonable market value of such property except as otherwise provided in this section. “Market value” is defined as the fair and reasonable exchange in the year in which the property is listed and valued between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and each being familiar with all the facts relating to the particular property. Sale prices of the property or comparable property in normal transactions reflecting

market value, and the probable availability or unavailability of persons interested in purchasing the property, shall be taken into consideration in arriving at its market value. In arriving at market value, sale prices of property in abnormal transactions not reflecting market value shall not be taken into account, or shall be adjusted to eliminate the effect of factors which distort market value, including but not limited to sales to immediate family of the seller, foreclosure or other forced sales, contract sales, discounted purchase transactions or purchase of adjoining land or other land to be operated as a unit.

The actual value of special purpose tooling, which is subject to assessment and taxation as real property under section 427A.1, subsection 1, paragraph “e”, but which can be used only to manufacture property which is protected by one or more United States or foreign patents, shall not exceed the fair and reasonable exchange value between a willing buyer and a willing seller, assuming that

the willing buyer is purchasing only the special purpose tooling and not the patent covering the property which the special purpose tooling is designed to manufacture nor the rights to manufacture the patented property. For purposes of this paragraph, special purpose tooling includes dies, jigs, fixtures, molds, patterns, and similar property. The assessor shall not take into consideration the special value or use value to the present owner of the special purpose tooling which is designed and intended solely for the manufacture of property protected by a patent in arriving at the actual value of the special purpose tooling.

c. In assessing and determining the actual value of special purpose industrial property having an actual value of five million dollars or more, the assessor shall equalize the values of such property with the actual values of other comparable special purpose industrial property in other counties of the state. Such special purpose industrial property includes, but is not limited to chemical plants. If a variation of ten percent or more exists between the actual values of comparable industrial property having an actual value of five million dollars or more located in separate counties, the assessors of the counties shall consult with each other and with the department of revenue and finance to determine if adequate reasons exist for the variation. If no adequate reasons exist, the assessors shall make adjustments in the actual values to provide for a variation of ten percent or less. For the purposes of this paragraph, special purpose industrial property includes structures which are designed and erected for operation of a unique and special use, are not rentable in existing condition, and are incapable of conversion to ordinary commercial or industrial use except at a substantial cost.

d. Actual value of property in one assessing jurisdiction shall be equalized as compared with actual value of property in an adjoining assessing jurisdiction. If a variation of five percent or more exists between the actual values of similar, closely adjacent property in adjoining assessing jurisdictions in Iowa, the assessors thereof shall determine whether adequate reasons exist for such variation. If no such reasons exist, the assessors shall make adjustments in such actual values to reduce the variation to five percent or less.

e. The actual value of agricultural property shall be determined on the basis of productivity and net earning capacity of the property determined on the basis of its use for agricultural purposes capitalized at a rate of seven percent and applied uniformly among counties and among classes of property. Any formula or method employed to determine productivity and net earning capacity of property shall be adopted in full by rule.

f. In counties or townships in which field work on a modern soil survey has been completed since January 1, 1949, the assessor shall place emphasis upon the results of the survey in spreading the val-

uation among individual parcels of such agricultural property.

g. Notwithstanding any other provision of this section, the actual value of any property shall not exceed its fair and reasonable market value, except agricultural property which shall be valued exclusively as provided in paragraph "e" of this subsection.

2. In the event market value of the property being assessed cannot be readily established in the foregoing manner, then the assessor may determine the value of the property using the other uniform and recognized appraisal methods including its productive and earning capacity, if any, industrial conditions, its cost, physical and functional depreciation and obsolescence and replacement cost, and all other factors which would assist in determining the fair and reasonable market value of the property but the actual value shall not be determined by use of only one such factor. The following shall not be taken into consideration: Special value or use value of the property to its present owner, and the good will or value of a business which uses the property as distinguished from the value of the property as property. Upon adoption of uniform rules by the revenue department or succeeding authority covering assessments and valuations of such properties, said valuation on such properties shall be determined in accordance therewith for assessment purposes to assure uniformity, but such rules shall not be inconsistent with or change the foregoing means of determining the actual, market, taxable and assessed values.

3. "Actual value", "taxable value", or "assessed value" as used in other sections of the Code in relation to assessment of property for taxation shall mean the valuations as determined by this section; however, other provisions of the Code providing special methods or formulas for assessing or valuing specified property shall remain in effect, but this section shall be applicable to the extent consistent with such provisions. The assessor and department of revenue and finance shall disclose at the written request of the taxpayer all information in any formula or method used to determine the actual value of the taxpayer's property.

The burden of proof shall be upon any complainant attacking such valuation as excessive, inadequate, inequitable or capricious; however, in protest or appeal proceedings when the complainant offers competent evidence by at least two disinterested witnesses that the market value of the property is less than the market value determined by the assessor, the burden of proof thereafter shall be upon the officials or persons seeking to uphold such valuation to be assessed.

4. For valuations established as of January 1, 1979, the percentage of actual value at which agricultural and residential property shall be assessed shall be the quotient of the dividend and divisor as defined in this section. The dividend for each class

of property shall be the dividend as determined for each class of property for valuations established as of January 1, 1978, adjusted by the product obtained by multiplying the percentage determined for that year by the amount of any additions or deletions to actual value, excluding those resulting from the revaluation of existing properties, as reported by the assessors on the abstracts of assessment for 1978, plus six percent of the amount so determined. However, if the difference between the dividend so determined for either class of property and the dividend for that class of property for valuations established as of January 1, 1978, adjusted by the product obtained by multiplying the percentage determined for that year by the amount of any additions or deletions to actual value, excluding those resulting from the revaluation of existing properties, as reported by the assessors on the abstracts of assessment for 1978, is less than six percent, the 1979 dividend for the other class of property shall be the dividend as determined for that class of property for valuations established as of January 1, 1978, adjusted by the product obtained by multiplying the percentage determined for that year by the amount of any additions or deletions to actual value, excluding those resulting from the revaluation of existing properties, as reported by the assessors on the abstracts of assessment for 1978, plus a percentage of the amount so determined which is equal to the percentage by which the dividend as determined for the other class of property for valuations established as of January 1, 1978, adjusted by the product obtained by multiplying the percentage determined for that year by the amount of any additions or deletions to actual value, excluding those resulting from the revaluation of existing properties, as reported by the assessors on the abstracts of assessment for 1978, is increased in arriving at the 1979 dividend for the other class of property. The divisor for each class of property shall be the total actual value of all such property in the state in the preceding year, as reported by the assessors on the abstracts of assessment submitted for 1978, plus the amount of value added to said total actual value by the revaluation of existing properties in 1979 as equalized by the director of revenue pursuant to section 441.49. The director shall utilize information reported on abstracts of assessment submitted pursuant to section 441.45 in determining such percentage. For valuations established as of January 1, 1980, and each year thereafter, the percentage of actual value as equalized by the director of revenue and finance as provided in section 441.49 at which agricultural and residential property shall be assessed shall be calculated in accordance with the methods provided herein including the limitation of increases in agricultural and residential assessed values to the percentage increase of the other class of property if the other class increases less than the allowable limit adjusted to include the applicable and

current values as equalized by the director of revenue and finance, except that any references to six percent in this subsection shall be four percent.

5. For valuations established as of January 1, 1979, commercial property and industrial property, excluding properties referred to in section 427A.1, subsection 6, shall be assessed as a percentage of the actual value of each class of property. The percentage shall be determined for each class of property by the director of revenue for the state in accordance with the provisions of this section. For valuations established as of January 1, 1979, the percentage shall be the quotient of the dividend and divisor as defined in this section. The dividend for each class of property shall be the total actual valuation for each class of property established for 1978, plus six percent of the amount so determined. The divisor for each class of property shall be the valuation for each class of property established for 1978, as reported by the assessors on the abstracts of assessment for 1978, plus the amount of value added to the total actual value by the revaluation of existing properties in 1979 as equalized by the director of revenue pursuant to section 441.49. For valuations established as of January 1, 1979, property valued by the department of revenue pursuant to chapters 428, 433, 436, 437, and 438 shall be considered as one class of property and shall be assessed as a percentage of its actual value. The percentage shall be determined by the director of revenue in accordance with the provisions of this section. For valuations established as of January 1, 1979, the percentage shall be the quotient of the dividend and divisor as defined in this section. The dividend shall be the total actual valuation established for 1978 by the department of revenue, plus ten percent of the amount so determined. The divisor for property valued by the department of revenue pursuant to chapters 428, 433, 436, 437, and 438 shall be the valuation established for 1978, plus the amount of value added to the total actual value by the revaluation of the property by the department of revenue as of January 1, 1979. For valuations established as of January 1, 1980, commercial property and industrial property, excluding properties referred to in section 427A.1, subsection 6, shall be assessed at a percentage of the actual value of each class of property. The percentage shall be determined for each class of property by the director of revenue for the state in accordance with the provisions of this section. For valuations established as of January 1, 1980, the percentage shall be the quotient of the dividend and divisor as defined in this section. The dividend for each class of property shall be the dividend as determined for each class of property for valuations established as of January 1, 1979, adjusted by the product obtained by multiplying the percentage determined for that year by the amount of any additions or deletions to actual value, excluding those resulting from the revaluation of existing properties, as re-

ported by the assessors on the abstracts of assessment for 1979, plus four percent of the amount so determined. The divisor for each class of property shall be the total actual value of all such property in 1979, as equalized by the director of revenue pursuant to section 441.49, plus the amount of value added to the total actual value by the revaluation of existing properties in 1980. The director shall utilize information reported on the abstracts of assessment submitted pursuant to section 441.45 in determining such percentage. For valuations established as of January 1, 1980, property valued by the department of revenue pursuant to chapters 428, 433, 436, 437, and 438 shall be assessed at a percentage of its actual value. The percentage shall be determined by the director of revenue in accordance with the provisions of this section. For valuations established as of January 1, 1980, the percentage shall be the quotient of the dividend and divisor as defined in this section. The dividend shall be the total actual valuation established for 1979 by the department of revenue, plus eight percent of the amount so determined. The divisor for property valued by the department of revenue pursuant to chapters 428, 433, 436, 437, and 438 shall be the valuation established for 1979, plus the amount of value added to the total actual value by the revaluation of the property by the department of revenue as of January 1, 1980. For valuations established as of January 1, 1981, and each year thereafter, the percentage of actual value as equalized by the director of revenue and finance as provided in section 441.49 at which commercial property and industrial property, excluding properties referred to in section 427A.1, subsection 6, shall be assessed shall be calculated in accordance with the methods provided herein, except that any references to six percent in this subsection shall be four percent. For valuations established as of January 1, 1981, and each year thereafter, the percentage of actual value at which property valued by the department of revenue and finance pursuant to chapters 428, 433, 436, 437, and 438 shall be assessed shall be calculated in accordance with the methods provided herein, except that any references to ten percent in this subsection shall be eight percent. Beginning with valuations established as of January 1, 1979, and each year thereafter, property valued by the department of revenue and finance pursuant to chapter 434 shall also be assessed at a percentage of its actual value which percentage shall be equal to the percentage determined by the director of revenue and finance for commercial property, industrial property, or property valued by the department of revenue and finance pursuant to chapters 428, 433, 436, 437, and 438, whichever is lowest.

6. Beginning with valuations established as of January 1, 1978, the assessors shall report the aggregate taxable values and the number of dwellings located on agricultural land and the aggregate

taxable value of all other structures on agricultural land. Beginning with valuations established as of January 1, 1981, the agricultural dwellings located on agricultural land shall be valued at their market value as defined in this section and agricultural dwellings shall be valued as rural residential property and shall be assessed at the same percentage of actual value as is all other residential property.

7. For the purpose of computing the debt limitations for municipalities, political subdivisions and school districts, the term "*actual value*" means the "*actual value*" as determined by subsections 1 to 3 of this section without application of any percentage reduction and entered opposite each item, and as listed on the tax list as provided in section 443.2 as "*actual value*".

Whenever any board of review or other tribunal changes the assessed value of property, all applicable records of assessment shall be adjusted to reflect such change in both assessed value and actual value of such property.

8. a. Any normal and necessary repairs to a building, not amounting to structural replacements or modification, shall not increase the taxable value of the building. This paragraph applies only to repairs of two thousand five hundred dollars or less per building per year.

b. Notwithstanding paragraph "a", any construction or installation of a solar energy system on property classified as agricultural, residential, commercial, or industrial property shall not increase the actual, assessed and taxable values of the property for five full assessment years.

c. As used in this subsection "*solar energy system*" means either of the following:

(1) A system of equipment capable of collecting and converting incident solar radiation or wind energy into thermal, mechanical or electrical energy and transforming these forms of energy by a separate apparatus to storage or to a point of use which is constructed or installed after January 1, 1978.

(2) A system that uses the basic design of the building to maximize solar heat gain during the cold season and to minimize solar heat gain in the hot season and that uses natural means to collect, store and distribute solar energy which is constructed or installed after January 1, 1981.

In assessing and valuing the property for tax purposes, the assessor shall disregard any market value added by a solar energy system to a building. The director of revenue and finance shall adopt rules, after consultation with the department of natural resources, specifying the types of equipment and structural components to be included under the guidelines provided in this subsection.

9. Not later than November 1, 1979 and November 1 of each subsequent year, the director shall certify to the county auditor of each county the percentages of actual value at which residential property, agricultural property, commercial property, industrial property, and property valued

by the department of revenue and finance pursuant to chapters 428, 433, 434, 436, 437, and 438 in each assessing jurisdiction in the county shall be assessed for taxation. The county auditor shall proceed to determine the assessed values of agricultural property, residential property, commercial property, industrial property, and property valued by the department of revenue and finance pursuant to chapters 428, 433, 434, 436, 437, and 438 by applying such percentages to the current actual value of such property, as reported to the county auditor by the assessor, and the assessed values so determined shall be the taxable values of such properties upon which the levy shall be made.

10. The percentage of actual value computed by the director for agricultural property, residential property, commercial property, industrial property and property valued by the department of revenue and finance pursuant to chapters 428, 433, 434, 436, 437, and 438 and used to determine assessed values of those classes of property does not constitute a rule as defined in section 17A.2, subsection 11.

11. Beginning with valuations established on or after January 1, 1995, as used in this section, “residential property” includes all land and buildings of multiple housing cooperatives organized under chapter 499A and includes land and buildings used primarily for human habitation which land and buildings are owned and operated by organizations that have received tax-exempt status under section 501(c)(3) of the Internal Revenue Code and rental income from the property is not taxed as unrelated business income under section 422.33, subsection 1A.

99 Acts, ch 114, §28
Subsection 2, unnumbered paragraph 1 stricken

441.30 Completion of assessment — oath.
Repealed by 99 Acts, ch 114, § 54.

441.49 Adjustment by auditor.

The director shall keep a record of the review and adjustment proceedings and finish the proceedings on or before October 1 unless for good cause the proceedings cannot be completed by that date. The director shall notify each county auditor by mail of the final action taken at the proceedings and specify any adjustments in the valuations of any class of property to be made effective for the jurisdiction.

However, an assessing jurisdiction may request the director to permit the use of an alternative method of applying the equalization order to the property values in the assessing jurisdiction, provided that the final valuation shall be equivalent to the director’s equalization order. The assessing jurisdiction shall notify the county auditor of the request for the use of an alternative method of applying the equalization order and the director’s disposition of the request. The request to use an alternative method of applying the equalization or-

der, including procedures for notifying affected property owners and appealing valuation adjustments, shall be made within ten days from the date the county auditor receives the equalization order and the valuation adjustments, and appeal procedures shall be completed by November 30 of the year of the equalization order. Compliance with the provisions of section 441.21 is sufficient grounds for the director to permit the use of an alternative method of applying the equalization order.

On or before October 15 the county auditor shall cause to be published in official newspapers of general circulation the final equalization order. The publication shall include, in type larger than the remainder of the publication, the following statement: “Assessed values are equalized by the department of revenue and finance every two years. Local taxing authorities determine the final tax levies and may reduce property tax rates to compensate for any increase in valuation due to equalization.” Failure to publish the equalization order has no effect upon the validity of the orders.

The county auditor shall add to or deduct from the valuation of each class of property in the county the required percentage, rejecting all fractions of fifty cents or less in the result, and counting all fractions over fifty cents as one dollar. For any special charter city that levies and collects its own tax based on current year assessed values, the equalization percentage shall be applied to the following year’s values, and shall be considered the equalized values for that year for purposes of this chapter.

The local board of review shall reconvene in special session from October 15 to November 15 for the purpose of hearing the protests of affected property owners or taxpayers within the jurisdiction of the board whose valuation of property if adjusted pursuant to the equalization order issued by the director of revenue and finance will result in a greater value than permitted under section 441.21. The board of review shall accept protests only during the first ten days following the date the local board of review reconvenes. The board of review shall limit its review to only the timely filed protests. The board of review may adjust all or a part of the percentage increase ordered by the director of revenue and finance by adjusting the actual value of the property under protest to one hundred percent of actual value. Any adjustment so determined by the board of review shall not exceed the percentage increase provided for in the director’s equalization order. The determination of the board of review on filed protests is final, subject to review by the director of revenue and finance for the purpose of determining whether the board’s actions substantially altered the equalization order. In making the review, the director has all the powers provided in chapter 421, and in exercising the powers the director is not subject to chapter 17A. Not later than fifteen days following the adjournment of the board, the board of review shall submit to the director of

revenue and finance, on forms prescribed by the director, a report of all actions taken by the board of review during this session.

Not later than ten days after the date the final equalization order is issued, the city or county officials of the affected county or assessing jurisdiction may appeal the final equalization order to the state

board of tax review. The appeal shall not delay the implementation of the equalization orders.

Tentative and final equalization orders issued by the director of revenue and finance are not rules as defined in section 17A.2, subsection 7.

99 Acts, ch 167, §1
Unnumbered paragraph 3 amended

CHAPTER 443

TAX LIST

443.12 Corrections by treasurer.

When property subject to taxation is withheld, overlooked, or from any other cause is not listed and assessed, the county treasurer shall, when apprised thereof, at any time within two years from the date at which such assessment should have been made, demand of the person, firm, corporation, or other party by whom the same should have been listed, or to whom it should have been assessed, or of the administrator thereof, the amount the property should have been taxed in each year the same was so withheld or overlooked and not listed and assessed, together with six percent interest thereon from the time the taxes would have become due and payable had such property been listed and assessed.

99 Acts, ch 174, §3, 7
Section amended

443.15 Time limit.

The assessment shall be made within two years after the tax list shall have been delivered to the treasurer for collection, and not afterwards, if the

property is then owned by the person who should have paid the tax.

99 Acts, ch 174, §4, 7
Section amended

443.17 Presumption of two-year ownership.

In any action or proceeding, now pending or hereafter brought, to recover taxes upon property not listed or assessed for taxation during the lifetime of any decedent, it shall be presumed that any property, any evidence of ownership of property, and any evidence of a promise to pay, owned by a decedent at the date of the decedent's death, had been acquired and owned by such decedent more than two years before the date of the decedent's death; and the burden of proving that any such property had been acquired by such decedent less than two years before the date of the decedent's death shall be upon the heirs, legatees, and legal representatives of any such decedent.

99 Acts, ch 174, §5, 7
Section amended

CHAPTER 445

TAX COLLECTION

445.5 Statement and receipt.

1. As soon as practicable after receiving the tax list prescribed in chapter 443, the treasurer shall deliver to the titleholder a statement of taxes due and payable which shall include the following information:

- a. The year of tax.
- b. A description of the parcel.
- c. The assessed value of the parcel, itemized by the value for land, dwellings, and buildings, for the current year and the previous year as valued by the assessor after application of any equalization orders.
- d. The taxable value of the parcel, itemized by the value for land, dwellings, and buildings, for the current year and the previous year after applica-

tion of any equalization orders, assessment limitations, and itemized valuation exemptions.

e. The complete name of all taxing authorities receiving a tax distribution, the amount of the distribution, and the percentage distribution for each named authority, listed from the highest to the lowest distribution percentage.

f. The consolidated levy rate for one thousand dollars of taxable valuation multiplied by the taxable valuation to produce the gross taxes levied before application of credits against levied taxes for the previous and current fiscal years.

g. The itemized credits against levied taxes deducted from the gross taxes levied in order to produce the net taxes owed for the previous and current fiscal years.

h. The amount of property tax dollars reduced on each parcel as a result of the moneys received from the property tax relief fund pursuant to section 426B.2, subsections 1 and 2.

i. The total amount of taxes levied by each taxing authority in the previous fiscal year and the current fiscal year and the difference between the two amounts, expressed as a percentage increase or decrease.

2. The county treasurer shall each year, upon request, deliver to the following persons or entities, or their duly authorized agents, a copy of the tax statement or tax statement information:

- a.* Contract purchaser.
- b.* Lessee.
- c.* Mortgagee.
- d.* Financial institution organized or chartered or holding an authorization certificate pursuant to chapter 524, 533, or 534.
- e.* Federally chartered financial institution.

The treasurer may negotiate and charge a reasonable fee not to exceed the cost of producing the information for the requestor for a tax statement or tax statement information provided by the treasurer.

3. A person other than those listed in subsection 2, who requests a tax statement or tax statement information, shall pay a fee to the treasurer at a rate not to exceed two dollars per parcel.

4. The county treasurer shall deliver to the taxpayer a receipt stating the year of tax, date of payment, a description of the parcel, and the amount of taxes, interest, fees, and costs paid except when payment of taxes is made by check, then a receipt shall be issued only upon request. The receipt shall be in full of the first half, second half, or full year amounts unless a payment is made under section 445.36A or 435.24, subsection 6.

99 Acts, ch 167, §2
Subsection 1, paragraph i amended

445.60 Refunding erroneous tax.

The board of supervisors shall direct the county treasurer to refund to the taxpayer any tax or portion of a tax found to have been erroneously or illegally paid, with all interest, fees, and costs actually paid. A refund shall not be ordered or made unless a claim for refund is presented to the board within two years of the date the tax was due, or if appealed to the board of review, the state board of tax review, or district court, within two years of the final decision.

99 Acts, ch 174, §6, 7
Section amended

CHAPTER 446

TAX SALES

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. If for good cause the treasurer cannot hold the annual tax sale on the third Monday of June, the treasurer may designate a different date in June for the sale.

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.

99 Acts, ch 4, §1, 4
1999 amendment to unnumbered paragraph 1 applies to tax sales held on or after February 17, 1999; 99 Acts, ch 4, §4
Unnumbered paragraph 1 amended

446.9 Notice of sale — service — publication — costs.

1. A notice of the date, time, and place of the annual tax sale shall be served upon the person in whose name the parcel subject to sale is taxed. The county treasurer shall serve the notice by sending it by regular first class mail to the person's last known address not later than May 1 of each fiscal year. The notice shall contain a description of the parcel to be sold which is clear, concise, and sufficient to distinguish the parcel to be sold from all other parcels. It shall also contain the amount of delinquent taxes for which the parcel is liable each year, the amount of the interest, fees, and the actual cost of publication of the notice as provided in subsection 2, all to be incorporated as a single sum. The notice shall contain a statement that, after the sale, if the parcel is not redeemed within the period provided in chapter 447, the right to redeem expires and a deed may be issued.

2. Publication of the date, time, and place of the annual tax sale shall be made once by the treasurer in at least one official newspaper in the county as selected by the board of supervisors and designated by the treasurer at least one week, but not more than three weeks, before the day of sale. The publication shall contain a description of the parcel to be sold that is clear, concise, and sufficient to distinguish the parcel to be sold from all other parcels. All items offered for sale pursuant to section 446.18 may be indicated by an “s” or by an asterisk. The publication shall also contain the name of the person in whose name the parcel to be sold is taxed, the amount delinquent for which the parcel is liable each year, the amount of the interest, fees, costs, and the cost of publication in the newspaper, all to be incorporated as a single sum. The publication shall contain a statement that, after the sale, if the parcel is not redeemed within the period provided in chapter 447, the right to redeem expires and a deed may be issued.

3. In addition to the notice required by subsection 1 and the publication required by subsection 2, the treasurer shall send, at least one week but not more than three weeks before the day of sale, a notice of sale in the form prescribed by subsection 1, by regular first class mail to any mortgagee having a lien upon the parcel, a vendor of the parcel under a recorded contract of sale, a lessor of the parcel who has a recorded lease or memorandum of a recorded lease, and to any other person who has an interest of record in the parcel, if the mortgagee, vendor, lessor, or other person having an interest of record has done both of the following:

a. Requested on a form prescribed by the treasurer that notice of sale be sent to the person.

b. Filed the request form with the treasurer at least one month prior to the date of sale, together with a fee of twenty-five dollars per parcel.

The request for notice is valid for a period of five years from the date of filing with the treasurer. The request for notice may be renewed for additional periods of five years by the procedure specified in this subsection.

4. Notice required by subsections 1 and 3 shall be deemed completed when the notice is enclosed in a sealed envelope with the proper postage on the envelope, is addressed to the person entitled to receive it at the person’s last known mailing address, and is deposited in a mail receptacle provided by the United States postal service. Failure to receive a mailed notice is not a defense to the payment of the total amount due.

99 Acts, ch 4, §2, 4

1999 amendments to subsections 1 and 2 apply to tax sales held on or after February 17, 1999; 99 Acts, ch 4, §4

Subsections 1 and 2 amended

446.19A Purchase by county or city for low or moderate income housing.

1. The board of supervisors of a county may adopt an ordinance authorizing the county and

each city in the county to bid on and purchase delinquent taxes and to assign tax sale certificates of abandoned property. This section may only be used by a county or by a city in the county if such an ordinance is in effect.

2. On the day of the regular tax sale or any continuance or adjournment of the tax sale, the county or a city may bid for abandoned property assessed as residential property or as commercial multifamily housing property a sum equal to the total amount due. Money shall not be paid by the county or city for the purchase, but each of the tax-levying and tax-certifying bodies having any interest in the taxes shall be charged with the total amount due the tax-levying or tax-certifying body as its just share of the purchase price. Prior to the purchase, the county or city shall file with the county treasurer a verified statement that a parcel to be purchased is abandoned and deteriorating in condition or is, or is likely to become, a public nuisance, and that the parcel is suitable for use for low or moderate income housing following rehabilitation.

3. If after the date that a parcel is sold pursuant to this chapter, or after the date that a parcel is sold under section 446.18, 446.38, or 446.39, the parcel assessed as residential property or as commercial multifamily housing property is identified as abandoned pursuant to a verified statement filed with the county treasurer by a city or county in the form set forth in subsection 2, a city or county may require the assignment of the tax sale certificate that had been issued for such parcel by paying to the holder of such certificate the total amount due on the date the assignment of the certificate is made to the county or city and recorded with the county treasurer. If the certificate is not assigned by the county or city pursuant to subsection 4, the county or city, whichever is applicable, is liable for the tax sale interest that was due the certificate holder pursuant to section 447.1, as of the date of assignment.

4. a. The city or county may assign the tax sale certificate obtained pursuant to this section. Preference shall be given to purchasers who are low or moderate income families or organizations which assist low or moderate income families to obtain housing. Persons who purchase certificates from the city or county under this subsection are liable for the total amount due the certificate holder pursuant to section 447.1.

b. All persons who purchase certificates from the city or county under this subsection shall demonstrate the intent to rehabilitate the property for habitation if the property is not redeemed. In the alternative, the county or city may, if title to the property has vested in the county or city under section 448.1, dispose of the property in accordance with section 331.361 or 364.7, as applicable.

5. For the purposes of this section, “abandoned” means the same as in section 657A.1. For the purposes of this section, “low or moderate in-

come families" has the same meaning as in section 403.17.

99 Acts, ch 29, §1, 3

1999 amendment is effective April 15, 1999, and applies to parcels first offered for sale at the tax sale held in June 1999 and subsequent years; 99 Acts, ch 29, §3

Section stricken and rewritten

446.28 Subsequent sale.

If for good cause, a parcel cannot be advertised

and offered for sale on the third Monday of June or on another date in June designated by the treasurer, the county treasurer shall make the sale on the third Monday of the next succeeding month in which the required notice can be given.

99 Acts, ch 4, §3, 4

1999 amendment applies to tax sales held on or after February 17, 1999; 99 Acts, ch 4, §4

Section amended

CHAPTER 447

TAX REDEMPTION

447.9 Notice of expiration of right of redemption — county right of redemption.

1. After one year and nine months from the date of sale, or after nine months from the date of a sale made under section 446.18, 446.19A, or 446.39, the holder of the certificate of purchase may cause to be served upon the person in possession of the parcel, and also upon the person in whose name the parcel is taxed, a notice signed by the certificate holder or the certificate holder's agent or attorney, stating the date of sale, the description of the parcel sold, the name of the purchaser, and that the right of redemption will expire and a deed for the parcel be made unless redemption is made within ninety days from the completed service of the notice. The notice shall be served by both regular mail and certified mail to the person's last known address and such service is deemed completed when the notice by certified mail is deposited in the mail and postmarked for delivery. The ninety-day redemption period begins as provided in section 447.12. When the notice is given by a county as a holder of a certificate of purchase the notice shall be signed by the county treasurer or the county attorney, and when given by a city, it shall be signed by the city officer designated by resolution of the council. When the notice is given by the Iowa finance authority or a city or county agency holding the parcel as part of an Iowa homesteading project, it shall be signed on behalf of the agency or authority by one of its officers, as authorized in rules of the agency or authority.

2. Service of the notice shall be made by mail on any mortgagee having a lien upon the parcel, a vendor of the parcel under a recorded contract of sale, a lessor who has a recorded lease or recorded memorandum of a lease, and any other person who has an interest of record, at the person's last known address. The notice shall be served on any city where the parcel is situated. Notice shall not be served after the filing of the affidavit required by section 447.12. Only those persons who are required to be served the notice of expiration as provided in this section or who have acquired an interest in or possession of the parcel subsequent to the filing of the

notice of expiration of the right of redemption are eligible to redeem a parcel from tax sale.

3. The county in which the parcel is located has the right of redemption for owner-occupied residential parcels as provided in this subsection. If a person is unable to contribute to the public revenue, the person may file a petition, duly sworn to, with the board of supervisors, stating that fact and giving a statement of parcels, as defined in section 445.1, owned or possessed by the petitioner, and other information as the board may require. The board of supervisors may order the county auditor to redeem a parcel owned or possessed by the petitioner from the holder of a certificate of purchase upon payment by the county to the certificate holder of the amount necessary to redeem under section 447.1. Each of the tax-levying and tax-certifying bodies having any interest in the taxes shall be charged with the total amount due the tax-levying or tax-certifying body as its just share of the purchase price, and that amount shall be deducted from the next month's disbursement made by the county to the tax-levying or tax-certifying body. Interest paid by the county to the certificate holder pursuant to section 447.1 shall be paid solely by the county and shall not be charged against the other tax-levying and tax-certifying bodies. Taxes charged and paid by the tax-levying or tax-certifying body in this manner shall be treated as suspended taxes pursuant to sections 427.8 through 427.12. Notwithstanding section 447.14, a county may redeem pursuant to this subsection for tax sales held before, on, or after July 1, 1998. A county may limit the number of times a taxpayer may file a petition for assistance under this subsection.

99 Acts, ch 29, §2, 3; 99 Acts, ch 83, §8, 10, 12

1998 amendment to former unnumbered paragraph 1 applies to redemption of parcels sold for delinquent taxes beginning with the tax sale held in June 1999; 99 Acts, ch 83, §10, 12

1999 amendment to subsection 1 by 99 Acts, ch 29, §2, is effective April 15, 1999, and applies to parcels first offered for sale at the tax sale held in June 1999 and subsequent years; 99 Acts, ch 29, §3

See Code editor's note to §10A.202

Subsection 1 amended

447.13 Cost — fee — report.

The cost of a record search and the cost of serving the notice, including the cost of mailing certified

mail notices and the cost of publication under section 447.10 if publication is required, shall be added to the amount necessary to redeem. The county treasurer shall file the proof of service and statement of costs and record these costs against the parcel. The certificate holder or the holder's agent shall report in writing to the treasurer the amount of authorized costs incurred, and the treasurer shall file the statement. Costs not filed with the treasurer before a redemption is complete shall not be collected by the treasurer and may be recovered through a court action against the parcel owner by

the certificate holder. If the parcel is held by a city or county, a city or county agency, or the Iowa finance authority, for use in an Iowa homesteading project, whether or not the parcel is the subject of a conditional conveyance granted under the project, the costs incurred for repairs and rehabilitation work required and undertaken in order to make the parcel meet applicable building or housing code standards shall be added to the amount necessary to redeem.

99 Acts, ch 83, §9
Section amended

CHAPTER 450

INHERITANCE TAX

450.1 Definitions — authority of county attorney.

In the construction of this chapter the word “*person*” shall include plural as well as singular, and artificial as well as natural persons. This chapter shall not be construed to confer upon a county attorney authority to represent the state in any case, and the county attorney shall represent the department of revenue and finance only when especially authorized by it to do so.

For purposes of this chapter, unless the context otherwise requires, “*personal representative*” means an executor, administrator, or trustee as each is defined in section 633.3 and “*Internal Revenue Code*” means the same as defined in section 422.3.

“*Real estate or real property*” for the purpose of appraisal under this chapter means real estate which is the land and appurtenances, including structures affixed thereto.

99 Acts, ch 152, §32, 40

Unnumbered paragraph 3 is effective July 1, 1999, for estates of decedents dying on or after that date; 99 Acts, ch 152, §32, 40
NEW unnumbered paragraph 3

450.7 Lien of tax.

1. Except for the share of the estate passing to the surviving spouse, and parents, grandparents, great-grandparents, and other lineal ascendants, children including legally adopted children and biological children entitled to inherit under the laws of this state, stepchildren, and grandchildren, great-grandchildren, and other lineal descendants, the tax is a charge against and a lien upon the estate subject to tax under this chapter, and all property of the estate or owned by the decedent from the death of the decedent until paid, subject to the following limitation:

Inheritance taxes owing with respect to a passing of property of a deceased person are no longer a lien against the property ten years from the date of death of the decedent owner regardless of whether

the decedent owner died prior to or subsequent to July 1, 1995, except to the extent taxes are attributable to remainder or deferred interests and are deferred in accordance with the provisions of this chapter.

2. Notice of the lien is not required to be recorded. The rights of the state under the lien have priority over all subsequent mortgages, purchases, or judgment creditors; and a conveyance after the decedent's death of the property subject to a lien does not discharge the property except as otherwise provided in this chapter. However, if additional tax is determined to be owing under this chapter or chapter 451 after the lien has been released under paragraph “*a*” or “*b*”, the lien does not have priority over subsequent mortgages, purchases, or judgment creditors unless notice of the lien is recorded in the office of the recorder of the county where the estate is probated, or where the property is located if the estate has not been administered. The department of revenue and finance may release the lien by filing in the office of the clerk of the court in the county where the property is located, the decedent owner died, or the estate is pending or was administered, one of the following:

- a. A receipt in full payment of the tax.
- b. A certificate of nonliability for the tax as to all property reported in the estate.
- c. A release or waiver of the lien as to all or any part of the property reported in the estate, which shall release the lien as to the property designated in the release or waiver.

3. The sale, exchange, mortgage, or pledge of property by the personal representative pursuant to a testamentary direction or power, pursuant to section 633.387, or under order of court, divests the property from the lien of the tax. The proceeds from that sale, exchange, mortgage, or pledge shall be held by the personal representative subject to the same priorities for the payment of the tax as existed with respect to the property before the trans-

action, and the personal representative is personally liable for payment of the tax to the extent of the proceeds.

99 Acts, ch 151, §45, 89
Subsection 1, unnumbered paragraph 2 amended

450.22 Administration avoided — inheritance tax duties required.

When the heirs or persons entitled to inherit the property of an estate subject to tax under this chapter desire to avoid the appointment of a personal representative as provided in section 450.21, and in all instances where real estate is involved and there are no regular probate proceedings, they or one of them shall file under oath the inventories required by section 633.361 and the required reports, perform all the duties required by this chapter of the personal representative, and file the inheritance tax return. However, this section does not apply and a return is not required even though real estate is part of the assets subject to tax under this chapter, if all of the assets are held in joint tenancy with right of survivorship between husband and wife alone, or if the estate exclusively consists of property held in joint tenancy with the right of survivorship solely by the decedent and any individuals listed in section 450.9 as individuals that are entirely exempt from Iowa inheritance tax and the estate does not have a federal estate tax obligation. When this section applies, proceedings for the collection of the tax when a personal representative is not appointed shall conform as nearly as possible to proceedings under this chapter in other cases.

99 Acts, ch 151, §46, 89
1999 amendment is effective July 1, 1999, for estates of decedents dying on or after that date; 99 Acts, ch 151, §46, 89
Section amended

450.27 Commission to appraisers.

When an appraisal of real estate is requested by the department of revenue and finance, as provided in section 450.37, or is otherwise required by this chapter, the clerk shall issue a commission to the appraisers, who shall fix a time and place for appraisal, except that if the only interest that is subject to tax is a remainder or deferred interest upon which the tax is not payable until the determination of a prior estate or interest for life or term of years, the clerk shall not issue the commission until the determination of the prior estate, except at the request of the department of revenue and finance when the parties in interest seek to remove an inheritance tax lien. When valuing the real estate for purposes of inheritance tax, an appraiser does not have the jurisdiction to determine what property or partial interests may or may not be subject to tax. Whole interests in the property should be appraised and the question of the actual property or partial interest subject to inheritance tax is to be determined by means of the administrative procedures pursuant to section 450.94. All joint property that is to be appraised should be listed at its full market value. Long-term leases are

not considered in determining the value of property when being appraised.

99 Acts, ch 152, §33, 40
1999 amendment is effective July 1, 1999, for estates of decedents dying on or after that date; 99 Acts, ch 152, §33, 40
Section amended

450.37 Value for computing the tax.

1. Unless the value has been determined under chapter 450B, the tax shall be computed based upon one of the following:

a. The fair market value of the property in the ordinary course of trade determined under subsection 2.

b. The alternate value of the property, if the personal representative so elects, that has been established for federal estate tax purposes under section 2032 of the Internal Revenue Code. The election shall be exercised on the return by the personal representative or other person signing the return, within the time prescribed by law for filing the return or before the expiration of any extension of time granted for filing the return.

2. Fair market value of real estate in the ordinary course of trade shall be established by agreement, including an agreement to accept the values as finally determined for federal estate tax purposes. The agreement shall be between the department of revenue and finance, the personal representative, and the persons who have an interest in the property.

a. If an agreement has not been reached on the fair market value of real property in the ordinary course of trade, the director of revenue and finance has thirty days after the return is filed to request an appraisal under section 450.27. If an appraisal request is not made within the thirty-day period, the value listed on the return is the agreed value of the real property.

b. If an agreement is not reached on the fair market value of personal property in the ordinary course of trade, the personal representative or any person interested in the personal property may appeal to the director of revenue and finance for a revision of the department of revenue and finance's determination of the value and after the appeal hearing may seek judicial review of the director's decision. The provisions of section 450.94, subsection 3, relating to appeal of a determination of the department and review of the director's decision apply to an appeal and review made under this subsection.

3. In addition to the applicable period of limitation for examination and determination, the department shall make an examination to adjust the value of real property for Iowa inheritance tax purposes to the value accepted by the internal revenue service for federal estate tax purposes. The department shall make an examination and adjustment for the value of the real property at any time within six months from the date of receipt by the department of written notice from the personal representative for the estate that all federal estate tax mat-

ters between the estate and the internal revenue service have been concluded. To begin the running of the six-month period, the notice shall be in writing in a form sufficient to inform the department of the final disposition of the federal estate tax obligation with the internal revenue service and a copy of the federal document showing the final disposition and final federal adjustments of all real property values must be attached. The department shall make an adjustment to the value of real property for inheritance tax purposes to the value accepted for federal estate tax purposes regardless of whether an inheritance clearance has been issued, an appraisal has been obtained on the real property indicating a contrary value, whether there has been an acceptance of another value for real property by the department, or whether an agreement has been entered into by the department and the personal representative for the estate and persons having an interest in the real property regarding the value of the real property. Notwithstanding the period of limitation specified in section 450.94, subsection 3, the personal representative for the estate shall have six months from the day of final disposition of any real property valuation matter between the personal representative for the estate and the internal revenue service to claim a refund of an overpayment of tax due to the change in the valuation of real property by the internal revenue service.

99 Acts, ch 151, §47, 89; 99 Acts, ch 152, §34, 40

1999 amendments to subsections 2 and 3 are effective July 1, 1999, for estates of decedents dying on or after that date; 99 Acts, ch 151, §47, 89; 99 Acts, ch 152, §34, 40

Subsection 2, unnumbered paragraph 1 amended
NEW subsection 3

450.92 Compromise settlement. Repealed by 99 Acts, ch 151, § 86, 89.

1999 amendment repealing section is effective July 1, 1999, for estates of decedents dying on or after that date; 99 Acts, ch 151, §86, 89

450.94 Return — determination — appeal.

1. “*Taxpayer*” as used in this section means a person liable for the payment of tax as stated in section 450.5.

2. The taxpayer shall file an inheritance tax return on forms to be prescribed by the director of revenue and finance on or before the last day of the ninth month after the death of the decedent. When an inheritance tax return is filed, the department shall examine it and determine the correct amount of tax. If the amount paid is less than the correct amount due, the department shall notify the taxpayer of the total amount due together with any penalty and interest which shall be a sum certain if paid on or before the last day of the month in which the notice is dated, or on or before the last day of the following month if the notice is dated after the twentieth day of a month and before the first day of the following month.

3. If the amount paid is greater than the correct tax, penalty, and interest due, the department

shall refund the excess with interest. Interest shall be computed at the rate in effect under section 421.7, under the rules prescribed by the director counting each fraction of a month as an entire month and the interest shall begin to accrue on the first day of the second calendar month following the date of payment or on the date the return was due to be filed or was filed, whichever is the latest. However, the director shall not allow a claim for refund or credit that has not been filed with the department within three years after the tax payment upon which a refund or credit is claimed became due, or one year after the tax payment was made, whichever time is later. A determination by the department of the amount of tax, penalty, and interest due, or the amount of refund for excess tax paid, is final unless the person aggrieved by the determination appeals to the director for a revision of the determination within sixty days from the date of the notice of determination of tax, penalty, and interest due or refund owing or unless the taxpayer contests the determination by paying the tax, interest, and penalty and timely filing a claim for refund. The director shall grant a hearing, and upon the hearing the director shall determine the correct tax, penalty, and interest or refund due, and notify the appellant of the decision by mail. The decision of the director is final unless the appellant seeks judicial review of the director’s decision under section 450.59 within sixty days after the date of the notice of the director’s decision.

4. Payments received must be credited first to the penalty and interest accrued and then to the tax due.

5. The amount of tax imposed under this chapter shall be assessed according to one of the following:

a. Within three years after the return is filed with respect to property reported on the final inheritance tax return.

b. At any time after the tax became due with respect to property not reported on the final inheritance tax return, but not later than three years after the omitted property is reported to the department on an amended return or on the final inheritance tax return if one was not previously filed.

In addition to the applicable periods of limitations for examination and determination specified in paragraphs “a” and “b”, the department may make an examination and determination at any time within six months from the date of receipt by the department of written notice from the taxpayer of the final disposition of any matter between the taxpayer and the internal revenue service with respect to the federal estate, gift, or generation skipping transfer tax. In order to begin the running of the six months assessment period, the notice shall be in writing in form sufficient to inform the department of the final disposition of any matter with respect to the federal estate, gift, or generation

skipping transfer tax, and a copy of the federal document showing the final disposition or final federal adjustments shall be attached to the notice.

99 Acts, ch 151, §48, 89

1994 amendments to subsection 3 are effective for notices of assessment

issued on or after January 1, 1995; 94 Acts, ch 1133, §16

1999 amendments to subsections 2 and 3 are effective July 1, 1999, for estates of decedents dying on or after that date; 99 Acts, ch 151, §48, 89

Subsections 2 and 3 amended

CHAPTER 451

IOWA ESTATE TAX

451.12 Applicable statutes — penalties.

All the provisions of chapter 450 with respect to the lien provisions of section 450.7, and the determination, imposition, payment, and collection of the tax imposed under that chapter, including penalty and interest upon delinquent taxes and the confidentiality of the tax return, are applicable to this chapter, except as they are in conflict with this chapter. The exceptions to the lien provisions found in section 450.7 do not apply to this chapter. The penalty provisions set out in section 450.53 shall apply to a person in possession of assets to be re-

ported for purposes of taxation who willfully makes a false or fraudulent return or willfully fails to pay the tax, supply the information, make, sign, or file the required return within the time required by law or a person who willfully attempts in any manner to evade taxes imposed by this chapter or avoid payment of the tax. The director of revenue and finance shall adopt rules necessary for the enforcement of this chapter.

99 Acts, ch 151, §49, 89

1999 amendment is effective July 1, 1999, for estates of decedents dying on or after that date; 99 Acts, ch 151, §49, 89

Section amended

CHAPTER 452A

MOTOR FUEL AND SPECIAL FUEL TAXES

452A.2 Definitions.

As employed in this division:

1. *“Aviation gasoline”* means any gasoline which is capable of being used for propelling aircraft, which is invoiced as aviation gasoline or is received, sold, stored, or withdrawn from storage by any person for the purpose of propelling aircraft. Motor fuel capable of being used for propelling motor vehicles is not aviation gasoline.

2. *“Blender”* means a person who owns and blends alcohol with gasoline to produce ethanol blended gasoline and blends the product at a non-terminal location. The blender is not restricted to blending alcohol with gasoline. Products blended with gasoline other than grain alcohol are taxed as gasoline. *“Blender”* also means a person blending two or more special fuel products at a nonterminal location where the tax has not been paid on all of the products blended. This blend is taxed as a special fuel.

3. *“Common carrier”* or *“contract carrier”* means a person involved in the movement of motor fuel or special fuel from the terminal or movement of the motor fuel or special fuel imported into this state, who is not an owner of the motor fuel or special fuel.

4. *“Dealer”* means a person, other than a distributor, who engages in the business of selling or distributing motor fuel or special fuel to the end user in this state.

5. *“Department”* means the department of revenue and finance.

6. *“Director”* means the director of revenue and finance.

7. *“Distributor”* means a person who acquires tax paid motor fuel or special fuel from a supplier, restrictive supplier or importer, or another distributor for subsequent sale at wholesale and distribution by tank cars or tank trucks or both. The department may require that the distributor be registered to have terminal purchase rights.

8. *“Eligible purchaser”* means a distributor of motor fuel or special fuel or an end user of special fuel who has purchased a minimum of two hundred forty thousand gallons of special fuel each year in the preceding two years. Eligible purchasers who elect to make delayed payments to a licensed supplier shall use electronic funds transfer. Additional requirements for qualifying as an eligible purchaser shall be established by rule.

9. *“Ethanol blended gasoline”* means motor fuel containing at least ten percent alcohol distilled from cereal grains.

10. *“Export”* means delivery across the boundaries of this state by or for the seller or purchaser from a place of origin in this state.

11. *“Exporter”* means a person or other entity who acquires fuel in this state for export to another state.

12. "Import" means delivery across the boundaries of this state by or for the seller or purchaser from a place of origin outside this state.

13. "Importer" means a person who imports motor fuel or undyed special fuel in bulk or transport load into the state by truck, rail, or barge.

14. "Licensed compressed natural gas and liquefied petroleum gas dealer" means a person in the business of handling untaxed compressed natural gas or liquefied petroleum gas who delivers any part of the fuel into a fuel supply tank of any motor vehicle.

15. "Licensed compressed natural gas and liquefied petroleum gas user" means a person licensed by the department who dispenses compressed natural gas or liquefied petroleum gas, upon which the special fuel tax has not been previously paid, for highway use from fuel sources owned and controlled by the person into the fuel supply tank of a motor vehicle, or commercial vehicle owned or controlled by the person.

16. "Licensee" means a person holding an uncanceled supplier's, restrictive supplier's, importer's, exporter's, dealer's, user's, or blender's license issued by the department under this division or any prior motor fuel tax law or any other person who possesses fuel for which the tax has not been paid.

17. "Motor fuel" means both of the following:

a. All products commonly or commercially known or sold as gasoline, including casinghead and absorption or natural gasoline, regardless of their classifications or uses, and including transmix which serves as a buffer between fuel products in the pipeline distribution process.

b. Any liquid advertised, offered for sale, sold for use as, or commonly or commercially used as a fuel for propelling motor vehicles which, when subjected to distillation of gasoline, naphtha, kerosene and similar petroleum products (American Society of Testing Materials Designation D-86), shows not less than ten per centum distilled (recovered) below three hundred forty-seven degrees Fahrenheit (one hundred seventy-five degrees Centigrade) and not less than ninety-five per centum distilled (recovered) below four hundred sixty-four degrees Fahrenheit (two hundred forty degrees Centigrade).

"Motor fuel" does not include special fuel, and does not include liquefied gases which would not exist as liquids at a temperature of sixty degrees Fahrenheit and a pressure of fourteen and sevenths pounds per square inch absolute, or naphthas and solvents unless the liquefied gases or naphthas and solvents are used as a component in the manufacture, compounding, or blending of a liquid within paragraph "b", in which event the resulting product shall be deemed to be motor fuel.

18. "Naphthas and solvents" shall mean and include those liquids which come within the distillation specifications for motor fuel set out under subsection 17, paragraph "b", but which are de-

signed and sold for exclusive use other than as a fuel for propelling motor vehicles.

19. "Regional transit system" means regional transit system as defined in section 452A.57, subsection 11.

20. "Restrictive supplier" means a person who imports motor fuel or undyed special fuel into this state in tank wagons or in small tanks not otherwise licensed as an importer.

21. "Special fuel" means fuel oils and all combustible gases and liquids suitable for the generation of power for propulsion of motor vehicles or turbine-powered aircraft, and includes any substance used for that purpose, except that it does not include motor fuel. Kerosene shall not be considered to be a special fuel, unless blended with other special fuels for use in a motor vehicle with a diesel engine.

22. "Supplier" means a person who acquires motor fuel or special fuel by pipeline or marine vessel from a state, territory, or possession of the United States, or from a foreign country for storage at and distribution from a terminal and who is registered under 26 U.S.C. § 4101 for tax-free transactions in gasoline, a person who produces in this state or acquires by truck, railcar, or barge for storage at and distribution from a terminal, alcohol or alcohol derivative substances, or a person who produces, manufactures, or refines motor fuel or special fuel in this state. "Supplier" includes a person who does not meet the jurisdictional connection to this state but voluntarily agrees to act as a supplier for purposes of collecting and reporting the motor fuel or special fuel tax. "Supplier" does not include a retail dealer or wholesaler who merely blends alcohol with gasoline before the sale or distribution of the product or a terminal operator who merely handles, in a terminal, motor fuel or special fuel consigned to the terminal operator.

23. "Terminal" means a motor fuel or special fuel storage and distribution facility that is supplied by a pipeline or a marine vessel and from which the fuel may be removed at a rack. "Terminal" does not include a facility at which motor fuel or special fuel blend stocks and additives are used in the manufacture of products other than motor fuel or special fuel and from which no motor fuel or special fuel is removed.

24. "Terminal operator" means the person who by ownership or contractual agreement is charged with the responsibility for, or physical control over, and operation of a terminal. If co-venturers own a terminal, "terminal operator" means the person who is appointed to exercise the responsibility for, or physical control over, and operation of the terminal.

25. "Urban transit system" means Iowa urban transit system as defined in section 452A.57, subsection 6.

26. "Use" means the receipt, delivery, or placing of liquefied petroleum gas by a licensed lique-

fied petroleum gas user into a fuel supply tank of a motor vehicle while the vehicle is in the state, except that with respect to natural gas used as a special fuel, "use" means the receipt, delivery, or placing of the natural gas into equipment for compressing the gas for subsequent delivery into the fuel supply tank of a motor vehicle.

27. "Withdrawn from terminal" means physical movement from a supplier to a distributor or eligible end user and includes an importer going out of state and obtaining fuel from a terminal and bringing the fuel into the state, and a restrictive supplier bringing fuel into the state even though not purchased directly from a terminal.

99 Acts, ch 151, §50, 51, 89
 Subsection 11 amended
 Subsection 17, paragraph a amended

452A.3 Levy of excise tax.

1. For the privilege of operating motor vehicles in this state, an excise tax of twenty cents per gallon is imposed upon the use of all motor fuel used for any purpose except as otherwise provided in this section and in this division.

2. a. For the privilege of operating aircraft in this state an excise tax of eight cents per gallon is imposed on the use of all aviation gasoline.

b. For the privilege of operating motor vehicles in this state, an excise tax of nineteen cents per gallon until June 30, 2007, is imposed upon the use of motor fuel containing at least ten percent alcohol distilled from cereal grains grown in the United States and used for any purpose except as otherwise provided in this division.

3. For the privilege of operating motor vehicles or aircraft in this state, there is imposed an excise tax on the use of special fuel in a motor vehicle or aircraft. The tax rate on special fuel for diesel engines of motor vehicles is twenty-two and one-half cents per gallon. The rate of tax on special fuel for aircraft is three cents per gallon. On all other special fuel the per gallon rate is the same as the motor fuel tax. Indelible dye meeting United States environmental protection agency and internal revenue service regulations must be added to fuel before or upon withdrawal at a terminal or refinery rack for that fuel to be exempt from tax and the dyed fuel may be used only for an exempt purpose.

4. For compressed natural gas used as a special fuel, the rate of tax that is equivalent to the motor fuel tax shall be sixteen cents per hundred cubic feet adjusted to a base temperature of sixty degrees Fahrenheit and a pressure of fourteen and seventy-three hundredths pounds per square inch absolute.

5. The tax shall be paid by the following:

a. The supplier, upon the invoiced gross gallonage of all motor fuel or undyed special fuel withdrawn from a terminal for delivery in this state.

b. The person who owns the fuel at the time it is brought into the state by a restrictive supplier or importer, upon the invoiced gross gallonage of motor fuel or undyed special fuel imported.

c. The blender on total invoiced gross gallonage of alcohol or other product sold to be blended with gasoline or special fuel.

d. Any other person who possesses taxable fuel upon which the tax has not been paid to a licensee.

However, the tax shall not be imposed or collected under this division with respect to motor fuel or special fuel sold for export or exported from this state to any other state, territory, or foreign country.

6. Thereafter, except as otherwise provided in this division, the per gallon amount of the tax shall be added to the selling price of every gallon of such motor fuel or undyed special fuel sold in this state and shall be collected from the purchaser so that the ultimate consumer bears the burden of the tax.

99 Acts, ch 151, §52, 89
 Subsection 5, paragraph b amended

452A.8 Tax reports — computation and payment of tax — credits.

1. For the purpose of determining the amount of the supplier's, restrictive supplier's, or importer's tax liability, a supplier or restrictive supplier shall file a return, not later than the last day of the month following the month in which this division becomes effective and not later than the last day of each calendar month thereafter, and an importer shall file a return semimonthly with the department, signed under penalty for false certification. For an importer for the reporting period from the first day of the month through the fifteenth of the month, the return is due on the last day of the month. For an importer for the reporting period from the sixteenth of the month through the last day of the month, the return is due on the fifteenth day of the following month. The returns shall include the following:

a. A statement of the number of invoiced gallons of motor fuel and undyed special fuel withdrawn from the terminal by the licensee within this state during the preceding calendar month in such detail as determined by the department. This includes on-site blending reports at the terminal.

b. For information purposes only, a supplier, restrictive supplier, or importer shall show the number of invoiced gallons of dyed special fuel withdrawn from the terminal.

c. A statement showing the deductions authorized in this division in such detail and with such supporting evidence as required by the department.

d. Any other information the department may require for the enforcement of this chapter.

2. At the time of filing a return, a supplier or restrictive supplier shall pay to the department the full amount of the fuel tax due for the preceding calendar month. An importer shall pay to the department the full amount of fuel tax due for the preceding semimonthly period. The tax shall be computed as follows:

a. From the total number of invoiced gallons of motor fuel or undyed special fuel withdrawn from the terminal by the licensee during the preceding calendar month or semimonthly period the following deductions shall be made:

(1) The gallonage of motor fuel or undyed special fuel withdrawn from a terminal by a licensee and exported outside Iowa.

(2) For suppliers only, the one and six-tenths percent of the number of gallons of motor fuel or seven-tenths percent of the number of gallons of undyed special fuel of the invoiced gallons of motor fuel or undyed special fuel withdrawn from a terminal within this state during the preceding calendar month.

b. The number of invoiced gallons remaining after the deductions in paragraph "a" shall be multiplied by the per gallon fuel tax rate.

c. The tax due under paragraph "b" shall be the amount of fuel tax due from the supplier, restrictive supplier, or importer for the preceding reporting period. The director may require by rule that the payment of taxes by suppliers, restrictive suppliers, and importers be made by electronic funds transfer. The director may allow a tax float by rule where the eligible purchaser is not required to pay the tax to the supplier until one business day prior to the date the tax is due. A licensed supplier who is unable to recover the tax from an eligible purchaser is not liable for the tax, upon proper documentation, and may credit the amount of unpaid tax against a later remittance of tax. Under this provision, a supplier does not qualify for a credit if the purchaser did not elect to use the eligible purchaser status, or otherwise does not qualify to be an eligible purchaser. To qualify for the credit, the supplier must notify the department of the uncollectible account no later than ten calendar days after the due date for payment of the tax. If a supplier sells additional motor fuel or undyed special fuel to a delinquent eligible purchaser after notifying the department that the supplier has an uncollectible debt with that eligible purchaser, the limited liability provision does not apply to the additional fuel. The supplier is liable for tax collected from the purchaser.

d. The director may require by rule that reports and returns be filed by electronic transmission.

e. The tax for compressed natural gas and liquefied petroleum gas delivered by a licensed compressed natural gas or liquefied petroleum gas dealer for use in this state shall attach at the time of the delivery and shall be collected by the dealer from the consumer and paid to the department as provided in this chapter. The tax, with respect to compressed natural gas and liquefied petroleum gas acquired by a consumer in any manner other than by delivery by a licensed compressed natural gas or liquefied petroleum gas dealer into a fuel supply tank of a motor vehicle, attaches at the time

of the use of the fuel and shall be paid over to the department by the consumer as provided in this chapter.

The department shall adopt rules governing the dispensing of compressed natural gas and liquefied petroleum gas by licensed dealers and licensed users. For purposes of this paragraph, "dealer" and "user" mean a licensed compressed natural gas or liquefied petroleum gas dealer or user and "fuel" means compressed natural gas or liquefied petroleum gas. The department shall require that all pumps located at dealer locations and user locations through which liquefied petroleum gas can be dispensed shall be metered, inspected, tested for accuracy, and sealed and licensed by the state department of agriculture and land stewardship, and that fuel delivered into the fuel supply tank of any motor vehicle shall be dispensed only through tested metered pumps and may be sold without temperature correction or corrected to a temperature of sixty degrees. If the metered gallonage is to be temperature-corrected, only a temperature-compensated meter shall be used. Natural gas used as fuel shall be delivered into compressing equipment through sealed meters certified for accuracy by the department of agriculture and land stewardship.

All gallonage which is not for highway use, dispensed through metered pumps as licensed under this section on which fuel tax is not collected, must be substantiated by exemption certificates as provided by the department or by valid exemption certificates provided by the dealers, signed by the purchaser, and retained by the dealer. A "valid exemption certificate provided by a dealer" is an exemption certificate which is in the form prescribed by the director to assist a dealer to properly account for fuel dispensed for which tax is not collected and which is complete and correct according to the requirements of the director.

For the privilege of purchasing liquefied petroleum gas, dispensed through licensed metered pumps, on a basis exempt from the tax, the purchaser shall sign exemption certificates for the gallonage claimed which is not for highway use.

The department shall disallow all sales of gallonage which is not for highway use unless proof is established by the certificate. Exemption certificates shall be retained by the dealer for a period of three years.

(1) For the purpose of determining the amount of liability for fuel tax, each dealer and each user shall file with the department not later than the last day of the month following the month in which this division becomes effective and not later than the last day of each calendar month thereafter a monthly tax return certified under penalties for false certification. The return shall show, with reference to each location at which fuel is delivered or placed by the dealer or user into a fuel supply tank of any motor vehicle during the next preceding cal-

endar month, information as required by the department.

(2) The amount of tax due shall be computed by multiplying the appropriate tax rate per gallon by the number of gallons of fuel delivered or placed by the dealer or user into supply tanks of motor vehicles.

(3) The return shall be accompanied by remittance in the amount of the tax due for the month in which the fuel was placed into the supply tanks of motor vehicles.

3. For the purpose of determining the amount of the tax liability on alcohol blended to produce ethanol blended gasoline, each licensed blender shall, not later than the last day of each month following the month in which the blending is done, file with the department a monthly return, signed under penalty for false certificate, containing information required by rules adopted by the director.

4. A person who possesses fuel or uses fuel in a motor vehicle upon which no tax has been paid by a licensee in this state is subject to reporting and paying the applicable tax.

99 Acts, ch 151, §53-56, 89
 Subsection 1, unnumbered paragraph 1 amended
 Subsection 2, unnumbered paragraph 1 and paragraph d amended
 Subsection 3 amended

452A.9 Returns from persons not licensed as suppliers, restrictive suppliers, or importers.

Every person other than a licensed supplier, restrictive supplier, or importer, who purchases, brings into this state, or otherwise acquires within this state motor fuel or undyed special fuel, not otherwise exempted, which the person has knowingly not paid or incurred liability to pay either to a licensee or to a dealer the motor fuel or special fuel tax, shall be subject to the provisions of this division that apply to suppliers, restrictive suppliers, and importers of motor fuel or undyed special fuel and shall file the same returns and make the same tax payments and be subject to the same penalties for delinquent filing or nonfiling or delinquent payment or nonpayment as apply to suppliers, restrictive suppliers, and importers.

99 Acts, ch 151, §57, 89
 Section amended

452A.15 Transportation reports — refinery and pipeline and marine terminal reports.

1. Every railroad and common carrier or contract carrier transporting motor fuel or special fuel either in interstate or intrastate commerce within this state and every person transporting motor fuel or special fuel by whatever manner into this state shall, subject to penalties for false certificate, report to the department all deliveries of motor fuel or special fuel to points within this state other than refineries or marine or pipeline terminals. If any supplier, restrictive supplier, importer, or distributor is also engaged in the transportation of motor

fuel or special fuel for others, the supplier, restrictive supplier, importer, or distributor shall make the same reports as required of common carriers and contract carriers.

The report shall cover monthly periods and shall show as to each delivery:

- a. The name and address of the person to whom delivery was actually made.
- b. The name and address of the originally named consignee, if delivered to any other than the originally named consignee.
- c. The point of origin, the point of delivery, and the date of delivery.
- d. The number and initials of each tank car and the number of gallons contained in the tank car, if shipped by rail.
- e. The name of the boat, barge, or vessel, and the number of gallons contained in the boat, barge, or vessel, if shipped by water.
- f. The registration number of each tank truck and the number of gallons contained in the tank truck, if transported by motor truck.
- g. The manner, if delivered by other means, in which the delivery is made.
- h. Additional information relative to shipments of motor fuel or special fuel as the department may require.

If a person required under this section to file transportation reports is a licensee under this division and if the information required in the transportation report is contained in any other report rendered by the person under this division, a separate transportation report of that information shall not be required.

2. A person operating storage facilities at a refinery or at a terminal in this state shall make a monthly accounting to the department of all motor fuel, alcohol, and undyed special fuel withdrawn from the refinery and all motor fuel, alcohol, and undyed special fuel delivered into, withdrawn from, and on hand in the refinery or terminal.

3. The reports required in this section shall be for information purposes only and the department may in its discretion waive the filing of any of these reports not necessary for proper administration of this division. The reports required in this section shall be certified under penalty for false certificate and filed with the department within the time allowed for filing of suppliers' and restrictive suppliers' returns of motor fuel or special fuel withdrawn from a terminal within this state or imported into this state.

99 Acts, ch 151, §58, 89
 Subsection 3 amended

452A.17 Refunds.

1. A person who uses motor fuel or undyed special fuel for any of the nontaxable purposes listed in this subsection, and who has paid the motor fuel or special fuel tax either directly to the department or by having the tax added to the price of the fuel, and who has a refund permit, upon presentation to and

approval by the department of a claim for refund, shall be reimbursed and repaid the amount of the tax which the claimant has paid on the gallonage so used, except that the amount of a refund payable under this division may be applied by the department against any tax liability outstanding on the books of the department against the claimant.

a. The refund is allowable for motor fuel or undyed special fuel sold directly to and used for the following:

(1) The United States or any agency or instrumentality of the United States or where collection of the tax would be prohibited by the Constitution of the United States or the laws of the United States or by the Constitution of the State of Iowa.

(2) An Iowa urban transit system which is used for a purpose specified in section 452A.57, subsection 6.

(3) A regional transit system, the state, any of its agencies, or any political subdivision of the state which is used for a purpose specified in section 452A.57, subsection 11, or for public purposes, including fuel sold for the transportation of pupils of approved public and nonpublic schools by a carrier who contracts with the public school under section 285.5.

(4) Fuel used in unlicensed vehicles, stationary engines, implements used in agricultural production, and machinery and equipment used for non-highway purposes.

(5) Fuel used for producing denatured alcohol.

(6) Fuel used for idle time, power takeoffs, reefer units, pumping credits, and transport diversions, fuel lost through casualty, exports by distributors, and blending errors for special fuel. The department shall adopt rules setting forth specific requirements relating to refunds for idle time, power takeoffs, reefer units, pumping credits, and transport diversions, fuel lost through casualty, and blending errors for special fuel.

(7) A bona fide commercial fisher, licensed and operating under an owner's certificate for commercial fishing gear issued pursuant to section 482.4.

(8) For motor fuel or undyed special fuel placed in motor vehicles and used, other than on a public highway, in the extraction and processing of natural deposits, without regard to whether the motor vehicle was registered under section 321.18. An applicant under this subparagraph shall maintain adequate records for a period of three years beyond the date of the claim.

(9) Undyed special fuel used in watercraft.

b. A claim for refund is subject to the following conditions:

(1) The claim shall be on a form prescribed by the department and be certified by the claimant under penalty for false certificate.

(2) The claim shall include proof as prescribed by the department showing the purchase of the motor fuel or undyed special fuel on which a refund is claimed.

(3) An invoice shall not be acceptable in support of a claim for refund unless it is a separate serially numbered invoice covering no more than one purchase of motor fuel or undyed special fuel, prepared by the seller on a form approved by the department which will prevent erasure or alteration and unless it is legibly written with no corrections or erasures and shows the date of sale, the name and address of the seller and of the purchaser, the kind of fuel, the gallonage in figures, the per gallon price of the motor fuel or undyed special fuel, the total purchase price including the Iowa motor fuel or undyed special fuel tax and that the total purchase price including tax has been paid. However, with respect to refund invoices made on a billing machine, the department may waive any of the requirements of this subparagraph.

(4) The claim shall state the gallonage of motor fuel that was used or will be used by the claimant other than in aircraft, watercraft, or to propel motor vehicles and the gallonage of undyed special fuel that was or will be used by the claimant other than in aircraft or to propel motor vehicles, the manner in which the motor fuel or undyed special fuel was used or will be used, and the equipment in which it was used or will be used.

(5) The claim shall state whether the claimant used fuel for aircraft, watercraft, or to propel motor vehicles from the same tanks or receptacles in which the claimant kept the motor fuel on which the refund is claimed or whether the claimant used fuel for aircraft or to propel motor vehicles from the same tanks or receptacles in which the claimant kept the undyed special fuel on which the refund is claimed.

(6) If an original invoice is lost or destroyed the department may in its discretion accept a copy identified and certified by the seller as being a true copy of the original.

(7) Claim shall be made by and the amount of the refund shall be paid to the person who purchased the motor fuel or undyed special fuel as shown in the supporting invoice unless that person designates another person as an agent for purposes of filing and receiving the refund for idle time, power takeoff, reefer units, pumping credits, and transport diversions. A governmental agency may be designated as an agent for another governmental agency for purposes of filing and receiving the refund under this section.

(8) In order to verify the validity of a claim for refund the department shall have the right to require the claimant to furnish such additional proof of validity as the department may determine and to examine the books and records of the claimant. Failure of a claimant to furnish the claimant's books and records for examination shall constitute a waiver of all rights to refund related to the transaction in question.

2. In lieu of the refund provided in this section, a person may receive an income tax credit as pro-

vided in chapter 422, division IX, but only as to motor fuel not used in motor vehicles, aircraft, or watercraft or as to undyed special fuel not used in motor vehicles or aircraft.

3. *a.* A claim for refund shall not be allowed unless the claimant has accumulated sixty dollars in credits for one calendar year. A claim for refund may be filed any time the sixty dollar minimum has been met within the calendar year. If the sixty dollar minimum has not been met in the calendar year, the credit shall be claimed on the claimant's income tax return unless the taxpayer is not required to file an income tax return in which case a refund shall be allowed. Once the sixty dollar minimum has been met, the claim for refund must be filed within one year.

b. A refund shall not be paid with respect to any motor fuel taken out of this state in supply tanks of watercraft, aircraft, or motor vehicles or with respect to any undyed special fuel taken out of this state in supply tanks of aircraft or motor vehicles.

99 Acts, ch 151, §59-63, 89
See §452A.81

1995 amendments effective January 1, 1996; 95 Acts, ch 155, §44
1996 amendment is retroactive to January 1, 1996; 96 Acts, ch 1066, §21
1997 amendments to subsection 1 apply retroactively to July 1, 1996; 97

Acts, ch 158, §53

Subsection 1, paragraph a, subparagraphs 4 and 6 amended

Subsection 1, paragraph b, subparagraphs 4 and 5 amended

Subsection 2 amended

Subsection 3, paragraph a amended

Subsection 3, paragraph c stricken

452A.21 Refund — credit.

Persons not licensed under this division who blend motor fuel and alcohol to produce ethanol blended gasoline may file for a refund for the difference between taxes paid on the motor fuel purchased to produce ethanol blended gasoline and the tax due on the ethanol blended gasoline blended. If, during any month, a person licensed under this division uses tax paid motor fuel to blend ethanol blended gasoline and the refund otherwise due under this section is greater than the licensee's total tax liability for that month, the licensee is entitled to a credit. The claim for credit shall be filed as part of the return required by section 452A.8.

In order to obtain the refund established by this section, the person shall do all of the following:

1. Obtain a blender's permit as provided in section 452A.18.
2. File a refund claim containing the information as required by the department and certified by the claimant under penalty for false certificate.
3. Retain invoices meeting the requirements of section 452A.17, subsection 1, paragraph "b", subparagraph (3), for the motor fuel purchased.
4. Retain invoices for the purchase of alcohol.

A refund shall not be issued unless the claim is filed within one year following the end of the month during which the ethanol blended gasoline was ac-

tually blended. An income tax credit is not allowed under this section.

99 Acts, ch 151, §64, 65, 89
Unnumbered paragraphs 1 and 3 amended

452A.22 Tax collected on exempt fuel.

If an amount of tax represented by a licensee to a purchaser as constituting tax due is computed upon gallonage that is not taxable or the amount represented is in excess of the actual amount of tax due and the amount represented is actually paid by the purchaser to the licensee, the excess amount of tax paid shall be returned to the purchaser by the licensee. If the licensee fails to return the excess tax paid to the purchaser, the amount which the purchaser has paid to the licensee shall be remitted by the licensee to the department.

99 Acts, ch 151, §66, 89
NEW section

452A.23 through 452A.30 Reserved.

452A.60 Forms of report, refund claim, and records.

The department of revenue and finance or the state department of transportation shall prescribe and furnish all forms, as applicable, upon which reports, returns, and applications shall be made and claims for refund presented under this chapter and may prescribe forms of record to be kept by suppliers, restrictive suppliers, importers, exporters, blenders, common carriers, contract carriers, licensed compressed natural gas and liquefied petroleum gas dealers and users, terminal operators, and interstate commercial motor vehicle operators.

The department of revenue and finance or the state department of transportation may approve a form of record, other than a prescribed form, if the required information is presented in a reasonably accessible form which substantially complies with the prescribed form.

99 Acts, ch 151, §67, 89
Unnumbered paragraph 1 amended

452A.61 Timely filing of reports and returns — extension.

The reports, returns, and remittances required under this chapter shall be deemed filed within the required time if postpaid, properly addressed, and postmarked on or before midnight of the day on which due and payable. If the final filing date falls on a Saturday, Sunday, or legal holiday the next secular or business day shall be the final filing date.

The department of revenue and finance or the state department of transportation upon application may grant a reasonable extension of time for the filing of any required report, return, or tax payment.

99 Acts, ch 151, §68, 89
Section amended

452A.63 Information confidential.

All information obtained by the department of revenue and finance or the state department of transportation from the examining of reports, returns, or records required to be filed or kept under this chapter shall be treated as confidential and shall not be divulged except to other state officers, a member or members of the general assembly, or any duly appointed committee of either or both houses of the general assembly, or to a representative of the state having some responsibility in connection with the collection of the taxes imposed or in proceedings brought under this chapter. The appropriate state agency may make available to the public on or before forty-five days following the last day of the month in which the tax is required to be paid, the names of suppliers, restrictive suppliers, and importers and as to each of them the total gallons of motor fuel, undyed special fuel, and ethanol-blended gasoline withdrawn from terminals or imported into the state during that month. The department of revenue and finance or the state department of transportation, upon request of officials entrusted with enforcement of the motor vehicle fuel tax laws of the federal government or any other state, may forward to these officials any pertinent information which the appropriate state agency may have relative to motor fuel and special fuel, provided the officials of the other state furnish like information.

Any person violating this section, and disclosing the contents of any records, returns, or reports required to be kept or made under this chapter, except as otherwise provided, shall be guilty of a simple misdemeanor.

99 Acts, ch 151, §69, 89
Section amended

452A.67 Limitation on collection proceedings.

The department shall examine the return and enforce collection of any amount of tax, penalty, fine, or interest over and above the amount shown to be due by the return filed by a licensee as soon as practicable but no later than three years after the return is filed. An assessment shall not be made covering a period beyond three years after the return is filed except that the period for the examination and determination of the correct amount of tax is unlimited in the case of a false or fraudulent return made with the intent to evade tax or in the case of a failure to file a return.

The three-year period of limitation may be extended by a taxpayer by signing a waiver agreement form to be provided by the department. The agreement must stipulate the period of extension and the tax period to which the extension applies. The agreement must also provide that a claim for refund may be filed by the taxpayer at any time during the period of extension.

99 Acts, ch 151, §70, 89
Section amended

452A.68 Power of department of revenue and finance or the state department of transportation to cancel licenses.

If a licensee files a false return of the data or information required by this chapter, or fails, refuses, or neglects to file a return required by this chapter, or to pay the full amount of fuel tax as required by this chapter, or is substantially delinquent in paying a tax due, owing, and administered by the department of revenue and finance, and interest and penalty if appropriate, 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 licensee corporation, or interest or penalty on the tax, administered by the department, then after ten days' written notice by mail directed to the last known address of the licensee setting a time and place at which the licensee may appear and show cause why the license should not be canceled, and if the licensee fails to appear or if upon the hearing it is shown that the licensee failed to correctly report or pay the tax, the appropriate state agency may cancel the license and shall notify the licensee of the cancellation by mail to the licensee's last known address.

If a licensee abuses the privileges for which the license was issued, fails to produce records reasonably requested or fails to extend reasonable cooperation to the appropriate state agency, the licensee shall be advised in writing of a hearing scheduled to determine if the license shall be canceled. The appropriate state agency upon the presentation of a preponderance of evidence may cancel a license for cause.

The director of the appropriate state agency may reissue a license which has been canceled for cause. As a condition of reissuance of a license, in addition to requirements for issuing a new license, the director may require a waiting period not to exceed ninety days before a license can be reissued or a new license issued. The director shall adopt rules specifying those instances for which a waiting period will be required.

Upon receipt of written request from any licensee the appropriate state agency shall cancel the license of the licensee effective on the date of receipt of the request. If, upon investigation, the appropriate state agency finds that a licensee is no longer engaged in the activities for which a license was issued and has not been so engaged for a period of six months, the state agency shall cancel the license and give thirty days' notice of the cancellation mailed to the last known address of the licensee.

99 Acts, ch 151, §71, 89
Unnumbered paragraph 1 amended

452A.74 Unlawful acts — penalty.

It shall be unlawful:

1. For any person to knowingly fail, neglect, or refuse to make any required return or statement or pay over fuel taxes required under this chapter.

2. For any person to knowingly make any false, incorrect, or materially incomplete record required to be kept or made under this chapter, to refuse to offer required books and records to the department of revenue and finance or the state department of transportation for inspection on demand or to refuse to permit the department of revenue and finance or the state department of transportation to examine the person's motor fuel or undyed special fuel storage tanks and handling or dispensing equipment.

3. For any seller to issue or any purchaser to receive and retain any incorrect or false invoice or sales ticket in connection with the sale or purchase of motor fuel or undyed special fuel.

4. For any claimant to alter any invoice or sales ticket, whether the invoice or sales ticket is to be used to support a claim for refund or income tax credit or not, provided, however, if a claimant's refund permit has been revoked for cause as provided in section 452A.19, the revocation shall serve as a bar to prosecution for violation of this subsection.

5. For any person to act as a supplier, restrictive supplier, importer, exporter, blender, or compressed natural gas or liquefied petroleum gas dealer or user without the required license.

6. For any person to use motor fuel, undyed special fuel, or dyed special fuel in the fuel supply tank of a vehicle with respect to which the person knowingly has not paid or had charged to the person's account with a distributor or dealer, or with respect to which the person does not, within the time required in this chapter, report and pay the applicable fuel tax.

7. For any licensed compressed natural gas or liquefied petroleum gas dealer or user to dispense compressed natural gas or liquefied petroleum gas into the fuel supply tank of any motor vehicle without collecting the fuel tax.

8. Any delivery of compressed natural gas or liquefied petroleum gas to a compressed natural gas or liquefied petroleum gas dealer or user for the purpose of evading the state tax on compressed natural gas or liquefied petroleum gas, into facilities other than those licensed above knowing that the fuel will be used for highway use shall constitute a violation of this section. Any compressed natural gas or liquefied petroleum gas dealer or user for purposes of evading the state tax on compressed natural gas or liquefied petroleum gas, who allows a distributor to place compressed natural gas or liquefied petroleum gas for highway use in facilities other than those licensed above, shall also be deemed in violation of this section.

A person found guilty of an offense specified in this section is guilty of a fraudulent practice. Prosecution for an offense specified in this section shall be commenced within six years following its commission.

See §452A.19
Fraudulent practices, see §714.8 through 714.14
Unnumbered paragraph 2 amended

452A.74A Additional penalty and enforcement provisions.

In addition to the tax or additional tax, the following fines and penalties shall apply:

1. *Illegal use of dyed fuel.* The illegal use of dyed fuel in the supply tank of a motor vehicle shall result in a civil penalty assessed against the owner or operator of the motor vehicle as follows:

a. A two hundred dollar fine for the first violation.

b. A five hundred dollar fine for a second violation within three years of the first violation.

c. A one thousand dollar fine for third and subsequent violations within three years of the first violation.

2. *Illegal importation of untaxed fuel.* A person who imports motor fuel or undyed special fuel without a valid importer's license or supplier's license shall be assessed a civil penalty as provided in this subsection. However, the owner or operator of the importing vehicle shall not be guilty of violating this subsection if it is shown by the owner or operator that the owner or operator reasonably did not know or reasonably should not have known of the illegal importation.

a. For a first violation, the importing vehicle shall be detained and a fine of two thousand dollars shall be paid before the vehicle will be released. The owner or operator of the importing vehicle or the owner of the fuel may be held liable for payment of the fine.

b. For a second violation, the importing vehicle shall be detained and a fine of five thousand dollars shall be paid before the vehicle will be released. The owner or operator of the importing vehicle or the owner of the fuel may be held liable to pay the fine.

c. For third and subsequent violations, the importing vehicle and the fuel shall be seized and a fine of ten thousand dollars shall be paid before the vehicle will be released. The owner or operator of the importing vehicle or the owner of the fuel may be held liable to pay the fine.

d. If the owner or operator of the importing vehicle or the owner of the fuel fails to pay the tax and fine for a first or second offense, the importing vehicle and the fuel may be seized. The department of revenue and finance, the state department of transportation, or any peace officer, at the request of either department, may seize the vehicle and the fuel.

e. If the operator or owner of the importing vehicle or the owner of the fuel move the vehicle or the fuel after the vehicle has been detained and a sticker has been placed on the vehicle stating that "This vehicle cannot be moved until the tax, penalty, and interest have been paid to the Department of Reve-

nue and Finance”, an additional penalty of five thousand dollars shall be assessed against the operator or owner of the importing vehicle or the owner of the fuel.

f. For purposes of this subsection, “vehicle” means as defined in section 321.1.

3. *Improper receipt of refund.* If a person files an incorrect refund claim, in addition to the excess amount of the claim, a penalty of ten percent shall be added to the amount by which the amount claimed and refunded exceeds the amount actually due and shall be paid to the department. If a person knowingly files a fraudulent refund claim with the intent to evade the tax, the penalty shall be seventy-five percent in lieu of the ten percent. The person shall also pay interest on the excess refunded at the rate per month specified in section 421.7, counting each fraction of a month as an entire month, computed from the date the refund was issued to the date the excess refund is repaid to the state.

4. *Illegal heating of fuel.* The deliberate heating of taxable motor fuel or special fuel by dealers prior to consumer sale is a simple misdemeanor.

5. *Prevention of inspection.* The department of revenue and finance or the state department of transportation may conduct inspections for coloration, markers, and shipping papers at any place where taxable fuel is or may be loaded into transport vehicles, produced, or stored. Any attempts by a person to prevent, stop, or delay an inspection of fuel or shipping papers by authorized personnel shall be subject to a civil penalty of not more than one thousand dollars per occurrence. Any law enforcement officer or department of revenue and finance or state department of transportation employee may physically inspect, examine or otherwise search any tank, reservoir, or other container that can or may be used for the production, storage, or transportation of any type of fuel.

6. *Failure to conspicuously label a fuel pump.* A retailer who does not conspicuously label a fuel pump or other delivery facility as required by the internal revenue service, that dispenses dyed diesel fuel so as to notify customers that it contains dyed diesel fuel, shall pay to the department a penalty of one hundred dollars per occurrence.

7. *False or fraudulent report or return.* Any person, including an officer of a corporation or a manager of a limited liability company, who is required to make, render, sign, or verify any report or return required by this chapter and who makes a false or fraudulent report or return, or who fails to file a report or return with the intent to evade the tax, shall be guilty of a fraudulent practice. Any person who aids, abets, or assists another person in making any false or fraudulent report or return or false statement in any report or return with the intent to evade payment of tax shall be guilty of a fraudulent practice.

99 Acts, ch 151, §72, 89
Fraudulent practices, see §714.8 through 714.14
Subsection 7 amended

452A.75 Penalty for false certificate — place of trial.

Any person who makes a false certificate, false fuel invoice, false fuel receipt, or false fuel sales ticket in any report, return, application, claim, or evidence required or provided for by this chapter or under any rule or regulation shall be guilty of a fraudulent practice.

Prosecution for an offense specified in this section shall be commenced within six years following its commission.

99 Acts, ch 152, §36, 40
Fraudulent practices, see §714.8–714.14
Unnumbered paragraph 2 amended

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.

Annually, the first four hundred eleven thousand three hundred eleven dollars derived from the excise tax on the sale of motor fuel used in watercraft shall be deposited in the general fund of the state. The moneys in excess of four hundred eleven thousand three hundred eleven dollars shall be deposited in the rebuild Iowa infrastructure fund. Moneys deposited to the general fund and to the rebuild Iowa infrastructure fund under this section and section 452A.84 are subject to the requirements of section 8.60 and 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 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 recreational boating.

99 Acts, ch 204, §37
Subsection 1 amended

452A.86 Method of determining gallonage.

The exclusive method of determining gallonage of any purchases or sales of motor fuel, undyed special fuel, compressed natural gas, or liquefied petroleum gas as defined in this chapter and distillate fuels shall be on a gross volume basis. A temperature-adjusted or other method shall not be used, except as it applies to liquefied petroleum gas and the sale or exchange of petroleum products between petroleum refiners. All invoices, bills of lading, or other records of sale or purchase and all returns or records required to be made, kept, and

maintained by a supplier, restrictive supplier, importer, exporter, blender, or compressed natural gas or liquefied petroleum gas dealer or user shall be made, kept, and maintained on the gross volume basis. For purposes of this section, “*distillate fuels*” means any fuel oil, gas oil, topped crude oil, or other petroleum oils derived by refining or processing

crude oil or unfinished oils which have a boiling range at atmospheric pressure which falls completely or in part between five hundred fifty and twelve hundred degrees Fahrenheit.

99 Acts, ch 151, §73, 89
Section amended

CHAPTER 453A

CIGARETTE AND TOBACCO TAXES

453A.6 Tax imposed.

1. There is imposed, and shall be collected and paid to the department, the following taxes on all cigarettes used or otherwise disposed of in this state for any purpose whatsoever:

Class A. On cigarettes weighing not more than three pounds per thousand, eighteen mills on each such cigarette.

Class B. On cigarettes weighing more than three pounds per thousand, eighteen mills on each such cigarette.

2. The said tax shall be paid only once by the person making the “first sale” in this state, and shall become due and payable as soon as such cigarettes are subject to a “first sale” in Iowa, it being intended to impose the tax as soon as such cigarettes are received by any person in Iowa for the purpose of making a “first sale” of same. If the person making the “first sale” did not pay such tax, it shall be paid by any person into whose possession such cigarettes come until said tax has been paid in full. No person, however, shall be required to pay a tax on cigarettes brought into this state on or about the person in quantities of forty cigarettes or less, when such cigarettes have had the individual packages or seals thereof broken and when such cigarettes are actually used by said person and not sold or offered for sale.

3. Payment of the tax shall be evidenced by stamps purchased from the department by a distributor or manufacturer and securely affixed to each individual package of cigarettes in amounts equal to the tax as imposed by this chapter, or by the impressing of an indicium upon individual packages of cigarettes, under regulations prescribed by the director.

4. Any other person who purchases or is in possession of unstamped cigarettes shall pay the tax directly to the department.

5. The per cigarette amount of the tax shall be added to the selling price of every package of cigarettes sold in this state and shall be collected from the purchaser so that the ultimate consumer bears the burden of the tax.

99 Acts, ch 151, §74, 75, 89
Inventory tax, §453A.40
Subsection 3 amended
NEW subsections 4 and 5

453A.8 Sale and exchange of stamps.

1. Stamps shall be sold by and purchased from the department. The department shall sell stamps to the holder of a state distributor’s or manufacturer’s permit which has not been revoked and to no other person. Stamps shall be sold to the permit holders at a discount of two percent of the face value. Stamps shall be sold in unbroken rolls of thirty thousand stamps or unbroken lots of any other form authorized by the director.

2. Orders for cigarette tax stamps, including the payment for such stamps, shall be sent direct to the department on a form to be prescribed by the director, except as provided in subsection 6.

3. The department may make refunds on unused stamps to the person who purchased the stamps at a price equal to the amount paid for the stamps when proof satisfactory to the department is furnished that any stamps upon which a refund is requested were properly purchased from the department and paid for by the person requesting the refund. In making the refund, the department shall prepare a voucher showing the amount of refund due and to whom payable and issue a warrant upon order of the director to pay the refund out of any funds in the state treasury not otherwise appropriated.

The director may promulgate rules providing for refunds of the face value of stamps, less any discount, affixed to any cigarettes which have become unfit for use and consumption, unsalable, or for any other legitimate loss which may occur, upon proof of such loss. Refund shall be made in the same manner as provided for unused stamps.

4. The department may in the enforcement of this division recall any stamps which have been sold by the department and which have not been used, and the department shall, upon receipt of recalled stamps, issue a refund for tax stamps surrendered for the face value of the stamps less the amount of the discount. The purchaser of stamps shall surrender any unused stamps for refund upon demand of the department.

5. The department shall keep a record of all stamps sold by the department and of all refunds made by the department.

6. The director may authorize a bank as defined by section 524.103, subsection 8, to sell stamps. A bank authorized to sell stamps shall comply with all of the requirements governing the sale of stamps by the department. Section 453A.12 shall apply to any bank authorized to sell stamps.

99 Acts, ch 151, §76, 89
Subsection 1 amended

453A.15 Records and reports of permit holders.

1. The director may prescribe the forms necessary for the efficient administration of this division and may require uniform books and records to be used and kept by each permit holder or other person as deemed necessary. The director may also require each permit holder or other person to keep and retain in the director's possession evidence on prescribed forms of all transactions involving the purchase and sale of cigarettes or the purchase and use of stamps. The evidence shall be kept for a period of two years from the date of each transaction, for the inspection at all times by the department.

2. Where a state permit holder sells cigarettes at retail, the holder shall be required to issue an invoice to the holder's retail department for cigarettes to be sold at retail and such cigarette invoices shall be kept separate and apart.

3. The director may by regulation require every holder of a manufacturer's or state permit or other person to make and deliver to the department on or before the tenth day of each month a report or reports for the preceding calendar month, upon a form or forms prescribed by the director, and may require that the reports shall be properly sworn to and executed by the permit holder or the holder's duly authorized representative or other person.

4. Every permit holder or other person shall, when requested by the department, make additional reports as the department deems necessary and proper and shall at the request of the department furnish full and complete information pertaining to any transaction of the permit holder or other person involving the purchase or sale or use of cigarettes or purchase of cigarette stamps.

5. Every person engaged in the business of selling cigarettes in interstate commerce only, who has, by furnishing the bond required in section 453A.14, been permitted to set aside or store cigarettes in this state for the conduct of such interstate business without the stamps affixed thereto, shall be required to keep such records and make such reports to the department as are required by the department.

6. If any distributor, manufacturer, or other person fails or refuses to pay any tax, penalties, or cost of audit hereinafter provided, and it becomes necessary to bring suit or to intervene in any manner for the establishment or collection of said claims, in any judicial proceedings, any report filed in the office of the director by the distributor,

manufacturer, or other person, or the distributor's, manufacturer's, or other person's representative, or a copy thereof, certified to by the director, showing the number of cigarettes sold by the distributor, the distributor's representative, the manufacturer, or the other person, upon which a tax, penalty, or cost of audit has not been paid, or any audit made by the department from the books or records of the distributor, manufacturer, or other person when signed and sworn to by the agent of the department making the audit as being made from the records of the distributor, manufacturer, or other person from or to whom the distributor, manufacturer, or other person has bought, received, or delivered cigarettes, whether from a transportation company or otherwise, such report or audit shall be admissible in evidence in such proceedings and shall be prima facie evidence of the contents thereof. However, the incorrectness of the report or audit may be shown.

99 Acts, ch 151, §77, 89
Subsections 1, 3, 4, and 6 amended

453A.16 Manufacturer's permit.

The department may, upon application of any manufacturer, issue without charge to the manufacturer a manufacturer's permit. The application shall contain information as the director shall prescribe. The holder of a manufacturer's permit is authorized to purchase stamps from the department, and must affix stamps to individual packages of cigarettes outside of this state, prior to their shipment into the state unless the cigarettes are shipped to an Iowa permitted distributor or an Iowa permitted distributor's agent.

99 Acts, ch 151, §78, 89
Section amended

453A.28 Assessment of tax by department — interest — penalty.

If after any audit, examination of records, or other investigation the department finds that any person has sold cigarettes without stamps affixed or that any person responsible for paying the tax has not done so as required by this division, the department shall fix and determine the amount of tax due, and shall assess the tax against the person, together with a penalty as provided in section 421.27. The taxpayer shall pay interest on the tax or additional tax at the rate determined under section 421.7 counting each fraction of a month as an entire month, computed from the date the tax was due. If any person fails to furnish evidence satisfactory to the director showing purchases of sufficient stamps to stamp unstamped cigarettes purchased by the person, the presumption shall be that the cigarettes were sold without the proper stamps affixed. Within two years after the report is filed or within two years after the report became due, whichever is later, the department shall examine the report and determine the correct amount of tax. The period for examination and determination of the correct amount of tax is unlimited in the case of a false or fraudulent report made with the intent to

evade tax, or in the case of a failure to file a report, or if a person purchases or is in possession of unstamped cigarettes.

The two-year period of limitation may be extended by a taxpayer by signing a waiver agreement form to be provided by the department. The agreement must stipulate the period of extension and the tax period to which the extension applies. The agreement must also provide that a claim for refund may be filed by the taxpayer at any time during the period of extension.

99 Acts, ch 151, §79, 89
Section amended

453A.29 Notice and appeal.

The department shall notify any person assessed pursuant to section 453A.28 by sending a written notice of the determination by mail to the principal place of business of the person as shown on the person's application for permit, and if an application was not filed by the person, to the person's last known address. A determination by the department of the amount of tax, penalty, and interest due, or the amount of refund for excess tax paid, is final, unless the person aggrieved by the determination appeals to the director for a revision of the determination within sixty days from the date of the notice of determination of tax, penalty, and interest or refund owing or unless the taxpayer contests the determination by paying the tax, interest, and penalty and timely filing a claim for refund. The director shall grant a hearing and upon the hearing, the director shall determine the correct tax, penalty, and interest or refund due and notify the appellant of the decision by mail. Judicial review of action of the director may be sought in accordance with the Iowa administrative procedure Act and section 422.29.

99 Acts, ch 151, §80, 89
Iowa administrative procedure Act; see chapter 17A
Section amended

453A.31 Civil penalty for certain violations.

If a permit holder fails to keep any of the records required to be kept by the provisions of this division, or sells cigarettes upon which a tax is required to be paid by this division without at the time having a valid permit, or if a distributor, wholesaler, manufacturer, or distributing agent fails to make reports to the department as required, or makes a false or incomplete report to the department, or if a distributing agent stores unstamped cigarettes in the state or distributes or delivers unstamped cigarettes within this state without at the time of storage or delivery having a valid permit, or if a person purchases or is in possession of unstamped cigarettes, or if a person affected by this division fails or refuses to abide by any of its provisions or the rules adopted under this division, the person is civilly liable to the state for a penalty as follows:

1. For possession of unstamped cigarettes:

a. A two hundred dollar penalty for the first violation if a person is in possession of more than forty but not more than four hundred unstamped cigarettes.

b. A five hundred dollar penalty for the first violation if a person is in possession of more than four hundred but not more than two thousand unstamped cigarettes.

c. A one thousand dollar penalty for the first violation if a person is in possession of more than two thousand unstamped cigarettes.

d. For a second violation within two years of the first violation, the penalty is four hundred dollars if a person is in possession of more than forty but not more than four hundred unstamped cigarettes; one thousand dollars if a person is in possession of more than four hundred but not more than two thousand unstamped cigarettes; and two thousand dollars if a person is in possession of more than two thousand unstamped cigarettes.

e. For a third or subsequent violation within two years of the first violation, the penalty is six hundred dollars if a person is in possession of more than forty but not more than four hundred unstamped cigarettes; one thousand five hundred dollars if a person is in possession of more than four hundred but not more than two thousand unstamped cigarettes; and three thousand dollars if a person is in possession of more than two thousand unstamped cigarettes.

2. For all other violations of this section:

a. A two hundred dollar penalty for the first violation.

b. A five hundred dollar penalty for a second violation within two years of the first violation.

c. A thousand dollar penalty for a third or subsequent violation within two years of the first violation.

The penalty imposed under this section shall be assessed and collected pursuant to section 453A.28 and is in addition to the tax, penalty, and interest imposed in that section.

99 Acts, ch 151, §81, 89
Section stricken and rewritten

453A.45 Licensees, duties.

1. Every distributor shall keep at each licensed place of business complete and accurate records for that place of business, including itemized invoices, of tobacco products held, purchased, manufactured, brought in or caused to be brought in from without the state, or shipped or transported to retailers in this state, and of all sales of tobacco products made, except sales to the ultimate consumer.

When a licensed distributor sells tobacco products exclusively to the ultimate consumer at the address given in the license, an invoice of those sales is not required, but itemized invoices shall be made of all tobacco products transferred to other retail outlets owned or controlled by that licensed distributor. All books, records and other papers and documents required by this subdivision to be kept shall

be preserved for a period of at least two years after the date of the documents or the date of the entries appearing in the records, unless the director, in writing, authorized their destruction or disposal at an earlier date. At any time during usual business hours, the director, or the director's duly authorized agents or employees, may enter any place of business of a distributor, without a search warrant, and inspect the premises, the records required to be kept under this subdivision, and the tobacco products contained therein, to determine if all the provisions of this division are being fully complied with. If the director, or any such agent or employee, is denied free access or is hindered or interfered with in making the examination, the license of the distributor at that premises is subject to revocation by the director.

2. Every person who sells tobacco products to persons other than the ultimate consumer shall render with each sale itemized invoices showing the seller's name and address, the purchaser's name and address, the date of sale, and all prices and discounts. The person shall preserve legible copies of all such invoices for two years from the date of sale.

3. Every retailer and subjobber shall procure itemized invoices of all tobacco products purchased. The invoices shall show the name and address of the seller and the date of purchase. The retailer and subjobber shall preserve a legible copy of each such invoice for two years from the date of purchase. Invoices shall be available for inspection by the director or the director's authorized agents or employees at the retailer's or subjobber's place of business.

4. Records of all deliveries or shipments of tobacco products from any public warehouse of first destination in this state which is subject to the provisions of and licensed under chapter 554 shall be kept by the warehouse and be available to the director for inspection. They shall show the name and address of the consignee, the date, the quantity of tobacco products delivered, and such other information as the commissioner may require. These records shall be preserved for two years from the date of delivery of the tobacco products.

5. The transportation of tobacco products into this state by means other than common carrier must be reported to the director within thirty days with the following exceptions:

a. The transportation of not more than fifty cigars, not more than ten ounces of snuff or snuff powder, or not more than one pound of smoking or chewing tobacco or other tobacco products not specifically mentioned herein;

b. Transportation by a person with a place of business outside the state, who is licensed as a distributor under section 453A.44, or tobacco products sold by such person to a retailer in this state.

Such report shall be made on forms provided by the director.

Common carriers transporting tobacco products into this state shall file with the director reports of all such shipments other than those which are delivered to public warehouses of first destination in this state which are licensed under the provisions of chapter 554. Such reports shall be filed on or before the tenth day of each month and shall show with respect to deliveries made in the preceding month; the date, point of origin, point of delivery, name of consignee, description and quantity of tobacco products delivered, and such information as the director may otherwise require.

Any person who fails or refuses to transmit to the director the required reports or whoever refuses to permit the examination of the records by the director shall be guilty of a simple misdemeanor.

99 Acts, ch 151, §82, 89
Subsections 2-4 amended

453A.46 Distributors, monthly returns — interest, penalties.

1. On or before the twentieth day of each calendar month every distributor with a place of business in this state shall file a return with the director showing the quantity and wholesale sales price of each tobacco product brought, or caused to be brought, into this state for sale; and made, manufactured, or fabricated in this state for sale in this state, during the preceding calendar month. Every licensed distributor outside this state shall in like manner file a return showing the quantity and wholesale sales price of each tobacco product shipped or transported to retailers in this state to be sold by those retailers, during the preceding calendar month. Returns shall be made upon forms furnished and prescribed by the director and shall contain other information as the director may require. Each return shall be accompanied by a remittance for the full tax liability shown on the return, less a discount as fixed by the director not to exceed five percent of the tax. Within two years after the return is filed or within two years after the return became due, whichever is later, the department shall examine it, determine the correct amount of tax, and assess the tax against the taxpayer for any deficiency. The period for examination and determination of the correct amount of tax is unlimited in the case of a false or fraudulent return made with the intent to evade tax, or in the case of a failure to file a return.

The two-year period of limitation may be extended by a taxpayer by signing a waiver agreement form to be provided by the department. The agreement must stipulate the period of extension and the tax period to which the extension applies. The agreement must also provide that a claim for refund may be filed by the taxpayer at any time during the period of extension.

2. All taxes shall be due and payable not later than the twentieth day of the month following the calendar month in which they were incurred, and

shall bear interest at the rate in effect under section 421.7 counting each fraction of a month as an entire month, computed from the date the tax was due.

The director may reduce or abate interest when in the director's opinion the facts warrant the reduction or abatement. The exercise of this power shall be subject to the approval of the attorney general.

3. In addition to the tax or additional tax, the taxpayer shall pay a penalty as provided in section 421.27.

4. The department shall notify any person assessed pursuant to this section by sending a written notice of the determination by mail to the principal place of business of the person as shown on the person's application for permit, and if an application was not filed by the person, to the person's last known address. A determination by the department of the amount of tax, penalty, and interest due, or the amount of refund for excess tax paid, is final, unless the person aggrieved by the determination appeals to the director for a revision of the determination within sixty days from the date of the notice of determination of tax, penalty, and interest or refund owing or unless the taxpayer contests the determination by paying the tax, interest, and penalty and timely filing a claim for refund. The director shall grant a hearing and upon the hearing, the director shall determine the correct tax, penalty, and interest or refund due and

notify the appellant of the decision by mail. Judicial review of action of the director may be sought in accordance with chapter 17A and section 422.29.

5. The director may recover the amount of any tax due and unpaid, interest, and any penalty in a civil action. The collection of such a tax, interest, or penalty shall not be a bar to any prosecution under this division.

6. On or before the twentieth day of each calendar month, every consumer who, during the preceding calendar month, has acquired title to or possession of tobacco products for use or storage in this state, upon which tobacco products the tax imposed by section 453A.43 has not been paid, shall file a return with the director showing the quantity of tobacco products so acquired. The return shall be made upon a form furnished and prescribed by the director, and shall contain other information as the director may require. The return shall be accompanied by a remittance for the full unpaid tax liability shown by it. Within two years after the return is filed or within two years after the return became due, whichever is later, the department shall examine it, determine the correct amount of tax, and assess the tax against the taxpayer for any deficiency. The period for examination and determination of the correct amount of tax is unlimited in the case of a false or fraudulent return made with the intent to evade tax, or in the case of a failure to file a return.

99 Acts, ch 151, §83, 89
Subsections 1, 4, and 6 amended

CHAPTER 453C

TOBACCO PRODUCT MANUFACTURERS — FINANCIAL OBLIGATIONS

453C.1 Definitions.

1. *Adjusted for inflation* means increased in accordance with the formula for inflation adjustment set forth in exhibit "C" to the master settlement agreement.

2. *Affiliate* means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. Solely for purposes of this definition, the terms "owns", "is owned", and "ownership" mean ownership of an equity interest, or the equivalent thereof, of ten percent or more, and the term "person" means an individual, partnership, committee, association, corporation, or any other organization or group of persons.

3. *Allocable share* means allocable share as defined in the master settlement agreement.

4. *Cigarette* means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains any of the following:

a. Any roll of tobacco wrapped in paper or in any substance not containing tobacco.

b. Tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette.

c. Any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in paragraph "a" of this definition.

The term "cigarette" includes "roll-your-own" tobacco which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes. For purposes of this definition of "cigarette", 0.09 ounces of "roll-your-own" tobacco shall constitute one individual "cigarette".

5. "Master settlement agreement" means the settlement agreement and related documents entered into on November 23, 1998, by the state and leading United States tobacco product manufacturers.

6. "Qualified escrow fund" means an escrow arrangement with a federally or state-chartered financial institution having no affiliation with any tobacco product manufacturer and having assets of at least one billion dollars where such arrangement requires that such financial institution hold the escrowed funds' principal for the benefit of releasing parties and prohibits the tobacco product manufacturer placing the funds into escrow from using, accessing, or directing the use of the funds' principal except as consistent with section 453C.2, subsection 2, paragraph "b".

7. "Released claims" means released claims as that term is defined in the master settlement agreement.

8. "Releasing parties" means releasing parties as that term is defined in the master settlement agreement.

9. "Tobacco product manufacturer" means an entity that on or after May 20, 1999, directly and not exclusively through any affiliate does any of the following:

a. Manufactures cigarettes anywhere that such manufacturer intends to be sold in the United States, including cigarettes intended to be sold in the United States through an importer, except where such importer is an original participating manufacturer, as that term is defined in the master settlement agreement, that will be responsible for the payments under the master settlement agreement with respect to such cigarettes as a result of the provisions of the subsection II(mm) of the master settlement agreement and that pays the taxes specified in subsection II(z) of the master settlement agreement and provided that the manufacturer of such cigarettes does not market or advertise such cigarettes in the United States.

b. Is the first purchaser anywhere for resale in the United States of cigarettes manufactured anywhere that the manufacturer does not intend to be sold in the United States.

c. Becomes a successor of an entity described in paragraph "a" or "b".

The term "tobacco product manufacturer" shall not include an affiliate of a tobacco product manufacturer unless such affiliate itself falls within any of paragraphs "a" through "c".

10. "Units sold" means the number of individual cigarettes sold in the state by the applicable tobacco product manufacturer, whether directly or through a distributor, retailer, or similar intermediary or intermediaries, during the year in question, as measured by excise taxes collected by the state on packs or roll-your-own tobacco containers bearing the excise tax stamp of the state. The department of revenue and finance shall adopt rules

as are necessary to ascertain the amount of state excise tax paid on the cigarettes of such tobacco product manufacturer for each year.

99 Acts, ch 157, §1, 3
NEW section

453C.2 Requirements.

Any tobacco product manufacturer selling cigarettes to consumers within the state, whether directly or through a distributor, retailer, or similar intermediary or intermediaries, on or after May 20, 1999, shall do one of the following:

1. Become a participating manufacturer as that term is defined in section II(jj) of the master settlement agreement and generally perform its financial obligations under the master settlement agreement.

2. a. Place into a qualified escrow fund by April 15 of the year following the year in question, the following amounts, as such amounts are adjusted for inflation:

(1) For 1999: \$.0094241 per unit sold on or after May 20, 1999.

(2) For 2000: \$.0104712 per unit sold.

(3) For each of 2001 and 2002: \$.0136125 per unit sold.

(4) For each of 2003 through 2006: \$.0167539 per unit sold.

(5) For 2007 and each year thereafter: \$.0188482 per unit sold.

b. A tobacco product manufacturer that places funds into escrow pursuant to paragraph "a" shall receive the interest or other appreciation on such funds as earned. Such funds themselves shall be released from escrow only under any of the following circumstances:

(1) To pay a judgment or settlement on any released claim brought against such tobacco product manufacturer by the state or any releasing party located or residing in the state. Funds shall be released from escrow under this subparagraph (1) in the order in which they were placed into escrow and only to the extent and at the time necessary to make payments required under such judgment or settlement.

(2) To the extent that a tobacco product manufacturer establishes that the amount the manufacturer was required to place into escrow in a particular year was greater than the state's allocable share of the total payments that such manufacturer would have been required to make in that year under the master settlement agreement had such manufacturer been a participating manufacturer, as such payments are determined pursuant to section IX(i)(2) of the master settlement agreement and before any of the adjustments or offsets described in section IX(i)(3) of that agreement other than the inflation adjustment, the excess shall be released from escrow and revert back to such tobacco product manufacturer.

(3) To the extent not released from escrow under subparagraph (1) or (2), funds shall be released from escrow and revert back to such tobacco product manufacturer twenty-five years after the date on which they were placed into escrow.

c. Each tobacco product manufacturer that elects to place funds into escrow pursuant to this subsection shall annually certify to the attorney general that the manufacturer is in compliance with this subsection. The attorney general may bring a civil action on behalf of the state against any tobacco product manufacturer that is not a participating manufacturer under the master settlement agreement and fails to place into escrow the funds required under this section. Any tobacco product manufacturer that fails in any year to place into escrow the funds required under this subsection shall be subject to all of the following:

(1) Be required within fifteen days to place such funds into escrow as shall bring the manufacturer into compliance with this subsection. The court, upon a finding of a violation of this subsection, may impose a civil penalty, to be paid to the general fund of the state, in an amount not to exceed five percent of the amount improperly with-

held from escrow per day of the violation and in a total amount not to exceed one hundred percent of the original amount improperly withheld from escrow.

(2) In the case of a knowing violation, be required within fifteen days to place such funds into escrow as shall bring the manufacturer into compliance with this subsection. The court, upon a finding of a knowing violation of this subsection, may impose a civil penalty, to be paid to the general fund of the state, in an amount not to exceed fifteen percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed three hundred percent of the original amount improperly withheld from escrow.

(3) In the case of a second knowing violation, be prohibited from selling cigarettes to consumers within the state, whether directly or through a distributor, retailer, or similar intermediary, for a period not to exceed two years.

d. Each failure to make an annual deposit required under this subsection shall constitute a separate violation.

99 Acts, ch 157, §2, 3
NEW section

CHAPTER 455A

DEPARTMENT OF NATURAL RESOURCES

455A.13 State nurseries.

Notwithstanding section 17A.2, subsection 11, paragraph “g”, the department of natural resources shall adopt administrative rules establishing a range of prices of plant material grown at the state forest nurseries to cover all expenses related to the growing of the plants.

1. The department shall develop programs to encourage the wise management and preservation of existing woodlands and shall continue its efforts to encourage forestation and reforestation on private and public lands in the state.

2. The department shall encourage a cooperative relationship between the state forest nurseries and private nurseries in the state in order to achieve these goals.

Section not amended; internal reference change applied

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, 1997, and ending June 30, 2021, there is appropriated from the general fund, to the Iowa resources enhancement and protection fund, the amount of 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.

4. Notwithstanding section 12C.7, interest or earnings on investments or time deposits of the moneys in the Iowa resources enhancement and protection fund or any of its accounts shall be credited to the Iowa resources enhancement and protection fund.

Standing appropriation limited and appropriated from rebuild Iowa infrastructure fund for fiscal year beginning July 1, 1999; 99 Acts, ch 204, §18
Section not amended; footnotes revised

CHAPTER 455B

JURISDICTION OF DEPARTMENT OF NATURAL RESOURCES

Review and oversight of actions of ozone transport assessment group; duties of director; repeal of 1997 provisions; 99 Acts, ch 92, §1-3

455B.110 Animal feeding operations — investigations and enforcement actions.

1. A person may file a complaint alleging that an animal feeding operation is in violation of this chapter, including rules adopted by the department, or environmental standards or regulations subject to federal law and enforced by the department.

a. The complaint may be filed with the department according to procedures required by the department or with the county board of supervisors in the county where the violation is alleged to have occurred, according to procedures required by the board. The county auditor may accept the complaint on behalf of the board.

b. If the county board of supervisors receives a complaint, it shall conduct a review to determine if the allegation contained in the complaint constitutes a violation, without investigating whether the facts supporting the allegation are true or untrue.

(1) If the county board of supervisors determines that the allegation does not constitute a violation, it shall notify the complainant, the animal feeding operation which is the subject of the complaint, and the department, according to rules adopted by the department.

(2) If the county board of supervisors determines that the allegation constitutes a violation, it shall forward the complaint to the department which shall investigate the complaint as provided in this section.

c. If the department receives a complaint from a complainant or a county forwarding a complaint, the department shall conduct an investigation of the complaint if the department determines that the complaint is legally sufficient and an investigation is justified. The department shall receive a complaint filed by a complainant, regardless of whether the complainant has filed a complaint with a county board of supervisors.

(1) The department in its discretion shall determine the urgency of the investigation, and the time and resources required to complete the investigation, based upon the circumstances of the case, including the severity of a threat to the quality of surface or subsurface water.

(2) The department shall notify the county board of supervisors in the county where the violation is alleged to occur prior to investigating the

premises of the alleged violation. However, the department is not required to provide notice if the department determines that a clear, present, and impending danger to the public health or environment requires immediate action.

(3) The county board of supervisors may designate a county employee to accompany a departmental official during the investigation of the premises of a confinement feeding operation. The county designee shall have the same right of access to the real estate of the premises as the departmental official conducting the inspection during the period that the county designee accompanies the departmental official.

(4) Upon the completion of an investigation, the department shall notify the complainant of the results of the investigation, including any anticipated, pending, or completed enforcement action arising from the investigation. The department shall deliver a copy of the notice to the animal feeding operation that is the subject of the complaint and the board of supervisors of the county where the violation is alleged to have occurred.

d. A county board of supervisors or the department is not required to divulge information regarding the identity of the complainant.

2. When entering the premises of an animal feeding operation, a person who is a departmental official, an agent of the department, or a person accompanying the departmental official or agent shall comply with section 455B.103. The person shall also comply with standard biosecurity requirements customarily required by the animal feeding operation which are necessary in order to control the spread of disease among an animal population.

3. The department shall not initiate an enforcement action in response to a violation by an animal feeding operation as provided in this chapter or a rule adopted pursuant to this chapter, or request the commencement of legal action by the attorney general pursuant to section 455B.141, unless the commission has approved the intended action. This subsection shall not apply to an enforcement action in which the department enforces a civil penalty of three thousand dollars or less. This subsection shall also not apply to an order to terminate an emergency issued by the director pursuant to section 455B.175.

99 Acts, ch 96, §39
Subsection 1, paragraph c, subparagraph (3) amended

455B.162 Animal feeding operations — new construction and expansion.

The following shall apply to animal feeding operation structures:

1. Except as provided in subsection 6, and sections 455B.163 and 455B.165, this subsection applies to animal feeding operation structures constructed on or after May 31, 1995, but prior to January 1, 1999; and to the expansion of structures constructed prior to January 1, 1999.

The following table represents the minimum separation distance in feet required between an animal feeding operation structure and a residence not owned by the owner of the animal feeding operation, or a commercial enterprise, bona fide religious institution, or an educational institution:

Type of structure	Minimum separation distance in feet for operations having an animal weight capacity of less than 625,000 pounds for animals other than bovine, or less than 1,600,000 pounds for bovine	Minimum separation distance in feet for operations having an animal weight capacity of 625,000 or more pounds but less than 1,250,000 pounds for animals other than bovine, or 1,600,000 or more pounds but less than 4,000,000 pounds for bovine	Minimum separation distance in feet for operations having an animal weight capacity of 1,250,000 or more pounds for animals other than bovine, or 4,000,000 or more pounds for bovine
Anaerobic lagoon	1,250	1,875	2,500
Uncovered earthen manure storage basin	1,250	1,875	2,500
Uncovered formed manure storage structure	1,000	1,500	2,000
Covered earthen manure storage basin	750	1,000	1,500
Covered formed manure storage structure	750	1,000	1,500
Confinement building	750	1,000	1,500
Egg washwater storage structure	750	1,000	1,500

2. Except as provided in subsection 6, and sections 455B.163 and 455B.165, this subsection applies to animal feeding operation structures constructed on or after January 1, 1999, and to the expansion of structures constructed on or after January 1, 1999. The following table represents the minimum separation distance in feet required between an animal feeding operation structure and a residence not owned by the owner of the animal feeding operation, or a commercial enterprise, bona fide religious institution, or an educational institution:

Type of structure	Minimum separation distance in feet for operations having an animal weight capacity of less than 625,000 pounds for animals other than bovine, or less than 1,600,000 pounds for bovine	Minimum separation distance in feet for operations having an animal weight capacity of 625,000 or more pounds but less than 1,250,000 pounds for animals other than bovine, or 1,600,000 or more pounds but less than 4,000,000 pounds for bovine	Minimum separation distance in feet for operations having an animal weight capacity of 1,250,000 or more pounds for animals other than bovine, or 4,000,000 or more pounds for bovine
Anaerobic lagoon	1,250	1,875	2,500
Uncovered earthen manure storage basin	1,250	1,875	2,500
Uncovered formed manure storage structure	1,250	1,500	2,000
Covered earthen manure storage basin	1,000	1,250	1,875
Covered formed manure storage structure	1,000	1,250	1,875
Confinement building	1,000	1,250	1,875
Egg washwater storage structure	750	1,000	1,500

3. Except as provided in subsection 6, and sections 455B.163 and 455B.165, this subsection applies to animal feeding operation structures constructed on or after May 31, 1995; to the expansion of structures constructed on or after May 31, 1995; and to the expansion of structures constructed prior to May 31, 1995. The following table represents the minimum separation distance in feet required between animal feeding operation structures and a public use area or a residence not owned by the owner of the animal feeding operation, a commercial enterprise, a bona fide religious institution, or an educational institution located within the corporate limits of a city:

Type of structure	Minimum separation distance in feet for operations having an animal weight capacity of less than 625,000 pounds for animals other than bovine, or less than 1,600,000 pounds for bovine	Minimum separation distance in feet for operations having an animal weight capacity of 625,000 or more pounds but less than 1,250,000 pounds for animals other than bovine, or 1,600,000 or more pounds but less than 4,000,000 pounds for bovine	Minimum separation distance in feet for operations having an animal weight capacity of 1,250,000 or more pounds for animals other than bovine, or 4,000,000 or more pounds for bovine
Animal feeding operation structure	1,250	1,875	2,500

4. Except as provided in section 455B.165, on and after January 1, 1999, an animal feeding operation structure shall not be constructed or expanded within one hundred feet from a thoroughfare, including a road, street, or bridge which is constructed or maintained by the state or a political subdivision.

5. Except as provided in section 455B.165, a person shall not apply liquid manure from a confinement feeding operation on land located within seven hundred fifty feet from a residence not owned by the titleholder of the land, a commercial enterprise, a bona fide religious institution, an educational institution, or a public use area.

6. *a.* As used in this subsection, a “qualified confinement feeding operation” means a confinement feeding operation having an animal weight capacity of two million or more pounds for animals other than animals kept in a swine farrow-to-finish operation or bovine kept in a confinement feeding operation; a swine farrow-to-finish operation having an animal weight capacity of two million five hundred thousand or more pounds; or a confinement feeding operation having an animal weight capacity of eight million or more pounds for bovine.

b. A qualified confinement feeding operation shall only use an animal feeding operation structure which employs bacterial action which is maintained by the utilization of air or oxygen, and which shall include aeration equipment. The type and degree of treatment technology required to be installed shall be based on the size of the confinement feeding operation, according to rules adopted by the department. The equipment shall be installed, operated, and maintained in accordance with the manufacturer’s instructions and requirements of rules adopted pursuant to this subsection.

c. This subsection shall not apply to a confinement feeding operation which stores manure as dry matter, or to an egg washwater storage structure. This subsection shall not apply to a confinement feeding operation, if the operation was constructed prior to May 31, 1995, or the department issued a permit prior to May 31, 1995, for the construction of an animal feeding operation structure connected to a confinement feeding operation and the construction began prior to May 31, 1995.

99 Acts, ch 114, §58, 59

Section not amended; 1998 legislation changing applicability date of requirements in this section, corrected; see 99 Acts, ch 114, §58, 59

455B.163 Separation distance requirements for animal feeding operations — expansion of prior constructed operations.

An animal feeding operation constructed or expanded prior to the date that a distance requirement became effective under section 455B.162 and which does not comply with the section’s distance requirement may continue to operate regardless of the distance requirement. The animal feeding

operation may be expanded if any of the following applies:

1. *a.* An animal feeding operation structure as constructed or expanded prior to January 1, 1999, complies with the distance requirements applying to that structure as provided in section 455B.162.

b. An animal feeding operation structure as constructed or expanded on or after January 1, 1999, complies with the distance requirements applying to that structure as provided in section 455B.162.

2. All of the following apply to the expansion of the animal feeding operation:

a. No portion of the animal feeding operation after expansion is closer than before expansion to a location or object for which separation is required under section 455B.162.

b. The animal weight capacity of the animal feeding operation as expanded is not more than the lesser of the following:

(1) Double its capacity on May 31, 1995, for an animal feeding operation structure constructed prior to January 1, 1999, or on January 1, 1999, for an animal feeding operation structure constructed on or after January 1, 1999.

(2) Either of the following:

(a) Six hundred twenty-five thousand pounds animal weight capacity for animals other than bovine.

(b) One million six hundred thousand pounds animal weight capacity for bovine.

3. The animal feeding operation was constructed prior to January 1, 1999, and is expanded by replacing one or more unformed manure storage structures with one or more formed manure storage structures, if all of the following apply:

a. The animal weight capacity is not increased for that portion of the animal feeding operation that utilizes all replacement formed manure storage structures.

b. Use of each replaced unformed manure storage structure is discontinued within one year after the construction of the replacement formed manure storage structure.

c. The capacity of all replacement formed manure storage structures does not exceed the amount required to store manure produced by that portion of the animal feeding operation utilizing the formed manure storage structures during any fourteen-month period.

d. No portion of the replacement formed manure storage structure is closer to an object or location for which separation is required under section 455B.162 than any other animal feeding operation structure which is part of the operation.

99 Acts, ch 114, §58, 59

Section not amended; 1998 legislation changing applicability date of requirements in this section, corrected; see 99 Acts, ch 114, §58, 59

455B.173 Duties.

The commission shall:

1. Develop comprehensive plans and programs for the prevention, control and abatement of water pollution.

2. Establish, modify, or repeal water quality standards, pretreatment standards and effluent standards. The effluent standards may provide for maintaining the existing quality of the water of the state where the quality thereof exceeds the requirements of the water quality standards.

If the federal environmental protection agency has promulgated an effluent standard or pretreatment standard pursuant to section 301, 306 or 307 of the federal Water Pollution Control Act, a pretreatment or effluent standard adopted pursuant to this section shall not be more stringent than the federal effluent or pretreatment standard for such source. This section may not preclude the establishment of a more restrictive effluent limitation in the permit for a particular point source if the more restrictive effluent limitation is necessary to meet water quality standards, the establishment of an effluent standard for a source or class of sources for which the federal environmental protection agency has not promulgated standards pursuant to section 301, 306 or 307 of the federal Water Pollution Control Act. Except as required by federal law or regulation, the commission shall not adopt an effluent standard more stringent with respect to any pollutant than is necessary to reduce the concentration of that pollutant in the effluent to the level due to natural causes, including the mineral and chemical characteristics of the land, existing in the water of the state to which the effluent is discharged. Notwithstanding any other provision of this part of this division, any new source, the construction of which was commenced after October 18, 1972, and which was constructed as to meet all applicable standards of performance for the new source or any more stringent effluent limitation required to meet water quality standards, shall not be subject to any more stringent effluent limitations during a ten-year period beginning on the date of completion of construction or during the period of depreciation or amortization of the pollution control equipment for the facility for the purposes of section 167 and 169 or both sections of the Internal Revenue Code, whichever period ends first.

3. Establish, modify, or repeal rules relating to the location, construction, operation, and maintenance of disposal systems and public water supply systems and specifying the conditions, including the viability of a system pursuant to section 455B.174, under which the director shall issue, revoke, suspend, modify, or deny permits for the operation, installation, construction, addition to, or modification of any disposal system or public water supply system, or for the discharge of any pollutant. The rules specifying the conditions under which the director shall issue permits for the

construction of an electric power generating facility subject to chapter 476A shall provide for issuing a conditional permit upon the submission of engineering descriptions, flow diagrams and schematics that qualitatively and quantitatively identify effluent streams and alternative disposal systems that will provide compliance with effluent standards or limitations.

No rules shall be adopted which regulate the hiring or firing of operators of disposal systems or public water supply systems except rules which regulate the certification of operators as to their technical competency.

A publicly owned treatment works whose discharge meets the final effluent limitations which were contained in its discharge permit on the date that construction of the publicly owned treatment works was approved by the department shall not be required to meet more stringent effluent limitations for a period of ten years from the date the construction was completed and accepted but not longer than twelve years from the date that construction was approved by the department.

4. Cooperate with other state or interstate water pollution control agencies in establishing standards, objectives, or criteria for the quality of interstate waters originating or flowing through this state.

5. Establish, modify or repeal rules relating to drinking water standards for public water supply systems. Such standards shall specify maximum contaminant levels or treatment techniques necessary to protect the public health and welfare. The drinking water standards must assure compliance with federal drinking water standards adopted pursuant to the federal Safe Drinking Water Act.

6. Adopt rules relating to inspection, monitoring, recordkeeping, and reporting requirements for the owner or operator of any public water supply or any disposal system or of any source which is an industrial user of a publicly or privately owned disposal system.

7. Adopt a statewide plan for the provision of safe drinking water under emergency circumstances. All public agencies, as defined in chapter 28E, shall cooperate in the development and implementation of the plan. The plan shall detail the manner in which the various state and local agencies shall participate in the response to an emergency. The department may enter into any agreement, subject to approval of the commission, with any state agency or unit of local government or with the federal government which may be necessary to establish the role of such agencies in regard to the plan. This plan shall be coordinated with disaster emergency plans.

8. Formulate and adopt specific and detailed statewide standards pursuant to chapter 17A for review of plans and specifications and the construction of sewer systems and water supply distribution systems and extensions to such sys-

tems not later than October 1, 1977. The standards shall be based on criteria contained in the “*Recommended Standards for Sewage Works*” and “*Recommended Standards for Water Works*” (Ten States Standards) as adopted by the Great Lakes-Upper Mississippi River board of state sanitary engineers, design manuals published by the department, applicable federal guidelines and standards, standard textbooks, current technical literature and applicable safety standards. The material standards for polyvinyl chloride pipe shall not exceed the specifications for polyvinyl chloride pipe in designations D-1784-69, D-2241-73, D-2564-76, D-2672-76, D-3036-73 and D-3139-73 of the American society of testing and material. The rules adopted which directly pertain to the construction of sewer systems and water supply distribution systems and the review of plans and specifications for such construction shall be known respectively as the Iowa Standards for Sewer Systems and the Iowa Standards for Water Supply Distribution Systems and shall be applicable in each governmental subdivision of the state. Exceptions shall be made to the standards so formulated only upon special request to and receipt of permission from the department. The department shall publish the standards and make copies of such standards available to governmental subdivisions and to the public.

9. Adopt, modify, or repeal rules relating to the construction and reconstruction of water wells, the proper abandonment of wells, and the registration or certification of water well contractors. The rules shall include those necessary to protect the public health and welfare, and to protect the waters of the state. The rules may include, but are not limited to, establishing fees for registration or certification of water well contractors, requiring the submission of well driller’s logs, formation samples or well cuttings, water samples, information on test pumping and requiring inspections. Fees shall be based upon the reasonable cost of conducting the water well contractor registration or certification program.

10. Adopt, modify, or repeal rules relating to the awarding of grants to counties for the purpose of carrying out responsibilities pursuant to section 455B.172 relative to private water supplies and private sewage disposal facilities.

11. Adopt, modify, or repeal rules relating to the business plan which disposal systems and public water supply systems must file with the department pursuant to section 455B.174, and adopt, modify, or repeal rules establishing a methodology and timetable by which nonviable systems shall take action to become viable or make alternative arrangements in providing treatment or water supply services.

12. Adopt rules for the issuance of a single general permit, after notice and opportunity for a public hearing. The single general permit shall cover numerous facilities to the extent that they are rep-

resentative of a class of facilities which can be identified and conditioned by a single permit.

13. Adopt, modify, or repeal rules relating to the construction or operation of animal feeding operations, as provided in sections relating to animal feeding operations provided in this part.

99 Acts, ch 45, §1
Subsection 6, paragraph b stricken and former paragraph a redesignated as an unnumbered paragraph

455B.201 Minimum manure control.

1. A confinement feeding operation shall retain all manure produced by the operation between periods of manure disposal. A confinement feeding operation shall not discharge manure directly into water of the state or into a tile line that discharges directly into water of the state.

2. Manure from an animal feeding operation shall be disposed of in a manner which will not cause surface water or groundwater pollution. Disposal in accordance with the provisions of state law, including this chapter, rules adopted pursuant to the provisions of state law, including this chapter, guidelines adopted pursuant to this chapter, and section 455B.204A, shall be deemed as compliance with this requirement.

3. The owner of the confinement feeding operation which discontinues the use of the operation shall remove all manure from related confinement feeding operation structures used to store manure, by a date specified in an order issued to the operation by the department, or six months following the date that the confinement feeding operation is discontinued, whichever is earlier.

99 Acts, ch 114, §57
Section not amended; 1998 legislation, containing clerical error relating to strike of former subsection 4, corrected; see 99 Acts, ch 114, §57

455B.202 Confinement feeding operations — pending actions and habitual violators.

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

a. “*Habitual violator*” means a person classified as a habitual violator pursuant to section 455B.191.

b. “*Operation of law*” means a transfer by inheritance, devise or bequest, court order, dissolution decree, order in bankruptcy, insolvency, replevin, foreclosure, execution sale, the execution of a judgment, the foreclosure of a real estate mortgage, the forfeiture of a real estate contract, or a transfer resulting from a decree for specific performance.

c. “*Suspect site*” means a confinement feeding operation or land where a confinement feeding operation could be constructed, if the site is subject to a suspect transaction.

d. “*Suspect transaction*” means a transaction in which a habitual violator does any of the following:

- (1) Transfers a controlling interest in a suspect site to any of the following:

(a) An employee of the habitual violator or business in which the person holds a controlling interest.

(b) A person who holds an interest in a business, including a confinement feeding operation, in which the habitual violator holds a controlling interest.

(c) A person related to the habitual violator as spouse, parent, grandparent, lineal ascendant of a grandparent or spouse and any other lineal descendant of the grandparent or spouse, or a person acting in a fiduciary capacity for a related person. This paragraph does not apply to a transaction completed by an operation of law.

(2) Provides financing for the construction or operation of a confinement feeding operation to any person, by providing a contribution or loan to the person, or providing cash or other tangible collateral for a contribution or loan made by a third person.

e. “*Transaction*” includes a transfer in any manner or by any means, including any of the following:

(1) Delivery and acceptance between two parties, including by contract or agreement with or without consideration, including by sale, exchange, barter, or gift.

(2) An operation of law.

2. a. A person shall not construct or expand an animal feeding operation structure which is part of a confinement feeding operation, if the person is any of the following:

(1) A party to a pending action for a violation of this chapter concerning a confinement feeding operation in which the person has a controlling interest and the action is commenced in district court by the attorney general.

(2) A habitual violator.

b. A person shall not construct or expand an animal feeding operation structure which is part of a confinement feeding operation for five years after the date of the last violation, committed by the person or confinement feeding operation in which the person holds a controlling interest, during which the person or operation was classified as a habitual violator.

c. This subsection shall not prohibit a person from completing the construction or expansion of an animal feeding operation structure, if any of the following apply:

(1) The person has an unexpired permit for the construction or expansion of the animal feeding operation structure.

(2) The person is not required to obtain a permit for the construction or expansion of the animal feeding operation structure.

d. For purposes of this subsection, “*construct*” or “*expand*” includes financing and contracting to build an animal feeding operation structure regardless of whether the person subsequently leases, owns, or operates the animal feeding operation structure.

3. A person who receives a controlling interest in a suspect site pursuant to a suspect transaction must submit a notice of the transaction to the department within thirty days. If, after notice and opportunity to be heard, pursuant to the contested case provisions of chapter 17A, the department finds that one purpose of the transaction was to avoid the conditions and enhanced penalties imposed upon a habitual violator, the person shall be subject to the same conditions and enhanced penalties as applied to the habitual violator at the time of the transaction.

4. The department shall conduct an annual review of each confinement feeding operation which is a habitual violator and each confinement feeding operation in which a habitual violator holds a controlling interest.

99 Acts, ch 114, §29
Subsection 2, paragraph b amended

455B.203A Manure applicators certification.

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

a. “*Commercial manure applicator*” means the same as defined in section 455B.171.

b. “*Confinement site*” means a site where there is located a manure storage structure which is part of a confinement feeding operation, other than a small animal feeding operation.

c. “*Confinement site manure applicator*” means a person who applies manure stored at a confinement site other than a commercial manure applicator.

2. a. A commercial manure applicator shall not apply manure to land, unless the person is certified pursuant to this section.

b. A confinement site manure applicator shall not apply manure to land, unless the person is certified pursuant to this section.

3. a. A person required to be certified as a commercial manure applicator must be certified by the department each year. The person shall be certified after completing an educational program which shall consist of an examination required to be passed by the person or three hours of continuing instructional courses which the person must attend each year in lieu of passing the examination.

b. A person required to be certified as a confinement site manure applicator must be certified by the department every three years. The person shall be certified after completing an educational program which shall consist of an examination required to be passed by the person or two hours of continuing instructional courses which the person must attend each year in lieu of passing the examination.

4. The department shall adopt, by rule, requirements for the certification, including educational program requirements. The department may establish different educational programs de-

signed for commercial manure applicators and confinement site manure applicators. The department shall adopt rules necessary to administer this section, including establishing certification standards, which shall at least include standards for the handling, application, and storage of manure, the potential effects of manure upon surface water and groundwater, and procedures to remediate the potential effects on surface water or groundwater.

a. The department shall adopt by rule criteria for allowing a person required to be certified to complete either a written or oral examination.

b. The department shall administer the continuing 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 continuing instructional courses. The department is not required to compensate persons to teach the continuing instructional courses. In selecting persons, the department shall consult with organizations interested in the application of manure, including associations representing manure 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 continuing instructional courses. The Iowa cooperative extension service may teach continuing instructional courses, train persons selected to teach courses, or distribute informational materials to persons teaching the courses.

c. The department, in administering the certification program under this section, and the department of agriculture and land stewardship in administering the certification program for pesticide applicators may cooperate together.

5. a. This section shall not require a person to be certified as a commercial manure applicator if any of the following applies:

(1) The person is any of the following:

(a) Actively engaged in farming who trades work with another such person.

(b) Employed by a person actively engaged in farming not solely as a manure applicator who applies manure as an incidental part of the person's general duties.

(c) Engaged in applying manure as an incidental part of a custom farming operation.

(d) Engaged in applying manure as an incidental part of a person's duties as provided by rules adopted by the department providing for an exemption.

(2) The person applies manure for a period of thirty days from the date of initial employment as a commercial manure applicator if the person applying the manure is acting under the instructions and control of a certified commercial manure applicator who is both of the following:

(a) Physically present at the site where the manure is located.

(b) In sight or hearing distance of the supervised person.

b. This section shall not require a person to be certified as a confinement site manure applicator if all of the following apply:

(1) The person is a part-time employee of a confinement site manure applicator.

(2) The person is acting under the instructions and control of a certified confinement site manure applicator who is both of the following:

(a) Physically present at the site where the manure is located.

(b) In sight or hearing distance of the supervised person.

6. a. The department may charge a fee for certifying persons under this section. The fee for certification shall be based on the costs of administering and enforcing this section and paying the expenses of the department relating to certification.

b. All moneys received by the department under the provisions of this chapter shall be handled in the same manner as repayment receipts, as defined in section 8.2, and shall be used solely for the administration and enforcement of this chapter.

99 Acts, ch 114, §30

Dates by which manure applicators required to be certified; 98 Acts, ch 1209, §47, 53; 99 Acts, ch 84, §1, 2

Subsection 5, paragraph b, subparagraph (2), unnumbered paragraph 1 amended

455B.474 Duties of commission — rules.

The commission shall adopt rules pursuant to chapter 17A relating to:

1. Release detection, prevention, and correction as may be necessary to protect human health and the environment, applicable to all owners and operators of underground storage tanks. The rules shall include, but are not limited to, requirements for:

a. Maintaining a leak detection system, an inventory control system with a tank testing, or a comparable system or method designed to identify releases in a manner consistent with the protection of human health and the environment.

b. Maintaining records of any monitoring or leak detection system, inventory control system, or tank testing or comparable system.

c. Reporting of any releases and corrective action taken in response to a release from an underground storage tank.

d. Establishing criteria for classifying sites according to the release of a regulated substance in connection with an underground storage tank.

(1) The classification system shall consider the actual or potential threat to public health and safety and to the environment posed by the contaminated site and shall take into account relevant factors, including the presence of contamination in soils, groundwaters, and surface waters, and the effect of conduits, barriers, and distances on the

contamination found in those areas according to the following factors:

(a) Soils shall be evaluated based upon the depth of the existing contamination and its distance from the ground surface to the contamination zone and the contamination zone to the groundwater; the soil type and permeability, including whether the contamination exists in clay, till or sand and gravel; and the variability of the soils, whether the contamination exists in soils of natural variability or in a disturbed area.

(b) Groundwaters shall be evaluated based upon the depth of the contamination and its distance from the ground surface to the groundwater and from the contamination zone to the groundwater; the flow pattern of the groundwater, the direction of the flow in relation to the contamination zone and the interconnection of the groundwater with the surface or with surface water and with other groundwater sources; the nature of the groundwater, whether it is located in a high yield aquifer, an isolated, low yield aquifer, or in a transient saturation zone; and use of the groundwater, whether it is used as a drinking water source for public or private drinking water supplies, for livestock watering, or for commercial and industrial processing.

(c) Surface water shall be evaluated based upon its location, its distance in relation to the contamination zone, the groundwater system and flow, and its location in relation to surface drainage.

(d) The effect of conduits, barriers, and distances on the contamination found in soils, groundwaters, and surface waters. Consideration should be given to the following: the effect of contamination on conduits such as wells, utility lines, tile lines and drainage systems; the effect of conduits on the transport of the contamination; whether a well is active or abandoned; what function the utility line serves, whether it is a sewer line, a water distribution line, telephone line, or other line; the existence of barriers such as buildings and other structures, pavement, and natural barriers, including rock formations and ravines; and the distance which separates the contamination found in the soils, groundwaters, or surface waters from the conduits and barriers.

(2) A site shall be classified as either high risk, low risk, or no action required.

(a) A site shall be considered high risk when it is determined that contamination from the site presents an unreasonable risk to public health and safety or the environment under any of the following conditions:

(i) Contamination is affecting or likely to affect groundwater which is used as a source water for public or private water supplies, to a level rendering them unsafe for human consumption.

(ii) Contamination is actually affecting or is likely to affect surface water bodies to a level where

surface water quality standards, under section 455B.173, will be exceeded.

(iii) Harmful or explosive concentrations of petroleum substances or vapors affecting structures or utility installations exist or are likely to occur.

(b) A site shall be considered low risk under any of the following conditions:

(i) Contamination is present and is affecting groundwater, but high risk conditions do not exist and are not likely to occur.

(ii) Contamination is above action level standards, but high risk conditions do not exist and are not likely to occur.

(c) A site shall be considered no action required if contamination is below action level standards and high or low risk conditions do not exist and are not likely to occur.

(d) For purposes of classifying a site as either low risk or no action required, the department shall rely upon the example tier one risk-based screening level look-up table of the American society for testing of materials' emergency standard, ES38-94, or other look-up table as determined by the department by rule.

(e) A site cleanup report which classifies a site as either high risk, low risk, or no action required shall be submitted by a groundwater professional to the department with a certification that the report complies with the provisions of this chapter and rules adopted by the department. The report shall be determinative of the appropriate classification of the site. However, if the report is found to be inaccurate or incomplete, and if based upon information in the report the risk classification of the site cannot be reasonably determined by the department based upon industry standards, the department shall work with the groundwater professional to obtain the additional information necessary to appropriately classify the site. A groundwater professional who knowingly or intentionally makes a false statement or misrepresentation which results in a mistaken classification of a site shall be guilty of a serious misdemeanor and shall have the groundwater professional's certification revoked under section 455G.18.

e. The closure of tanks to prevent any future release of a regulated substance into the environment. If consistent with federal environmental protection agency technical standard regulations, state tank closure rules shall include, at the tank owner's election, an option to fill the tank with an inert material. Removal of a tank shall not be required if the tank is filled with an inert material pursuant to department of natural resources rules. A tank closed, or to be closed and which is actually closed, within one year of May 13, 1988, shall be required to complete monitoring or testing as required by the department to ensure that the tank did not leak prior to closure, but shall not be required to have a monitoring system installed.

f. Establishing corrective action response requirements for the release of a regulated substance in connection with an underground storage tank. The corrective action response requirements shall include, but not be limited to, all of the following:

(1) A requirement that the site cleanup report do all of the following:

(a) Identify the nature and level of contamination resulting from the release.

(b) Provide supporting data and a recommendation of the degree of risk posed by the site relative to the site classification system adopted pursuant to paragraph "d".

(c) Provide supporting data and a recommendation of the need for corrective action.

(d) Identify the corrective action options which shall address the practical feasibility of implementation, costs, expected length of time to implement, and environmental benefits.

(2) To the fullest extent practicable, allow for the use of generally available hydrological, geological, topographical, and geographical information and minimize site specific testing in preparation of the site cleanup report.

(3) Require that at a minimum the source of a release be stopped either by repairing, upgrading, or closing the tank and that free product be removed or contained on site.

(4) High risk sites shall be addressed pursuant to a corrective action design report, as submitted by a groundwater professional and as accepted by the department. The corrective action design report shall determine the most appropriate response to the high risk conditions presented. The appropriate corrective action response shall be based upon industry standards and shall take into account the following:

(a) The extent of remediation required to reclassify the site as a low risk site.

(b) The most appropriate exposure scenarios based upon residential, commercial, or industrial use or other predefined industry accepted scenarios.

(c) Exposure pathway characterizations including contaminant sources, transport mechanisms, and exposure pathways.

(d) Affected human or environmental receptors and exposure scenarios based on current and projected use scenarios.

(e) Risk-based corrective action assessment principles which identify the risks presented to the public health and safety or the environment by each release in a manner that will protect the public health and safety or the environment using a tiered procedure consistent with the American society for testing of materials' emergency standard, ES38-94.

(f) Other relevant site specific factors such as the feasibility of available technologies, existing background contaminant levels, current and planned future uses, ecological, aesthetic, and oth-

er relevant criteria, and the applicability and availability of engineering and institutional controls.

(g) Remediation shall not be required on a site that does not present an increased cancer risk at the point of exposure of one in one million for residential areas or one in ten thousand for nonresidential areas.

(5) A corrective action design report submitted by a groundwater professional shall be accepted by the department and shall be primarily relied upon by the department to determine the corrective action response requirements of the site. However, if the corrective action design report is found to be inaccurate or incomplete, and if based upon information in the report the appropriate corrective action response cannot be reasonably determined by the department based upon industry standards, the department shall work with the groundwater professional to obtain the additional information necessary to appropriately determine the corrective action response requirements. A groundwater professional who knowingly or intentionally makes a false statement or misrepresentation which results in an improper or incorrect corrective action response shall be guilty of a serious misdemeanor and shall have the groundwater professional's certification revoked under section 455G.18.

(6) Low risk sites shall be monitored as deemed necessary by the department consistent with industry standards. Monitoring shall not be required on a site which has received a no further action certificate.

(7) An owner or operator may elect to proceed with additional corrective action on the site. However, any action taken in addition to that required pursuant to this paragraph "f" shall be solely at the expense of the owner or operator and shall not be considered corrective action for purposes of section 455G.9.

(8) Notwithstanding other provisions to the contrary and to the extent permitted by federal law, the department shall allow for bioremediation of soils and groundwater. For purposes of this subparagraph, "bioremediation" means the use of biological organisms, including microorganisms or plants, to degrade organic pollutants to common natural products.

(9) Replacement or upgrade of a tank on a site classified as a high or low risk site shall be equipped with a secondary containment system with monitoring of the space between the primary and secondary containment structures or other board approved tank system or methodology.

(10) The commission and the board shall cooperate to ensure that remedial measures required by the corrective action rules adopted pursuant to this paragraph are reasonably cost-effective and shall, to the fullest extent possible, avoid duplicating and conflicting requirements.

(11) The director may order an owner or operator to immediately take all corrective actions

deemed reasonable and necessary by the director if the corrective action is consistent with the prioritization rules adopted under this paragraph. Any order taken by the director pursuant to this subparagraph shall be reviewed at the next meeting of the environmental protection commission.

g. Specifying an adequate monitoring system to detect the presence of a leaking underground storage tank and to provide for protection of the groundwater resources for regulated tanks installed prior to January 14, 1987. The effective date of the rules adopted shall be January 14, 1989. In the event that federal regulations are adopted by the United States environmental protection agency after the commission has adopted state standards pursuant to this subsection, the commission shall immediately proceed to adopt rules consistent with those federal regulations adopted. Unless the federal environmental protection agency adopts final rules to the contrary, rules adopted pursuant to this section shall not apply to hydraulic lift reservoirs, such as for automobile hoists and elevators, containing hydraulic oil.

h. Issuing a no further action certificate or a monitoring certificate to the owner or operator of an underground storage tank site.

(1) A no further action certificate shall be issued by the department for a site which has been classified as a no further action site or which has been reclassified pursuant to completion of a corrective action plan or monitoring plan to be a no further action site.

(2) A monitoring certificate shall be issued by the department for a site which does not require remediation, but does require monitoring of the site.

(3) A certificate may be recorded with the county recorder. The owner or operator of a site who has been issued a certificate under this paragraph "h" or a subsequent purchaser of the site shall not be required to perform further corrective action solely because action standards are changed at a later date. A certificate shall not prevent the department from ordering corrective action of a new release.

In adopting the rules under this subsection, the commission may distinguish between types, classes, and ages of underground storage tanks. In making the distinctions, the commission may take into consideration factors including, but not limited to, location of the tanks, compatibility of a tank material with the soil and climate conditions, uses of the tanks, history of maintenance, age of the tanks, current industry recommended practices, national consensus codes, hydrogeology, water table, size of the tanks, quantity of regulated substances periodically deposited in or dispensed from the tank, the degree of risk presented by the regulated substance, the technical and managerial capability of the owners and operators, and the compatibility of the regulated substance and the

materials of which the underground storage tank is fabricated.

The department may issue a variance, which includes an enforceable compliance schedule, from the mandatory monitoring requirement for an owner or operator who demonstrates plans for tank removal, replacement, or filling with an inert material pursuant to a department approved variance. A variance may be renewed for just cause.

2. The maintenance of evidence of financial responsibility as the director determines to be feasible and necessary for taking corrective action and for compensating third parties for bodily injury and property damage caused by release of a regulated substance from an underground storage tank.

a. Financial responsibility required by this subsection may be established in accordance with rules adopted by the commission by any one, or any combination, of the following methods: insurance, guarantee, surety bond, letter of credit, or qualification as a self-insurer. In adopting requirements under this subsection, the commission may specify policy or other contractual terms, conditions, or defenses which are necessary or are unacceptable in establishing the evidence of financial responsibility.

A person who establishes financial responsibility by self-insurance shall not require or shall not enforce an indemnification agreement with an operator or owner of the tank covered by the self-insurance obligation, unless the owner or operator has committed a substantial breach of a contract between the self-insurer and the owner or operator, and that substantial breach relates directly to the operation of the tank in an environmentally sound manner. This paragraph applies to all contracts between a self-insurer and an owner or operator entered into on or after May 5, 1989.

b. If the owner or operator is in bankruptcy, reorganization, or arrangement pursuant to the federal bankruptcy law or if jurisdiction in any state court or federal court cannot be obtained over an owner or operator likely to be solvent at the time of judgment, any claim arising from conduct for which evidence of financial responsibility must be provided under this subsection may be asserted directly against the guarantor providing the evidence of financial responsibility. In the case of action pursuant to this paragraph, the guarantor is entitled to invoke all rights and defenses which would have been available to the owner or operator if an action had been brought against the owner or operator by the claimant and which would have been available to the guarantor if an action had been brought against the guarantor by the owner or operator.

c. The total liability of a guarantor shall be limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the owner or operator under this subsection.

This subsection does not limit any other state or federal statutory, contractual, or common law liability of a guarantor to its owner or operator including, but not limited to, the liability of the guarantor for bad faith in negotiating or in failing to negotiate the settlement of any claim. This subsection does not diminish the liability of any person under section 107 or 111 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 or other applicable law.

d. For the purpose of this subsection, the term “*guarantor*” means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator under this subsection.

e. If an owner or operator is required to uncover or remove an underground storage tank based upon a determination of the department that the underground storage tank presents a hazard to the public health, safety, or the environment, and if upon inspection of the tank the determination is unfounded, the state may reimburse reasonable costs incurred in the inspection of the tank. Claims for reimbursement shall be filed on forms provided by the commission. The commission shall adopt rules pursuant to chapter 17A relating to determinations of reasonableness in approval or rejection of claims in cases of dispute. Claims shall be paid from the general fund of the state. When any one of the tanks or the related pumps and piping at a multiple tank facility are found to be leaking, the state shall not reimburse costs for uncovering or removing any of the other tanks, piping, or pumps that are not found to be leaking.

3. Standards of performance for new underground storage tanks which shall include, but are not limited to, design, construction, installation, release detection, and compatibility standards. Until the effective date of the standards adopted by the commission and after January 1, 1986, a person shall not install an underground storage tank for the purpose of storing regulated substances unless the tank (whether of single or double wall construction) meets all the following conditions:

a. The tank will prevent release due to corrosion or structural failure for the operational life of the tank.

b. The tank is cathodically protected against corrosion, constructed of noncorrosive material, steel clad with a noncorrosive material, or designed in a manner to prevent the release or threatened release of any stored substance.

c. The material used in the construction or lining of the tank is compatible with the substance to be stored. If soil tests conducted in accordance with A.S.T.M., standard G 57-78 or another standard approved by the commission show that soil resistivity in an installation location is twelve thousand ohm/cm or more (unless a more stringent soil resistivity standard is adopted by rule of the commission), a storage tank without corrosion protection may be

installed in that location until the effective date of the standards adopted by the commission and after January 1, 1986.

d. Rules adopted by the commission shall specify adequate monitoring systems to detect the presence of a leaking underground storage tank and to provide for protection of the groundwater resources from regulated tanks installed after January 14, 1987. In the event that federal regulations are adopted by the United States environmental protection agency after the commission has adopted state standards pursuant to this subsection, the commission shall immediately proceed to adopt rules consistent with those federal regulations adopted. Tanks installed on or after January 14, 1987, shall continue to be considered new tanks for purposes of this chapter and are subject to state monitoring requirements unless federal requirements are more restrictive.

4. The form and content of the written notices required by section 455B.473.

5. The duties of owners or operators of underground storage tanks to locate and abate the source of release of regulated substances, when in the judgment of the director, the local hydrology, geology and other relevant factors reasonably include a tank as a potential source.

6. Reporting requirements necessary to enable the department to maintain an accurate inventory of underground storage tanks.

7. Designation of regulated substances subject to this part, consistent with section 455B.471, subsection 8. The rules shall be at least as stringent as the regulations of the federal government pursuant to section 311, subsection b, paragraph 2, subparagraph A of the federal Water Pollution Control Act, 33 U.S.C. § 1321(b)(2)(A), pursuant to section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9602, pursuant to section 307, subsection a of the federal Water Pollution Control Act, 33 U.S.C. § 1317(a), pursuant to section 112 of the Clean Air Act, 42 U.S.C. § 7412, or pursuant to section 7 of the Toxic Substances Control Act, 15 U.S.C. § 2606.

The rules adopted by the commission under this section shall be consistent with and shall not exceed the requirements of federal regulations relating to the regulation of underground storage tanks except as provided in subsection 1, paragraph “*f*” and subsection 3, paragraph “*d*”. It is the intent of the general assembly that state rules adopted pursuant to subsection 1, paragraph “*f*” and subsection 3, paragraph “*d*” be consistent with and not more restrictive than federal regulations adopted by the United States environmental protection agency when those rules are adopted.

Groundwater and soil monitoring to include testing for methyl tertiary butyl ether; 99 Acts, ch 204, §15, 20

Section not amended; footnote added

455B.501 Regulation of infectious waste.

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

a. "*Contaminated animal carcasses*" means waste including carcasses, body parts, and bedding of animals that were exposed to infectious agents during research, production of biologicals, or testing of pharmaceuticals.

b. "*Contaminated sharps*" means all discarded sharp items derived from patient care in medical, research, or industrial facilities including glass vials containing materials defined as infectious, hypodermic needles, scalpel blades, and pasteur pipettes.

c. "*Cultures and stocks of infectious agents*" means specimen cultures collected from medical and pathological laboratories, cultures and stocks of infectious agents from research and industrial laboratories, wastes from the production of biological agents, discarded live and attenuated vaccines, and culture dishes and devices used to transfer, inoculate, or mix cultures.

d. "*Human blood and blood products*" means human serum, plasma, other blood components, bulk blood, or containerized blood in quantities greater than twenty milliliters.

e. "*Infectious*" means containing pathogens with sufficient virulence and quantity so that exposure to an infectious agent by a susceptible host could result in an infectious disease when the infectious agent is improperly treated, stored, transplanted, or disposed.

f. "*Infectious waste*" means waste, which is infectious, including but not limited to contaminated sharps, cultures, and stocks of infectious agents, blood and blood products, pathological waste, and contaminated animal carcasses from hospitals or research laboratories.

g. "*Pathological waste*" means human tissues and body parts that are removed during surgery or autopsy.

2. The department shall recommend, for adoption by the commission, standards for on-site and off-site treatment of infectious waste. In developing standards, the department shall consider factors affecting the feasibility of alternative methods of

treatment and disposal, including but not limited to the volume of infectious waste generated, the availability of treatment facilities within geographic areas, and the costs of transporting infectious wastes to treatment facilities. The standards shall include monitoring requirements for treatment facilities and training requirements for operators of facilities. The standards may include requirements for management plans dealing with the plans for management of infectious wastes in compliance with adopted standards. In cases in which an individual generator of infectious waste is served by a person treating or disposing of the infectious waste, the person treating or disposing of the waste may prepare the plan for all generators served.

99 Acts, ch 46, §1

Local approval of infectious waste incinerator projects; §455B.305A

Subsection 1, paragraphs a-g reorganized to place in alphabetical order

Subsection 2 amended

455B.502 Infectious medical waste incinerators — regents universities — requirements. Repealed by 99 Acts, ch 46, § 3.

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 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.

99 Acts, ch 46, §2

Section amended

CHAPTER 455D

WASTE VOLUME REDUCTION AND RECYCLING

455D.9A Disposal of baled solid waste at a sanitary landfill — prohibited.

Beginning January 1, 1992, a person shall not dispose of baled solid waste at a sanitary landfill and a sanitary landfill shall not accept baled solid

waste for final disposal. Solid waste which is baled on-site may be disposed of at the sanitary landfill.

99 Acts, ch 14, §1

Section amended

CHAPTER 455G

COMPREHENSIVE PETROLEUM UNDERGROUND STORAGE TANK FUND

455G.3 Establishment of Iowa comprehensive petroleum underground storage tank fund.

1. The Iowa comprehensive petroleum underground storage tank fund is created as a separate fund in the state treasury, and any funds remaining in the fund at the end of each fiscal year shall not revert to the general fund but shall remain in the Iowa comprehensive petroleum underground storage tank fund. Interest or other income earned by the fund shall be deposited in the fund. The fund shall include moneys credited to the fund under this section, section 423.24, subsection 1, paragraph “a”, and sections 455G.8, 455G.9, and 455G.11, and other funds which by law may be credited to the fund. The moneys in the fund are appropriated to and for the purposes of the board as provided in this chapter. Amounts in the fund shall not be subject to appropriation for any other purpose by the general assembly, but shall be used only for the purposes set forth in this chapter. The treasurer of state shall act as custodian of the fund and disburse amounts contained in it as directed by the board including automatic disbursements of funds as received pursuant to the terms of bond indentures and documents and security provisions to trustees and custodians. The treasurer of state is authorized to invest the funds deposited in the fund at the direction of the board and subject to any limitations contained in any applicable bond proceedings. The income from such investment shall be credited to and deposited in the fund. The fund shall be administered by the board which shall make expenditures from the fund consistent with the purposes of the programs set out in this chapter without further appropriation. The fund may be divided into different accounts with different depositories as determined by the board and to fulfill the purposes of this chapter.

2. The board shall assist Iowa’s owners and operators of petroleum underground storage tanks in complying with federal environmental protection agency technical and financial responsibility regulations by establishment of the Iowa comprehensive petroleum underground storage tank fund. The authority may issue its bonds, or series of bonds, to assist the board, as provided in this chapter.

3. The purposes of this chapter shall include but are not limited to any of the following:

a. To establish a remedial account to fund corrective action for petroleum releases as provided by section 455G.9.

b. To establish a loan guarantee account, as provided by and to the extent permitted by section 455G.10.

c. To establish an insurance fund for insurable underground storage tank risks within the state as provided by section 455G.11.

d. To establish a marketability fund for the purposes as stated in section 455G.21.

e. To establish a no further action fund for the purposes stated in section 455G.22.

4. The state, the general fund of the state, or any other fund of the state, other than the Iowa comprehensive petroleum underground storage tank fund, is not liable for a claim or cause of action in connection with a tank not owned or operated by the state, or agency of the state. All expenses incurred by the fund shall be payable solely from the fund and no liability or obligation shall be imposed upon the state. The liability of the fund is limited to the extent of coverage provided by the account or fund under which a claim is submitted, subject to the terms and conditions of that coverage. The liability of the fund is further limited by the moneys made available to the fund, and no remedy shall be ordered which would require the fund to exceed its then current funding limitations to satisfy an award or which would restrict the availability of moneys for higher priority sites. The state is not liable for a claim presented against the fund.

5. For purposes of payment of refunds of the environmental protection charge under section 424.15 by the department of revenue and finance, the treasurer of state shall allocate to the department of revenue and finance the total amount budgeted by the fund’s board for environmental protection charge refunds. Any unused funds shall be remitted to the treasurer of state.

Section not amended; internal reference changes applied

455G.6 Iowa comprehensive petroleum underground storage tank fund — general and specific powers.

In administering the fund, the board has all of the general powers reasonably necessary and convenient to carry out its purposes and duties and may do any of the following, subject to express limitations contained in this chapter:

1. Guarantee secured and unsecured loans, and enter into agreements for corrective action, acquisition and construction of tank improvements, and provide for the insurance program. The loan guarantees may be made to a person or entity owning or operating a tank. The board may take any ac-

tion which is reasonable and lawful to protect its security and to avoid losses from its loan guarantees.

2. Acquire, hold, and mortgage personal property and real estate and interests in real estate to be used.

3. Purchase, construct, improve, furnish, equip, lease, option, sell, exchange, or otherwise dispose of one or more improvements under the terms it determines.

4. Grant a mortgage, lien, pledge, assignment, or other encumbrance on one or more improvements, revenues, asset of right, accounts, or funds established or received in connection with the fund, including revenues derived from the use tax under section 423.24, subsection 1, paragraph "a", and deposited in the fund or an account of the fund.

5. Provide that the interest on bonds may vary in accordance with a base or formula.

6. Contract for the acquisition, construction, or both of one or more improvements or parts of one or more improvements and for the leasing, subleasing, sale, or other disposition of one or more improvements in a manner it determines.

7. The board may contract with the authority for the authority to issue bonds and do all things necessary with respect to the purposes of the fund, as set out in the contract between the board and the authority. The board may delegate to the authority and the authority shall then have all of the powers of the board which are necessary to issue and secure bonds and carry out the purposes of the fund, to the extent provided in the contract between the board and the authority. The authority may issue the authority's bonds in principal amounts which, in the opinion of the board, are necessary to provide sufficient funds for the fund, the payment of interest on the bonds, the establishment of reserves to secure the bonds, the costs of issuance of the bonds, other expenditures of the authority incident to and necessary or convenient to carry out the bond issue for the fund, and all other expenditures of the board necessary or convenient to administer the fund. The bonds are investment securities and negotiable instruments within the meaning of and for purposes of the uniform commercial code.

8. Bonds issued under this section are payable solely and only out of the moneys, assets, or revenues of the fund, all of which may be deposited with trustees or depositories in accordance with bond or security documents and pledged by the board to the payment thereof, and are not an indebtedness of this state or the authority, or a charge against the general credit or general fund of the state or the authority, and the state shall not be liable for any financial undertakings with respect to the fund. Bonds issued under this chapter shall contain on their face a statement that the bonds do not constitute an indebtedness of the state or the authority.

9. The proceeds of bonds issued by the authority and not required for immediate disbursement

may be deposited with a trustee or depository as provided in the bond documents and invested in any investment approved by the authority and specified in the trust indenture, resolution, or other instrument pursuant to which the bonds are issued without regard to any limitation otherwise provided by law.

10. The bonds shall be:

a. In a form, issued in denominations, executed in a manner, and payable over terms and with rights of redemption, and be subject to such other terms and conditions as prescribed in the trust indenture, resolution, or other instrument authorizing their issuance.

b. Negotiable instruments under the laws of the state and may be sold at prices, at public or private sale, and in a manner, as prescribed by the authority. Chapters 73A, 74, 74A and 75 do not apply to their sale or issuance of the bonds.

c. Subject to the terms, conditions, and covenants providing for the payment of the principal, redemption premiums, if any, interest, and other terms, conditions, covenants, and protective provisions safeguarding payment, not inconsistent with this chapter and as determined by the trust indenture, resolution, or other instrument authorizing their issuance.

11. The bonds are securities in which public officers and bodies of this state; political subdivisions of this state; insurance companies and associations and other persons carrying on an insurance business; banks, trust companies, savings associations, savings and loan associations, and investment companies; administrators, guardians, executors, trustees, and other fiduciaries; and other persons authorized to invest in bonds or other obligations of the state, may properly and legally invest funds, including capital, in their control or belonging to them.

12. Bonds must be authorized by a trust indenture, resolution, or other instrument of the authority, approved by the board. However, a trust indenture, resolution, or other instrument authorizing the issuance of bonds may delegate to an officer of the issuer the power to negotiate and fix the details of an issue of bonds.

13. Neither the resolution, trust agreement, nor any other instrument by which a pledge is created needs to be recorded or filed under the Iowa uniform commercial code to be valid, binding, or effective.

14. Bonds issued under the provisions of this section are declared to be issued for an essential public and governmental purpose and all bonds issued under this chapter shall be exempt from taxation by the state of Iowa and the interest on the bonds shall be exempt from the state income tax and the state inheritance and estate tax.

15. *a.* Subject to the terms of any bond documents, moneys in the fund or fund accounts may be expended for administration expenses, civil penal-

ties, moneys paid under an agreement, stipulation, or settlement, for the costs associated with sites within a community remediation project, for costs related to contracts entered into with a state agency or university, costs for activities relating to litigation, or for the costs of any other activities as the board may determine are necessary and convenient to facilitate compliance with and to implement the intent of federal laws and regulations and this chapter. For purposes of this chapter, administration expenses include expenses incurred by the underground storage tank section of the department of natural resources in relation to tanks regulated under this chapter.

b. The authority granted under this subsection which allows the board to expend fund moneys on an activity the board determines is necessary and convenient to facilitate compliance with and to implement the intent of federal laws and regulations and this chapter, shall only be used in accordance with the following:

(1) Prior board approval shall be required before expenditure of moneys pursuant to this authority shall be made.

(2) If the expenditure of fund moneys pursuant to this authority would result in the board establishing a policy which would substantially affect the operation of the program, rules shall be adopted pursuant to chapter 17A prior to the board or the administrator taking any action pursuant to this proposed policy.

16. The board shall cooperate with the department of natural resources in the implementation and administration of this chapter to assure that in combination with existing state statutes and rules governing underground storage tanks, the state will be, and continue to be, recognized by the federal government as having an "approved state account" under the federal Resource Conservation and Recovery Act, especially by compliance with the Act's subtitle I financial responsibility requirements as enacted in the federal Superfund Amendments and Reauthorization Act of 1986 and the financial responsibility regulations adopted by the United States environmental protection agency at 40 C.F.R. pts. 280 and 281. Whenever possible this chapter shall be interpreted to further the purposes of, and to comply, and not to conflict, with such federal requirements.

17. Allocate moneys from the Iowa comprehensive petroleum underground storage tank fund to the no further action fund.

Section not amended; internal reference change applied

455G.8 Revenue sources for fund.

Revenue for the fund shall include, but is not limited to, the following, which shall be deposited with the board or its designee as provided by any bond or security documents and credited to the fund:

1. *Bonds issued to capitalize fund.* The proceeds of bonds issued to capitalize and pay the costs of the fund, and investment earnings on the pro-

ceeds except as required for the capital reserve funds.

2. *Use tax.* The revenues derived from the use tax imposed under chapter 423. The proceeds of the use tax under section 423.24, subsection 1, paragraph "a", shall be allocated, consistent with this chapter, among the fund's accounts, for debt service and other fund expenses, according to the fund budget, resolution, trust agreement, or other instrument prepared or entered into by the board or authority under direction of the board.

3. *Storage tank management fee.* That portion of the storage tank management fee proceeds which are deposited into the fund, pursuant to section 455B.479.

4. *Cost recovery enforcement.* Cost recovery enforcement net proceeds as provided by section 455G.13 shall be allocated to the innocent landowners fund created under section 455G.21, subsection 2, paragraph "a". 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.

5. *Other sources.* Interest attributable to investment of money in the fund or an account of the fund. Moneys in the form of a devise, gift, bequest, donation, federal or other grant, reimbursement, repayment, judgment, transfer, payment, or appropriation from any source intended to be used for the purposes of the fund.

99 Acts, ch 114, §31
Subsection 2 amended
Internal reference change applied
Subsection 4 stricken and former subsections 5 and 6 renumbered as 4 and 5

455G.9 Remedial program.

1. *Limits of remedial account coverage.* Moneys in the remedial account shall only be paid out for the following:

a. (1) Corrective action for an eligible release reported to the department of natural resources on or after July 1, 1987, but prior to May 5, 1989. Third-party liability is specifically excluded from remedial account coverage. For a claim for a release under this subparagraph, the remedial program shall pay in accordance with 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 re-

sources must have been in compliance with then current monitoring requirements, if any, or must have been in the process of compliance efforts with anticipated requirements, including installation of monitoring devices, a new tank, tank improvements or retrofit, or any combination.

(2) Corrective action, up to one million dollars total, and subject to prioritization rules as established pursuant to section 455G.12A, for a release reported to the department of natural resources after May 5, 1989, and on or before October 26, 1990. Third-party liability is specifically excluded from remedial account coverage. Corrective action coverage provided pursuant to this paragraph may be aggregated with other financial assurance mechanisms as permitted by federal law to satisfy required aggregate and per occurrence limits of financial responsibility for both corrective action and third-party liability, if the owner's or operator's effective financial responsibility compliance date is prior to October 26, 1990. School districts who reported a release to the department of natural resources prior to December 1, 1990, shall have until July 1, 1991, to report a claim to the board for remedial coverage under this subparagraph.

(3) Corrective action for an eligible release reported to the department of natural resources on or after January 1, 1984, but prior to July 1, 1987. Third-party liability is specifically excluded from remedial account coverage. For a claim for a release under this subparagraph, the remedial program shall pay in accordance with 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 (9). 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 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.

j. One hundred percent of the costs of corrective action for a governmental subdivision in connection with a tank if the governmental subdivision did not own or operate the tank from which the release occurred, and the property was acquired pursuant to eminent domain after the release occurred. A governmental subdivision which acquires property pursuant to eminent domain in order to obtain benefits under this paragraph is not a responsible party for a release in connection with property which it acquired, and does not become a responsible party by sale or transfer of property so acquired.

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.* An owner or operator shall be required to pay the greater of five thousand dollars or eighteen percent of the first eighty thousand dollars of the total costs of corrective action for that release.

If a site's actual expenses exceed eighty thousand dollars, the remedial account shall pay the remainder, as required by federal regulations, of the total costs of the corrective action for that release, not to exceed one million dollars, except that a county shall not be required to pay a copayment in connection with a release situated on property acquired in connection with delinquent taxes, as provided in subsection 1, paragraph "d", unless subsequent to acquisition the county actively operates a tank on the property for purposes other than risk assessment, risk management, or tank closure.

5. *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.

6. *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.

7. *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.

8. *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.

9. *Self-insureds.* For a self-insured as determined under 567 IAC 136.6(455B), 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.

10. *Expenses incurred by governmental subdivisions.* The board may adopt rules for reimbursement for reasonable expenses incurred by a governmental subdivision for treating, handling, or disposing, as required by the department, of petroleum-contaminated soil and groundwater encountered in a public right-of-way during installation, maintenance, or repair of a public improvement. The board may seek full recovery from a responsible party liable for the release for such expenses and for all other costs and reasonable attorney fees and costs of litigation for which moneys are expended by the fund. Any expense described in this subsection incurred by the fund constitutes a lien upon the property from which the release occurred. A lien shall be recorded and an

expense shall be collected in the same manner as provided in section 424.11.

99 Acts, ch 74, §1, 2
Subsection 1, NEW paragraph j
NEW subsection 10

455G.10 Loan guarantee account. Repealed by 89 Acts, ch 131, § 62.

Section repealed effective July 1, 1999; repeal shall not affect outstanding contractual rights; 89 Acts, ch 131, §62

455G.11 Insurance fund.

1. *Underground storage tank insurance fund.*

a. An Iowa underground storage tank insurance fund is created as a separate fund in the state treasury on July 1, 1998, consisting of all moneys held in the insurance account of the comprehensive petroleum underground storage tank fund.

Notwithstanding section 8.33, moneys remaining in the underground storage tank insurance fund at the end of each fiscal year shall not revert to the general fund but shall remain in the underground storage tank insurance fund. Notwithstanding section 12C.7, interest or earnings on moneys in the underground storage tank insurance fund shall be credited to the underground storage tank insurance fund in addition to any other income specifically allocated to the underground storage tank insurance fund.

b. Amounts in the underground storage tank insurance fund shall not be subject to appropriation for any purpose by the general assembly, but shall be used only for the purposes set forth in this section. The treasurer of state shall act as custodian of the underground storage tank insurance fund and disburse moneys contained in it as directed by the board. The treasurer of state is authorized to invest the moneys deposited in the underground storage tank insurance fund at the discretion of the board. The income from such investments shall be credited to and deposited in the underground storage tank insurance fund. The underground storage tank insurance fund shall be administered by the board which shall make expenditures from the underground storage tank insurance fund consistent with the purposes of the programs provided for in this chapter without further appropriation.

c. No later than July 1, 2004, all moneys in the underground storage tank insurance fund shall be transferred to the insurance board when restructured as an independent nonprofit entity organized to provide an allowable mechanism to demonstrate financial responsibility as required in 40 C.F.R. pts. 280 and 281, owned and operated by insureds, as determined by the comprehensive petroleum underground storage tank fund board.

2. *Underground storage tank insurance board.*

a. An underground storage tank insurance board is established and shall consist of the following members:

(1) The treasurer of state or the treasurer of state's designee serving for a two-year term. The treasurer of state or the treasurer of state's designee shall serve as a nonvoting member of the insurance board.

(2) The auditor of state or the auditor of state's designee serving for a three-year term. The auditor of state or the auditor of state's designee shall serve as a nonvoting member of the insurance board.

(3) A representative of a governmental subdivision which owns an underground storage tank system which is insured through the insurance account and was insured through the insurance account of the comprehensive petroleum underground storage tank fund beginning on or before October 26, 1990, appointed by the governor and serving a six-year term.

(4) Two owners or operators appointed by the governor who have been petroleum systems insureds through the insurance account and were insured through the insurance account of the comprehensive petroleum underground storage tank fund on or before October 26, 1990. The insurance board members appointed under this subparagraph shall serve a term of six years and shall be eligible to serve subsequent terms pursuant to paragraph "b".

b. After the initial terms served by the insurance board members designated in paragraph "a", subparagraphs (1), (2), (3), and (4), all subsequent insurance board members shall be a part of and elected by the population of private insureds who have been petroleum systems insureds through the underground storage tank insurance fund and were insured through the insurance account of the comprehensive petroleum underground storage tank fund. The subsequent insurance board members elected pursuant to this paragraph shall serve for three-year terms and are eligible to serve an unlimited number of terms.

c. Members of the insurance board are entitled to receive reimbursement of actual expenses incurred in the discharge of their duties within the limits of the moneys appropriated to the insurance board or made available to the underground storage tank insurance fund.

d. Members of the insurance board shall elect a voting chairperson from among the members who are privately insured owners and operators.

3. *Recommendations for restructuring.* Prior to the restructuring of the insurance board as an independent nonprofit entity, the insurance board shall provide recommendations to the comprehensive petroleum underground storage tank fund board relating to all of the following:

a. Relating to rules, practices, procedures, underwriting criteria, premium determinations, organizational structure, procedures for investigating and settling claims, determining appropriate deductibles, benefits offered, and otherwise imple-

menting and administering the underground storage tank insurance fund.

b. Confirming that the insurance board has established a process to independently provide the following:

(1) Long-term insurability based upon competitive rates for insureds who are in compliance with technical regulatory requirements.

(2) Elimination of any lapse in coverage between state insurance coverage and private insurance coverage.

(3) Ease in transition from state underwriting criteria, application process, claims handling, and premium determinations.

(4) Participation of insureds in establishing underwriting, application, claims, and premium determinations.

(5) Continued approval as an acceptable financial assurance mechanism as required in 40 C.F.R. pts. 280 and 281.

c. Determining a date specific upon which all assets and liabilities of the insurance fund will be transferred to the insurance board as an independent nonprofit entity organized to provide an allowable mechanism to provide financial responsibility as required by 40 C.F.R. pts. 280 and 281, owned and operated by insureds, on or before July 1, 2004.

4. *Transfer of insurance board moneys.*

a. If the insurance board dissolves or ceases to function as an acceptable financial assurance mechanism as required in 40 C.F.R. pts. 280 and 281, any unencumbered and unobligated moneys transferred to the insurance board pursuant to subsection 1, paragraph "c", shall be transferred to the comprehensive petroleum underground storage tank fund, or if the comprehensive petroleum underground storage tank fund is no longer in existence, the unencumbered and unobligated moneys shall be transferred to the general fund of the state.

b. If a person or persons purchase the ownership rights of the assets of the underground storage tank insurance board, any unencumbered and unobligated moneys transferred to the insurance board pursuant to subsection 1, paragraph "c", shall be transferred to the comprehensive petroleum underground storage tank fund, or if the comprehensive petroleum underground storage tank fund is no longer in existence, the unencumbered and unobligated moneys shall be transferred to the general fund of the state.

5. *Insurance fund as a financial assurance mechanism.* The insurance fund 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 fund 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.

6. *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.

7. *Eligibility of owners and operators for insurance fund 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 fund 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. Is in compliance with all technical requirements of the department.

8. *Insurance account premiums.* An owner or operator applying for coverage shall pay an annually adjusted insurance premium for coverage by the insurance fund. Premiums paid shall be credited to and deposited in the insurance fund. 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 fund presented by the insured. Risk factor adjustments should reflect the range of risk presented by the variety of tank systems, monitoring systems, and risk management practices in the general insurable tank population. Premium adjustments for risk factors should at minimum take into account lifetime costs of a tank and monitoring system and insurance fund 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 fund 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.

The insurance fund may offer, at the buyer's option, a range of deductibles. A ten thousand dollar deductible policy shall be offered.

9. *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 fund until moneys in the fund are exhausted. Upon exhaustion of the moneys in the fund, any remaining claims shall be invalid.

b. The resolution of a cost recovery action filed prior to the effective date of the repeal.

10. *Installer's and inspector's insurance coverage.*

a. *Coverage.* The board may offer insurance coverage under the insurance fund 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 fund. 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 dol-

lars aggregate, subject to the terms and conditions under this section and those adopted by the board.

d. *Deductible.* The insurance fund 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.

g. The board may cease offering insurance coverage under this subsection if the board determines that competitive private market alternatives exist.

11. *Coverage alternatives.* The board shall provide for insurance coverage to be offered to installers and inspectors for a tank installation certified pursuant to subsection 10, through both of the following methods:

a. Directly through the underground storage tank insurance fund with premiums and deductibles as provided in subsection 10.

b. In cooperation with a private insurance carrier with excess or stop loss coverage provided by the underground storage tank insurance 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.

12. *Account expenditures.* Moneys in the insurance fund 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 fund, up to the limits of coverage extended. A personal injury is not a compensable third-party liability damage.

13. *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.

14. *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.

15. The board may cease offering insurance coverage under this subsection if the board determines that competitive private market alternatives exist and if the board determines that all of the following conditions are met:

a. Long-term insurability based upon competitive rates for insureds who are in compliance with technical regulatory requirements.

b. Elimination of any lapse in coverage between state insurance coverage and private insurance coverage.

c. Ease in transition from state underwriting criteria, application process, claims handling, and premium determinations.

d. Participation of insureds in establishing underwriting, application, claims, and premium determinations.

e. Continued approval as an acceptable financial assurance mechanism as required in 40 C.F.R. pts. 280 and 281.

99 Acts, ch 114, §32-35

Subsection 1 amended

Subsection 2, paragraph c amended

Subsection 8, unnumbered paragraph 1 amended

Subsection 11, paragraphs a and b amended

455G.13 Cost recovery enforcement.

1. *Full recovery sought from owner.* The board shall seek full recovery from the owner, operator, or other potentially responsible party liable for the released petroleum which is the subject of a corrective action, for which the fund expends moneys for corrective action or third-party liability, and for all other costs, including reasonable attorney fees and costs of litigation for which moneys are ex-

pended by the fund in connection with the release. When federal cleanup funds are recovered, the funds are to be deposited to the remedial account of the fund and used solely for the purpose of future cleanup activities.

2. *Limitation of liability of owner or operator.* Except as provided in subsection 3:

a. The board or the department of natural resources shall not seek recovery for expenses in connection with corrective action for a release from an owner or operator eligible for assistance under the remedial account except for any unpaid portion of the deductible or copayment. This section does not affect any authorization of the department of natural resources to impose or collect civil or administrative fines or penalties or fees. The remedial account shall not be held liable for any third-party liability.

b. An owner or operator's liability for a release for which coverage is admitted under the insurance fund shall not exceed the amount of the deductible.

3. *Owner or operator not in compliance, subject to full and total cost recovery.* Notwithstanding subsection 2, the liability of an owner or operator shall be the full and total costs of corrective action and bodily injury or property damage to third parties, as specified in subsection 1, if the owner or operator has not complied with the financial responsibility or other underground storage tank rules of the department of natural resources or with this chapter and rules adopted under this chapter.

4. *Treble damages for certain violations.* Notwithstanding subsections 2 and 3, the owner or operator, or both, of a tank are liable to the fund for punitive damages in an amount equal to three times the amount of any cost incurred or moneys expended by the fund as a result of a release of petroleum from the tank if the owner or operator did any of the following:

a. Failed, without sufficient cause, to respond to a release of petroleum from the tank upon, or in accordance with, a notice issued by the director of the department of natural resources.

b. After May 5, 1989, failed to perform any of the following:

(1) Failed to register the tank, which was known to exist or reasonably should have been known to exist.

(2) Intentionally failed to report a known release.

The punitive damages imposed under this subsection are in addition to any costs or expenditures recovered from the owner or operator pursuant to this chapter and in addition to any other penalty or relief provided by this chapter or any other law.

However, the state, a city, county, or other political subdivision shall not be liable for punitive damages.

5. *Lien on tank site.* Any amount for which an owner or operator is liable to the fund, if not paid when due, by statute, rule, or contract, or deter-

mination of liability by the board or department of natural resources after hearing, shall constitute a lien upon the real property where the tank, which was the subject of corrective action, is situated, and the liability shall be collected in the same manner as the environmental protection charge pursuant to section 424.11.

6. *Joinder of parties.* The department of natural resources has standing in any case or contested action related to the fund or a tank to assert any claim that the department may have regarding the tank at issue in the case or contested action, upon motion and sufficient showing by a party to a cost recovery or subrogation action provided for under this section, the court or the administrative law judge shall join to the action any potentially responsible party who may be liable for costs and expenditures of the type recoverable pursuant to this section.

7. *Strict liability.* The standard of liability for a release of petroleum or other regulated substance as defined in section 455B.471 is strict liability.

8. *Third-party contracts not binding on board, proceedings against responsible party.* An insurance, indemnification, hold harmless, conveyance, or similar risk-sharing or risk-shifting agreement shall not be effective to transfer any liability for costs recoverable under this section. The fund, board, or department of natural resources may proceed directly against the owner or operator or other allegedly responsible party. This section does not bar any agreement to insure, hold harmless, or indemnify a party to the agreement for any costs or expenditures under this chapter, and does not modify rights between the parties to an agreement, except to the extent the agreement shifts liability to an owner or operator eligible for assistance under the remedial account for any damages or other expenses in connection with a corrective action for which another potentially responsible party is or may be liable. Any such provision is null and void and of no force or effect.

9. *Later proceedings permitted against other parties.* The entry of judgment against a party to the action does not bar a future action by the board or the department of natural resources against another person who is later alleged to be or discovered to be liable for costs and expenditures paid by the fund. Notwithstanding section 668.5 no other potentially responsible party may seek contribution or any other recovery from an owner or operator eligible for assistance under the remedial account for damages or other expenses in connection with corrective action for a release for which the potentially responsible party is or may be liable. Subsequent successful proceedings against another party shall not modify or reduce the liability of a party against whom judgment has been previously entered.

10. *Claims against potentially responsible parties.* Upon payment by the fund for corrective action or third-party liability pursuant to this chapter, the rights of the claimant to recover payment from any potentially responsible party, are assumed by the board to the extent paid by the fund. A claimant is precluded from receiving double compensation for the same injury.

In an action brought pursuant to this chapter seeking damages for corrective action or third-party liability, the court shall permit evidence and argument as to the replacement or indemnification of actual economic losses incurred or to be incurred in the future by the claimant by reason of insurance benefits, governmental benefits or programs, or from any other source.

A claimant may elect to permit the board to pursue the claimant's cause of action for any injury not compensated by the fund against any potentially responsible party, provided the attorney general determines such representation would not be a conflict of interest. If a claimant so elects, the board's litigation expenses shall be shared on a pro rata basis with the claimant, but the claimant's share of litigation expenses is payable exclusively from any share of the settlement or judgment payable to the claimant.

11. *Exclusion of punitive damages.* The fund shall not be liable in any case for punitive damages.

12. *Recovery or subrogation — installers and inspectors.* Notwithstanding any other provision contained in this chapter, the board or a person insured under the insurance fund has no right of recovery or right of subrogation against an installer or an inspector insured by the insurance fund for the tank giving rise to the liability other than for recovery of any deductibles paid.

99 Acts, ch 114, §36
Subsection 12 amended

455G.21 Marketability fund.

1. A marketability fund is created as a separate fund in the state treasury under the control of the board. The board shall administer the marketability fund. Notwithstanding section 8.33, moneys remaining in the marketability fund at the end of each fiscal year shall not revert to the general fund but shall remain in the marketability fund. The marketability fund shall include, notwithstanding section 12C.7, interest earned by the marketability fund or other income specifically allocated to the marketability fund.

2. The marketability fund shall be used for the following purposes:

a. The innocent landowners fund shall be established as a separate fund in the state treasury under the control of the board. The innocent landowners fund shall include any moneys recovered pursuant to cost recovery enforcement under sec-

tion 455G.13. Notwithstanding section 455G.1, subsection 2, benefits for the costs of corrective action shall be provided to the owner of a petroleum-contaminated property, who is not otherwise eligible to receive benefits under section 455G.9. An owner of a petroleum-contaminated property shall be eligible for payment of total corrective action costs subject to copayment requirements under section 455G.9, subsection 4. The board may adopt rules conditioning receipt of benefits under this paragraph to those petroleum-contaminated properties which present a higher degree of risk to the public health and safety or the environment and may adopt rules providing for denial of benefits un-

der this paragraph to a person who did not make a good faith attempt to comply with the provisions of this chapter. This paragraph does not confer a legal right to an owner of petroleum-contaminated property for receipt of benefits under this paragraph.

b. The remainder of the moneys shall be used for payment of remedial benefits as provided in section 455G.9.

3. Moneys in the fund shall not be used for purposes of bonding or providing security for bonding under chapter 455G.

99 Acts, ch 114, §37, 38
Subsection 1 amended
Subsection 2, paragraph a amended

CHAPTER 455H

LAND RECYCLING AND REMEDIATION STANDARDS

455H.103 Definitions.

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

1. *"Affected area"* means any real property affected, suspected of being affected, or modeled to be likely affected by a release occurring at an enrolled site.

2. *"Affiliate"* means a corporate parent, subsidiary, or predecessor of a participant, a co-owner or co-operator of a participant, a spouse, parent, or child of a participant, an affiliated corporation or enterprise of a participant, or any other person substantially involved in the legal affairs or management of a participant, as defined by the department.

3. *"Background levels"* means concentrations of hazardous substances naturally occurring and generally present in the environment in the vicinity of an enrolled site or an affected area and not the result of releases.

4. *"Commission"* means the environmental protection commission created under section 455A.6.

5. *"Department"* means the department of natural resources created under section 455A.2.

6. *"Director"* means the director of the department of natural resources appointed under section 455A.3.

7. *"Enrolled site"* means any property which has been or is suspected to be the site of or affected by a release and which has been enrolled pursuant to this chapter by a participant.

8. *"Hazardous substance"* has the same meaning as defined in section 455B.381.

9. *"Noncancer health risk"* means the potential for adverse systemic or toxic effects caused by exposure to noncarcinogenic hazardous substances expressed as the hazard quotient for a hazardous substance. A hazard quotient is the ratio of the level of exposure of a hazardous substance over a spe-

cified time period to a reference dose for a similar exposure period.

10. *"Participant"* means any person who enrolls property pursuant to this chapter. A participant is a participant only to the extent the participant complies with the requirements of this chapter.

11. *"Protected groundwater source"* means a saturated bed, formation, or group of formations which has a hydraulic conductivity of at least forty-four-hundredths meters per day and a total dissolved solids concentration of less than two thousand five hundred milligrams per liter.

12. *"Protected party"* means any of the following:

a. A participant, including, but not limited to, a development authority or fiduciary.

b. A person who develops or otherwise occupies an enrolled site after the issuance of a no further action letter.

c. A successor or assignee of a protected party, as to an enrolled site of a protected party.

d. A lender which practices commercial lending including, but not limited to, providing financial services, holding of security interests, workout practices, and foreclosure or the recovery of funds from the sale of an enrolled site.

e. A parent corporation or subsidiary of a participant.

f. A co-owner or co-operator, either by joint tenancy or a tenancy in common, or any other party sharing a legal relationship with the participant.

g. A holder of a beneficial interest of a land trust or inter vivos trust, whether revocable or irrevocable, as to any interests in an enrolled site.

h. A mortgagee or trustee of a deed of trust existing as to an enrolled site as of the date of issuance of a no further action letter.

i. A transferee of the participant whether the transfer is by purchase, eminent domain, assign-

ment, bankruptcy proceeding, partition, dissolution of marriage, settlement or adjudication of any civil action, charitable gift, or bequest, in conjunction with the acquisition of title to the enrolled site.

j. An heir or devisee of a participant.

k. A government agency or political subdivision which acquires an enrolled site through voluntary or involuntary means, including, but not limited to, abandonment, tax foreclosure, eminent domain, or escheat.

13. "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment of a hazardous substance, including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substance, but excludes all of the following:

a. Any release which results in exposure to persons solely within a workplace, with respect to a claim which such persons may assert against the employer of such persons.

b. Emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine.

c. The release of source, by-product, or special nuclear material from a nuclear incident, as those

terms are defined in the federal Atomic Energy Act of 1954, if such release is subject to requirements with respect to financial protection established by the nuclear regulatory commission under 42 U.S.C. § 2210 or, for the purposes of 42 U.S.C. § 9604 or any other response action, any release of source, by-product, or special nuclear material from any processing site designated under 42 U.S.C. § 7912(a)(1) or 7942(a).

d. The use of pesticides in accordance with the product label.

14. "Response action" means an action taken to reduce, minimize, eliminate, clean up, control, assess, or monitor a release to protect the public health and safety or the environment. "Response action" includes, but is not limited to, investigation, excavation, removal, disposal, cleansing of groundwaters or surface waters, natural biodegradation, institutional controls, technological controls, or site management practices.

99 Acts, ch 114, §39
Subsection 15 stricken

455H.501 Rulemaking. Repealed by 99 Acts, ch 114, § 54.

455H.502 Technical advisory committee. Repealed by 99 Acts, ch 114, § 54.

CHAPTER 455I

AGRICULTURAL DRAINAGE WELLS

455I.3 Closing of agricultural drainage wells and construction of alternative drainage systems.

1. Not later than December 31, 2001, the owner of land which is within a designated agricultural drainage well area shall close each agricultural drainage well located on the land. The owner shall close the agricultural drainage well in a manner using materials and according to specifications required by rules which shall be adopted by the department in consultation with the division. The department may provide different closing requirements based on classifications established by the department. However, the department's re-

quirements shall ensure that an agricultural drainage well is closed by using sealing materials such as bentonite to permanently seal the agricultural drainage well from contamination by surface or subsurface water drainage.

2. A person owning land affected by the closing of an agricultural drainage well as required pursuant to subsection 1 may construct an alternative drainage system as part of an established or new drainage district as provided in chapter 468. The alternative drainage system shall ensure that surface or subsurface water does not drain into an agricultural drainage well.

99 Acts, ch 72, §1
Subsection 1 amended

CHAPTER 456A

REGULATION AND FUNDING — NATURAL RESOURCES DEPARTMENT

456A.20 Limitation on nursery stock — exception.

1. Moneys appropriated to the department which are used in growing or handling nursery

stock shall be used for growing or handling of the nursery stock for distribution only on state-owned lands. However, the department may do any of the following:

a. Produce and sell game cover packets and trees for erosion control at private sale.

b. Produce trees for a demonstration wind-break in each township in the state.

c. Dispose of growing trees under a departmental plan of distribution.

2. The department shall deposit a portion of the moneys that it receives from selling trees and shrubs as provided in this section to the forestry management and enhancement fund as created in section 456A.21. The amount deposited in the fund shall equal five cents for each coniferous tree and ten cents for each hardwood tree and shrub received from the sales.

99 Acts, ch 206, §25
Section amended

456A.21 Forestry management and enhancement fund.

1. A forestry management and enhancement fund is created in the state treasury under the control of the department's forests and forestry division created in section 455A.7. The fund is composed of moneys deposited into the fund pursuant to section 456A.20, moneys appropriated by the general assembly, and moneys available to and obtained or accepted by the division or the depart-

ment from the United States or private sources for placement in the fund.

2. Moneys in the fund are subject to an annual audit by the auditor of state. The fund is subject to warrants written by the director of revenue and finance, drawn upon the written requisition of the division.

3. The fund shall be used exclusively to support the management and enhancement of forests, including woodlands or timber stands in this state, on private lands in cooperation with the owners of those lands. The department shall use moneys in the fund to support the following full-time equivalent positions in addition to those supported from the general fund of the state:

a. Four forestry technicians who shall serve regions of the state as designated by the division.

b. One professional forester who shall serve the southwest region of the state.

4. The commission may adopt rules pursuant to chapter 17A to administer this section.

5. Section 8.33 shall not apply to moneys in the fund. Notwithstanding section 12C.7, moneys earned as income, including as interest, from the fund shall remain in the fund until expended as provided in this section.

99 Acts, ch 206, §26
Legislative findings; 99 Acts, ch 206, §24
NEW section

CHAPTER 461A

PUBLIC LANDS AND WATERS

461A.31A Sale of timber.

If the estimated quantity of timber grown in a state park or a preserve to be sold by the department in a sixty-day period is ten thousand board feet or more or if the estimated value of the timber grown in a state park or a preserve to be sold by the department during the same period of time is five thousand dollars or more, the department shall conduct a public hearing on the proposed sale. Notice of the hearing shall be published as provided in section 331.305. After the public hearing, the department may proceed with the sale of the timber.

99 Acts, ch 206, §27
NEW section

461A.35A Entrance fee.

The department shall not impose a fee upon a person for entering into a state park or preserve.

99 Acts, ch 206, §28, 29
NEW section

461A.42 Use of firearms, explosives, weapons, and fireworks prohibited — exceptions.

1. The use of firearms, explosives, and weapons of all kinds by a person is prohibited in all state

parks and preserves except under the following conditions:

a. A firearm or other weapon authorized for hunting may be used in preserves or parts of preserves designated by the state advisory board on preserves at the request of the commission.

b. A person may use a bow and arrow with an attached bow fishing reel and ninety-pound minimum line attached to the arrow to take rough fish as provided by rule of the commission.

c. The commission may establish, by rule, the state parks or parts of state parks where firearms may be discharged during special events, festivals and education programs, or a special hunt to control animal populations. The rules governing special hunts to control animal populations shall be applied separately to each designated state park.

2. The use of fireworks, as defined in section 727.2, in state parks and preserves is prohibited except as authorized by a permit issued by the department. The commission shall establish, by rule adopted pursuant to chapter 17A, a fireworks permit system which authorizes the issuance of a limited number of permits to qualified persons to use or display fireworks in selected state parks and

preserves. A person violating this subsection is guilty of a simple misdemeanor. In addition to any other penalties, the punishment imposed for a violation of this subsection shall include assessment of a fine of not less than two hundred fifty dol-

lars. The court shall order restitution if any damages were caused by the violation which may include, but is not limited to, community service.

99 Acts, ch 153, §10
Subsection 2 amended

CHAPTER 468

LEVEE AND DRAINAGE DISTRICTS AND IMPROVEMENTS

468.112 Construction when company refuses.

If a railroad company does not comply with a notice provided in section 468.109, the board shall provide for the construction of the improvement under the supervision of the engineer in charge of the improvement. The railroad company shall be liable for the cost of the construction which shall be

collected by the county on behalf of the district in any court having jurisdiction. The court may award a prevailing county reasonable attorney fees incurred by the county, to be paid by the railroad company and taxed as part of the costs of the action.

99 Acts, ch 184, §1
Section amended

CHAPTER 475A

CONSUMER ADVOCATE

475A.6 Certification of expenses to utilities division.

The consumer advocate shall determine the advocate's expenses, including a reasonable allocation of general office expenses, directly attributable to the performance of the advocate's duties involving specific persons subject to direct assessment, and shall certify the expenses to the utilities division not less than quarterly. The expenses shall then be includable in the expenses of the division subject to direct assessment under section 476.10.

The consumer advocate shall annually, within ninety days after the close of each fiscal year, determine the advocate's expenses, including a reasonable allocation of general office expenses, attributable to the performance of the advocate's duties generally, and shall certify the expenses to the utilities division. The expenses shall then be includable in the expenses of the division subject to remainder assessment under section 476.10.

The consumer advocate is entitled to notice and opportunity to be heard in any utilities board proceeding on objection to an assessment for expenses certified by the consumer advocate. Expenses assessed under this section shall not exceed the

amount appropriated for the consumer advocate division of the department of justice.

The office of consumer advocate may expend additional funds, including funds for outside consultants, if those additional expenditures are actual expenses which exceed the funds budgeted for the performance of the advocate's duties. Before the office expends or encumbers an amount in excess of the funds budgeted, 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 office of consumer advocate and that the office does not have other funds from which such expenses can be paid. Upon approval of the director of the department of management, the office may expend and encumber funds for excess expenses. The amounts necessary to fund the excess expenses shall be collected from those utilities or persons which caused the excess expenditures, and the collections shall be treated as repayment receipts as defined in section 8.2, subsection 8.

99 Acts, ch 20, §1, 6
Section amended

CHAPTER 476

PUBLIC UTILITY REGULATION

476.1B Applicability of authority — municipally owned utilities.

1. Unless otherwise specifically provided by statute, a municipally owned utility furnishing gas or electricity is not subject to regulation by the board under this chapter, except for regulatory action pertaining to:

a. Assessment of fees for the support of the division and the office of consumer advocate, as set forth in section 476.10.

b. Safety standards.

c. Assigned areas of service, as set forth in sections 476.22 through 476.26.

d. Enforcement of civil penalties pursuant to section 476.51.

e. Disconnection of service, as set forth in section 476.20.

f. Discrimination against users of renewable energy resources, as set forth in section 476.21.

g. Encouragement of alternate energy production facilities, as set forth in sections 476.41 through 476.45.

h. Enforcement of section 476.56.

i. Enforcement of section 476.66.

j. Enforcement of section 476.62.

k. Assessment of fees for the support of the Iowa energy center created in section 266.39C and the center for global and regional environmental research created by the state board of regents.

1. Filing energy efficiency plans and energy efficiency results with the board. The energy efficiency plans as a whole shall be cost-effective. The board may permit these utilities to file joint plans.

2. The board may waive all or part of the energy efficiency filing and review requirements for municipally owned utilities which demonstrate superior results with existing energy efficiency efforts.

3. Unless otherwise specifically provided by statute, a municipally owned utility providing local exchange services is not subject to regulation by the board under this chapter except for regulatory action pertaining to the enforcement of sections 476.11, 476.29, 476.95, 476.96, 476.100, 476.101, and 476.102.

99 Acts, ch 63, §7, 8

1999 amendment to subsection 3 applies retroactively to July 1, 1993; 99 Acts, ch 63, §8

Subsection 3 amended

476.84 and 476.85 Reserved.

COMPETITIVE NATURAL GAS PROVIDERS

476.86 Definitions.

As used in this section and section 476.87, unless the context otherwise requires:

1. “*Aggregator*” means a person who combines retail end users into a group and arranges for the acquisition of competitive natural gas services without taking title to those services.

2. “*Competitive natural gas provider*” means a person who takes title to natural gas and sells it for consumption by a retail end user in the state of Iowa. “*Competitive natural gas provider*” includes an affiliate of an Iowa gas utility.

“*Competitive natural gas provider*” does not include the following:

a. A public utility which is subject to rate regulation under this chapter.

b. A municipally owned utility which provides natural gas service within its incorporated area or within the municipal natural gas competitive service area, as defined in section 437A.3, subsection 20, paragraph “a”, subparagraph (1), in which the municipally owned utility is located.

99 Acts, ch 20, §2, 6; 99 Acts, ch 208, §57, 74

NEW section

Unnumbered paragraph 1 amended

476.87 Certification of competitive natural gas providers.

1. The board shall certify all competitive natural gas providers and aggregators providing natural gas services in this state. In an application for certification, a competitive natural gas provider or aggregator must reasonably demonstrate managerial, technical, and financial capability sufficient to obtain and deliver the services such provider or aggregator proposes to offer. The board may establish reasonable conditions or restrictions on the certificate at the time of issuance. The board shall adopt rules to establish specific criteria for certification. The board shall make a determination on an application for certification within ninety days of its submission, unless the board determines that additional time is necessary to consider the application, in which case the board may extend the time for making a determination for an additional sixty days.

2. The board may resolve disputes involving the provision of natural gas services by a competitive natural gas provider or aggregator.

3. The board shall allocate the costs and expenses reasonably attributable to certification and dispute resolution in this section to persons identified as parties to such proceeding who are engaged in or who seek to engage in providing natural gas services or other persons identified as participants in such proceeding. The funds received for the costs and the expenses of certification and dispute resolution shall be remitted to the treasurer of state for deposit in the general fund of the state as provided in section 476.10.

99 Acts, ch 20, §3, 6
NEW section

476.88 through 476.90 Reserved.

LOCAL EXCHANGE COMPETITION

476.101 Local exchange competition.

1. A certificate of public convenience and necessity to provide local telephone service shall not be interpreted as conveying a monopoly, exclusive privilege, or franchise. A competitive local exchange service provider shall not be subject to the requirements of this chapter, except that a competitive local exchange service provider shall obtain a certificate of public convenience and necessity pursuant to section 476.29, file tariffs, notify affected customers prior to any rate increase, file reports, information, and pay assessments pursuant to section 476.2, subsection 4, and sections 476.9, 476.10, 476.16, 476.102, and 477C.7, and shall be subject to the board's authority with respect to adequacy of service, interconnection, discontinuation of service, civil penalties, and complaints. If, after notice and opportunity for hearing, the board determines that a competitive local exchange service provider possesses market power in its local exchange market or markets, the board may apply such other provisions of this chapter to a competitive local exchange service provider as it deems appropriate.

2. The duty of a local exchange carrier includes the duty, in accordance with requirements prescribed by the board pursuant to subsection 3 and other laws, to provide equal access to, and interconnection with, its facilities so that its network is fully interoperable with the telecommunications services and information services of other providers, and to offer unbundled essential facilities.

3. A local exchange carrier shall provide reasonable access to ducts, conduits, rights-of-way, and other pathways owned or controlled by the local exchange carrier to which reasonable access is necessary to a competitive local exchange service provider in order for a competitive local exchange service provider to provide service and is feasible for the local exchange carrier.

Upon application of a local exchange carrier or a competitive local exchange service provider, the board shall determine any matters concerning reasonable access to ducts, conduits, rights-of-way, and other pathways owned or controlled by the lo-

cal exchange carrier upon which agreement cannot be reached, including but not limited to, matters regarding valuation, space, and capacity restraints, and compensation for access.

4. *a.* Prior to September 1, 1995, the board shall initiate a rulemaking proceeding to adopt rules that satisfy the requirements enumerated in subparagraphs (1) through (4). The rulemaking proceeding shall be completed as promptly as possible. The board, upon petition or on its own motion, may conduct a separate evidentiary hearing on the same or related subjects. The evidence from a hearing may be considered by the board during the rulemaking proceeding, provided that the board announces its intention to do so prior to the oral presentation in the rulemaking proceeding. The rules shall do the following:

(1) Require a local exchange carrier to provide unbundled essential facilities of its network, and allow reasonable and nondiscriminatory equal access to, use of, and interconnection with, those unbundled essential facilities on reasonable, cost-based, and tariffed terms and conditions. The board's rules must require a local exchange carrier, including those operating under a plan of price regulation, to file tariffs implementing the unbundled essential facilities within ninety days of the board's final order adopting such rules, except for local exchange carriers with less than seventy-five thousand access lines which must file such tariffs within two years of July 1, 1995. Such access, use, and interconnection shall be on terms and conditions no less favorable than those the local exchange carrier provides to itself and its affiliates for the provision of local exchange, access, and toll services. This subsection shall not be construed to establish a presumption as to the level of interconnection charges, if any, to be determined by the board pursuant to subparagraph (2).

(2) Establish reciprocal cost-based compensation for termination of telecommunications services between local exchange carriers and competitive local exchange service providers.

(3) Require local exchange carriers to make interim number portability available on request of a competitive local exchange service provider, and to implement provider number portability as soon as the availability of necessary technology makes provider number portability economically and technically feasible, as determined by the board. The rules shall also devise a reasonable and nondiscriminatory mechanism for the recovery of all recurring and nonrecurring costs of interim and provider number portability.

(4) Develop the cost methodology appropriate for a competitive telecommunications environment.

b. The rules adopted in paragraph "a", subparagraphs (2) and (3), do not apply to local exchange carriers with less than seventy-five thousand access lines until a competitive local exchange

service provider has filed for a certificate to provide basic communications services in an exchange or exchanges of the local exchange carrier, or the board determines that competitive necessity requires the implementation of the rules in paragraph "a", subparagraphs (2) and (3), by the local exchange carrier.

5. Local exchange carriers shall file tariffs or price lists in accordance with board rules with respect to the services, features, functions, and capabilities offered to comply with board rules on unbundling of essential facilities and interconnection. Local exchange carriers shall submit with the tariffs or price lists for basic communications services and toll services supporting information that is sufficient for the board to determine the relationship between the proposed charges and the costs of providing such services, features, functions, or capabilities, including the imputed cost of intrastate access service rates in toll service rates pursuant to existing board orders. The board shall review the tariffs or price lists to ensure that the charges are cost-based and that the terms and conditions contained in the tariffs or price lists unbundle any essential facilities in accordance with the board's rules and any other applicable laws.

6. This section shall not be construed to prohibit the board from enforcing rules or orders entered in contested cases pending on July 1, 1995, to the extent that such rules and orders are consistent with the provisions of this section.

7. Except as provided under section 476.29, subsection 2, and this section, the board shall not impose or allow a local exchange carrier to impose restrictions on the resale of local exchange services, functions, or capabilities. The board may prohibit residential service from being resold as a different class of service.

8. Any person may file a written complaint with the board requesting the board to determine compliance by a local exchange carrier with the provisions of sections 476.96 through 476.100, 476.102, and this section, or any board rules implementing those sections. Upon the filing of such complaint, the board may promptly initiate a formal complaint proceeding and give notice of the proceeding and the opportunity for hearing. The formal complaint proceeding may be initiated at any time by the board on its own motion. The board shall render a decision in the proceeding within ninety days after the date the written complaint was filed.

9. A telecommunications carrier, as defined in the federal Telecommunications Act of 1996, shall not do any of the following:

- a. Use customer information in a manner which is not in compliance with 47 U.S.C. § 222.
- b. Disparage the services offered by another telecommunications carrier through false or misleading statements.

c. Take any action that disadvantages a customer who has chosen to receive services from another telecommunications carrier.

10. In a proceeding associated with the granting of a certificate under section 476.29, approving maps and tariffs for competitive local exchange providers provided for in this section, or in resolving a complaint filed pursuant to subsection 8 and proceedings under 47 U.S.C. § 251-254, the board shall allocate the costs and expenses of the proceedings to persons identified as parties in the proceeding who are engaged in or who seek to engage in providing telecommunications services or other persons identified as participants in the proceeding. The funds received for the costs and the expenses shall be remitted to the treasurer of state for deposit in the general fund of the state as provided in section 476.10.

99 Acts, ch 20, §4, 6
NEW subsection 10

CHANGE IN SERVICE

476.103 Unauthorized change in service — civil penalty.

1. Notwithstanding the deregulation of a communications service or facility under section 476.1D, the board may adopt rules to protect consumers from unauthorized changes in telecommunications service. Such rules shall not impose undue restrictions upon competition in telecommunications markets.

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

a. "*Change in service*" means the designation of a new provider of a telecommunications service to a consumer, including the initial selection of a service provider, and includes the addition or deletion of a telecommunications service for which a separate charge is made to a consumer account.

b. "*Consumer*" means a person other than a service provider who uses a telecommunications service.

c. "*Executing service provider*" means, with respect to any change in telecommunications service, a service provider who executes an order for a change in service received from another service provider.

d. "*Service provider*" means a person providing a telecommunications service.

e. "*Submitting service provider*" means a service provider who requests another service provider to execute a change in service.

f. "*Telecommunications service*" means a local exchange or long distance telephone service other than commercial mobile radio service.

3. The board shall adopt rules prohibiting an unauthorized change in telecommunications service. The rules shall be consistent with federal communications commission regulations regarding procedures for verification of customer authoriza-

tion of a change in service. The rules, at a minimum, shall provide for all of the following:

a. (1) A submitting service provider shall obtain verification of customer authorization of a change in service before submitting such change in service.

(2) Verification appropriate under the circumstances for all other changes in service.

(3) The verification may be in written, oral, or electronic form and may be performed by a qualified third party.

(4) The reasonable time period during which the verification is to be retained, as determined by the board.

b. A customer shall be notified of any change in service.

c. Appropriate compensation for a customer affected by an unauthorized change in service.

d. Board determination of potential liability, including assessment of damages, for unauthorized changes in service among the customer, previous service provider, executing service provider, and submitting service provider.

e. A provision encouraging service providers to resolve customer complaints without involvement of the board.

f. The prompt reversal of unauthorized changes in service.

g. Procedures for a customer, service provider, or the consumer advocate to submit to the board complaints of unauthorized changes in service.

4. a. In addition to any applicable civil penalty set out in section 476.51, a service provider who violates a provision of this section, a rule adopted pursuant to this section, or an order lawfully issued by the board pursuant to this section, is subject to a civil penalty, which, after notice and opportunity for hearing, may be levied by the board, of not more than ten thousand dollars per violation. Each violation is a separate offense.

b. A civil penalty may be compromised by the board. In determining the amount of the penalty, or the amount agreed upon in a compromise, the board may consider the size of the service provider, the gravity of the violation, any history of prior violations by the service provider, remedial actions taken by the service provider, the nature of the conduct of the service provider, and any other relevant factors.

c. A civil penalty collected pursuant to this subsection shall be forwarded by the executive secre-

tary of the board to the treasurer of state to be credited to the general fund of the state and to be used only for consumer education programs administered by the board.

d. A penalty paid by a rate-of-return regulated utility pursuant to this section shall be excluded from the utility's costs when determining the utility's revenue requirement, and shall not be included either directly or indirectly in the utility's rates or charges to its customers.

e. The board shall not commence an administrative proceeding to impose a civil penalty under this section for acts subject to a civil enforcement action pending in court under section 714D.7.

5. If the board determines, after notice and opportunity for hearing, that a service provider has shown a pattern of violations of the rules adopted pursuant to this section, the board may by order do any of the following:

a. Prohibit any other service provider from billing charges to residents of Iowa on behalf of the service provider determined to have engaged in such a pattern of violations.

b. Prohibit certificated local exchange service providers from providing exchange access services to the service provider.

c. Limit the billing or access services prohibition under paragraph "a" or "b" to a period of time. Such prohibition may be withdrawn upon a showing of good cause.

d. Revoke the certificate of public convenience and necessity of a local exchange service provider.

6. The board has primary jurisdiction over a complaint pursuant to this section initiated by a service provider.

7. Subsection 6 does not preclude proceedings before the federal communications commission to enforce applicable federal law. However, a service provider or a consumer, for the same alleged acts, shall not pursue a complaint both before the federal communications commission and pursuant to this section.

8. The board shall adopt competitively neutral rules establishing procedures for the solicitation, imposition, and lifting of preferred carrier freezes. A valid preferred carrier freeze prevents a change in service unless the subscriber gives the service provider from whom the freeze was requested the subscriber's express consent.

99 Acts, ch 16, §1
NEW section

CHAPTER 479

PIPELINES AND UNDERGROUND GAS STORAGE

479.29 Land restoration.

1. The board shall, pursuant to chapter 17A, adopt rules establishing standards for the restora-

tion of agricultural lands during and after pipeline construction. In addition to the requirements of section 17A.4, the board shall distribute copies of

the notice of intended action and opportunity for oral presentations to each county board of supervisors. Any county board of supervisors may, under the provisions of chapter 17A, and subsequent to the rulemaking proceedings, petition under those provisions for additional rulemaking to establish standards for land restoration after pipeline construction within that county. Upon the request of the petitioning county, the board shall schedule a hearing to consider the merits of the petition. Rules adopted under this section shall not apply to land located within city boundaries unless the land is used for agricultural purposes. Rules adopted under this section shall address, but are not limited to, all of the following subject matters:

- a. Topsoil separation and replacement.
- b. Temporary and permanent repair to drain tile.
- c. Removal of rocks and debris from the right-of-way.
- d. Restoration of areas of soil compaction.
- e. Restoration of terraces, waterways, and other erosion control structures.
- f. Revegetation of untilled land.
- g. Future installation of drain tile or soil conservation structures.
- h. Restoration of land slope and contour.
- i. Restoration of areas used for field entrances and temporary roads.
- j. Construction in wet conditions.
- k. Designation of a pipeline company point of contact for landowner inquiries or claims.

2. The county board of supervisors shall cause an on-site inspection for compliance with the standards adopted under this section to be performed at any pipeline construction project in the county. A licensed professional engineer familiar with the standards adopted under this section and registered under chapter 542B shall be responsible for the inspection. A county board of supervisors may contract for the services of a licensed professional engineer for the purposes of the inspection. The reasonable costs of the inspection shall be borne by the pipeline company.

3. If the inspector determines that there has been a violation of the standards adopted under this section, of the land restoration plan, or of an independent agreement on land restoration or line location executed in accordance with subsection 10, the inspector shall give oral notice, followed by written notice, to the pipeline company and the contractor operating for the pipeline company and order corrective action to be taken in compliance with the standards. The costs of the corrective action shall be borne by the contractor operating for the pipeline company.

4. An inspector shall adequately inspect underground improvements altered during construction of pipeline. An inspection shall be conducted at the time of the replacement or repair of the underground improvements. An inspector shall be pres-

ent on the site at all times at each phase and separate activity of the opening of the trench, the restoration of underground improvements, and backfilling. The pipeline company and its contractor shall keep an inspector continually informed of the work schedule and any schedule changes. If proper notice is given, construction shall not be delayed due to an inspector's failure to be present on the site.

5. If the pipeline company or its contractor does not comply with the requirements of this section, with the land restoration plan, or with an independent agreement on land restoration or line location executed in accordance with subsection 10, the county board of supervisors may petition the board for an order requiring corrective action to be taken. In addition, the county board of supervisors may file a complaint with the board seeking imposition of civil penalties pursuant to section 479.31.

6. The pipeline company shall allow landowners and the inspector to view the proposed center line of the pipeline prior to commencing trenching operations to insure that construction takes place in its proper location.

7. An inspector may temporarily halt the construction if the construction is not in compliance with this chapter and the standards adopted pursuant to this chapter, the land restoration plan, or the terms of an independent agreement with the pipeline company regarding land restoration or line location executed in accordance with subsection 10, until the inspector consults with the supervisory personnel of the pipeline company.

8. The board shall instruct inspectors appointed by the board of supervisors regarding the content of the statutes and rules and the inspectors' responsibility to require construction conforming with the standards provided by this chapter.

9. Petitioners for a permit for pipeline construction shall file with the petition a written land restoration plan showing how the requirements of this section, and of rules adopted pursuant to this section, will be met. The petitioners shall provide copies of the plan to all landowners of property that will be disturbed by the construction.

10. This section does not preclude the application of provisions for protecting or restoring property that are different than those prescribed in this section, in rules adopted pursuant to this section, or in the land restoration plan, if the alternative provisions are contained in agreements independently executed by the pipeline company and landowner, and if the alternative provisions are not inconsistent with state law or with rules adopted by the board. Independent agreements on land restoration or line location between the landowner and pipeline company shall be in writing and a copy provided to the county inspector.

11. For purposes of this section, “*construction*” includes the removal of a previously constructed pipeline.

12. The requirements of this section shall apply only to pipeline construction projects commenced on or after June 1, 1999.

99 Acts, ch 85, §1, 11
Section amended

479.45 Particular damage claims.

1. Compensable losses shall include, but are not limited to, all of the following:

a. Loss or reduced yield of crops or forage on the pipeline right-of-way, whether caused directly by construction or from disturbance of usual farm operations.

b. Loss or reduced yield of crops or yield from land near the pipeline right-of-way resulting from lack of timely access to the land or other disturbance of usual farm operations, including interference with irrigation.

c. Fertilizer, lime, or organic material applied by the landowner to restore land disturbed by construction to full productivity.

d. Loss of or damage to trees of commercial or other value that occurs at the time of construction, restoration, or at the time of any subsequent work by the pipeline company.

e. The cost of or losses in moving or relocating livestock, and the loss of gain by or the death or injury of livestock caused by the interruption or relocation of normal feeding.

f. Erosion on lands attributable to pipeline construction.

g. Damage to farm equipment caused by striking a pipeline, debris, or other material reasonably associated with pipeline construction while engaged in normal farming operations as defined in section 480.1.

2. A claim for damage for future crop deficiency within the easement strip shall not be precluded from renegotiation under section 6B.52 on the grounds that it was apparent at the time of settlement unless the settlement expressly releases the pipeline company from claims for damage to the productivity of the soil. The landowner shall notify the company in writing fourteen days prior to harvest in each year to assess crop deficiency.

99 Acts, ch 85, §2, 11
Section amended

479.48 Reversion on nonuse.

1. If a pipeline right-of-way, or any part of a pipeline right-of-way, is wholly abandoned for pipeline purposes by the relocation of the pipeline, is not used or operated for a period of five consecutive years, or if the construction of the pipeline has been commenced and work has ceased and has not in good faith resumed for five years, the right-of-way

may revert as provided in this section to the person who, at the time of the abandonment or nonuse, is the owner of the tract from which such right-of-way was taken. For purposes of this section, a pipeline or a pipeline right-of-way is not considered abandoned or unused if it is transporting product or is being actively maintained with reasonable anticipation of a future use.

2. To effect a reversion on nonuse of right-of-way, the owner or holder of purported fee title to such real estate shall serve notice upon the owner of such right-of-way easement and, if filed of record, successors in interest and upon any party in possession of the real estate. The written notice shall accurately describe the real estate and easement in question, set out the facts concerning ownership of the fee, ownership of the right-of-way easement, and the period of abandonment or nonuse, and notify the parties that such reversion shall be complete and final, and that the easement or other right shall be forfeited, unless the parties shall, within one hundred twenty days after the completed service of notice, file an affidavit with the county recorder of the county in which the real estate is located disputing the facts contained in the notice.

3. The notice shall be served in the same manner as an original notice under the Iowa rules of civil procedure, except that when notice is served by publication an affidavit shall not be required before publication. If an affidavit disputing the facts contained in the notice is not filed within one hundred twenty days, the party serving the notice may file for record in the office of the county recorder a copy of the notice with proofs of service attached and endorsed, and when so recorded, the record shall be constructive notice to all persons of the abandonment, reversion, and forfeiture of such right-of-way.

4. Upon reversion of the easement, the landowner may require the pipeline company to remove any pipe or pipeline facility remaining on the property. Provisions of this chapter relating to damages shall apply when the pipeline is removed.

5. If a pipeline right-of-way is abandoned for pipeline use, but the pipe is not removed from the right-of-way, the pipeline company shall remain responsible for the additional costs of subsequent tiling as provided for in section 479.47, shall mark the location of the line in response to a notice of proposed excavation in accordance with chapter 480, and shall remain subject to the damage provisions of this chapter in the event access to or excavation relating to the pipe is required. The landowner shall provide reasonable access to the pipeline in order to carry out the responsibilities of this subsection.

99 Acts, ch 85, §3, 11
NEW section

CHAPTER 479A

INTERSTATE NATURAL GAS PIPELINES

479A.9 Deposit of funds.

Moneys received under this chapter shall be credited to the general fund of the state as provided in section 476.10.

99 Acts, ch 85, §10, 11
Section amended

479A.14 Land restoration — standards — inspection.

1. The board shall adopt rules establishing standards for the restoration of agricultural lands during and after pipeline construction. In addition to the requirements of section 17A.4, the board shall distribute copies of the notice of intended action and opportunity for oral presentations to each county board of supervisors. A county board of supervisors may, under chapter 17A and subsequent to the rulemaking proceedings, petition for additional rulemaking to establish standards for land restoration after pipeline construction within that county. Upon the request of the petitioning county, the board shall schedule a hearing to consider the merits of the petition. Rules adopted under this section shall not apply to land located within city boundaries unless the land is used for agricultural purposes. Rules adopted under this section shall address, but are not limited to, all of the following subject matters:

- a. Topsoil separation and replacement.
- b. Temporary and permanent repair to drain tile.
- c. Removal of rocks and debris from the right-of-way.
- d. Restoration of areas of soil compaction.
- e. Restoration of terraces, waterways, and other erosion control structures.
- f. Revegetation of untilled land.
- g. Future installation of drain tile or soil conservation structures.
- h. Restoration of land slope and contour.
- i. Restoration of areas used for field entrances and temporary roads.
- j. Construction in wet conditions.
- k. Designation of a pipeline company point of contact for landowner inquiries or claims.

2. The county board of supervisors shall cause an on-site inspection for compliance with the standards adopted under this section to be performed at any pipeline construction project in the county. A licensed professional engineer familiar with the standards adopted under this section and registered under chapter 542B shall be responsible for the inspection. The reasonable costs of the inspection shall be borne by the pipeline company.

3. If the inspector determines that there has been a violation of the standards adopted under this section, of the land restoration plan, or of an in-

dependent agreement on land restoration executed in accordance with subsection 10, the inspector shall give oral notice, followed by written notice, to the pipeline company and the contractor operating for the pipeline company, and order corrective action to be taken in compliance with the standards. The costs of the corrective action shall be borne by the contractor operating for the pipeline company.

4. An inspector shall adequately inspect underground improvements altered during construction of a pipeline. An inspection shall be conducted at the time of the replacement or repair of the underground improvements. An inspector shall be present on the site at all times at each phase and separate activity of the opening of the trench, the restoration of underground improvements, and backfilling. The pipeline company and its contractor shall keep an inspector continually informed of the work schedule and any schedule changes. If proper notice is given, construction shall not be delayed due to an inspector's failure to be present on the site.

5. If the pipeline company or its contractor does not comply with the requirements of this section, with the land restoration plan, or with an independent agreement on land restoration executed in accordance with subsection 10, the county board of supervisors may petition the board for an order requiring corrective action to be taken. In addition, the county board of supervisors may file a complaint with the board seeking imposition of civil penalties pursuant to section 479A.16.

6. The pipeline company shall allow landowners and the inspector to view the proposed center line of the pipeline before commencing trenching operations to ensure that construction takes place in the proper location.

7. An inspector may temporarily halt the construction if the construction is not in compliance with this chapter and the standards adopted under this chapter, the land restoration plan approved by the board, or the terms of an independent agreement with the pipeline company regarding line location or land restoration executed in accordance with subsection 10, until the inspector consults with the supervisory personnel of the pipeline company.

8. The board shall instruct inspectors appointed by the county board of supervisors regarding the content of this chapter and the standards and the inspectors' responsibility to require construction conforming with them.

9. Prior to the initiation of construction, the pipeline company shall file a written land restoration plan with the board describing the methods and procedures by which compliance with this sec-

tion and the standards adopted under this section will be achieved. The board shall review this plan to insure that the requirements of this section and rules adopted pursuant to this section are met. After board review, the pipeline company shall provide copies of the plan to all landowners of property that will be disturbed by the construction. The requirements of this subsection may be waived by the board to the extent an environmental impact statement addressing the land restoration subjects in subsection 1 was prepared by the federal energy regulatory commission.

10. This section does not preclude the application of provisions for protecting or restoring property that are different than those prescribed in this section, in rules adopted pursuant to this section, or in the land restoration plan if the alternative provisions are contained in agreements independently executed by the pipeline company and the landowner, and if the alternative provisions are not inconsistent with state law or with rules adopted by the board. Independent agreements on land restoration or line location between the landowner and pipeline company shall be in writing and a copy provided to the county inspector.

11. For the purposes of this section, "construction" includes the removal of a previously constructed pipeline.

12. The requirements of this section shall not apply to pipeline projects that have received a certificate from the federal energy regulatory commission prior to June 1, 1999.

99 Acts, ch 85, §4, 11
Section amended

479A.24 Particular damage claims.

1. Compensable losses shall include, but are not limited to, all of the following:

a. Loss or reduced yield of crops or forage on the pipeline right-of-way, whether caused directly by construction or from disturbance of usual farm operations.

b. Loss or reduced yield of crops or yield from land near the pipeline right-of-way resulting from lack of timely access to the land or other disturbance of usual farm operations, including interference with irrigation.

c. Fertilizer, lime, or organic material applied by the landowner to restore land disturbed by construction to full productivity.

d. Loss of or damage to trees of commercial or other value that occurs at the time of construction, restoration, or at the time of any subsequent work by the pipeline company.

e. The cost of or losses in moving or relocating livestock, and the loss of gain by, or the death or injury of livestock caused by the interruption or relocation of normal feeding.

f. Erosion on lands attributable to pipeline construction.

g. Damage to farm equipment caused by striking a pipeline, debris, or other material reasonably

associated with pipeline construction while engaged in normal farming operations as defined in section 480.1.

2. A claim for damage for future crop deficiency within the easement strip shall not be precluded from renegotiation under section 6B.52 on the grounds that it was apparent at the time of settlement unless the settlement expressly releases the pipeline company from claims for damage to the productivity of the soil. The landowner shall notify the company in writing fourteen days prior to harvest in each year to assess crop deficiency.

3. With the exception of claims for damage to drain tile and future crop deficiency, landowners and tenants must submit in writing their claims for damages caused by installation of the pipeline within one year of completion of installation of a pipeline as determined by the county board of supervisors.

99 Acts, ch 85, §5, 11
Subsections 1 and 2 amended

479A.27 Reversion on nonuse.

1. If a pipeline right-of-way, or any part of a pipeline right-of-way, is wholly abandoned for pipeline purposes by the relocation of the pipeline, is not used or operated for a period of five consecutive years, or if the construction of the pipeline has been commenced and work has ceased and has not in good faith resumed for five years, the right-of-way may revert as provided in this section to the person who, at the time of the abandonment or nonuse, is the owner of the tract from which such right-of-way was taken. Abandonment of pipeline facilities requires approval from the federal energy regulatory commission prior to this provision taking effect.

2. To effect a reversion on nonuse of right-of-way, the owner or holder of purported fee title to such real estate shall serve notice upon the owner of such right-of-way easement and, if filed of record, successors in interest and upon any party in possession of the real estate. The written notice shall accurately describe the real estate and easement in question, set out the facts concerning ownership of the fee, ownership of the right-of-way easement, and the period of abandonment or nonuse, and notify the parties that such reversion shall be complete and final, and that the easement or other right shall be forfeited, unless the parties shall, within one hundred twenty days after the completed service of notice, file an affidavit with the county recorder of the county in which the real estate is located disputing the facts contained in the notice.

3. The notice shall be served in the same manner as an original notice under the Iowa rules of civil procedure, except that when notice is served by publication an affidavit shall not be required before publication. If an affidavit disputing the facts contained in the notice is not filed within one hundred twenty days, the party serving the notice may file for record in the office of the county record-

er a copy of the notice with proofs of service attached and endorsed, and when so recorded, the record shall be constructive notice to all persons of the abandonment, reversion, and forfeiture of such right-of-way.

4. Upon reversion of the easement, the landowner may require the pipeline company to remove any pipe or pipeline facility remaining on the property to the extent such removal is in accordance with the terms of the abandonment authority from the federal energy regulatory commission. Provisions of this chapter relating to damages shall apply when the pipeline is removed.

5. If a pipeline right-of-way is abandoned for

pipeline use, but the pipe is not removed from the right-of-way, the pipeline company shall remain responsible for the additional costs of subsequent tiling as provided for in section 479A.26, shall mark the location of the line in response to a notice of proposed excavation in accordance with chapter 480, and shall remain subject to the damage provisions of this chapter in the event access to or excavation relating to the pipe is required. The landowner shall provide reasonable access to the pipeline in order to carry out the responsibilities of this subsection.

99 Acts, ch 85, §6, 11
NEW section

CHAPTER 479B

HAZARDOUS LIQUID PIPELINES AND STORAGE FACILITIES

479B.20 Land restoration standards.

1. The board, pursuant to chapter 17A, shall adopt rules establishing standards for the restoration of agricultural lands during and after pipeline or underground storage facility construction. In addition to the requirements of section 17A.4, the board shall distribute copies of the notice of intended action and opportunity for oral presentations to each county board of supervisors. Any county board of supervisors may, under the provisions of chapter 17A, and subsequent to the rule-making proceedings, petition under those provisions for additional rulemaking to establish standards for land restoration after pipeline construction within that county. Upon the request of the petitioning county, the board shall schedule a hearing to consider the merits of the petition. Rules adopted under this section shall not apply to land located within city boundaries unless the land is used for agricultural purposes. Rules adopted under this section shall address, but are not limited to, all of the following subject matters:

- a. Topsoil separation and replacement.
- b. Temporary and permanent repair to drain tile.
- c. Removal of rocks and debris from the right-of-way.
- d. Restoration of areas of soil compaction.
- e. Restoration of terraces, waterways, and other erosion control structures.
- f. Revegetation of untilled land.
- g. Future installation of drain tile or soil conservation structures.
- h. Restoration of land slope and contour.
- i. Restoration of areas used for field entrances and temporary roads.
- j. Construction in wet conditions.
- k. Designation of a pipeline company point of contact for landowner inquiries or claims.

2. The county board of supervisors shall cause an on-site inspection for compliance with the standards adopted under this section to be performed at any pipeline construction project in the county. A licensed professional engineer familiar with the standards adopted under this section and registered under chapter 542B shall be responsible for the inspection. A county board of supervisors may contract for the services of a licensed professional engineer for the purposes of the inspection. The reasonable costs of the inspection shall be paid by the pipeline company.

3. If the inspector determines that there has been a violation of the standards adopted under this section, of the land restoration plan, or of an independent agreement on land restoration or line location executed in accordance with subsection 10, the inspector shall give oral notice, followed by written notice, to the pipeline company and the contractor operating for the pipeline company and order corrective action to be taken in compliance with the standards. The costs of the corrective action shall be borne by the contractor operating for the pipeline company.

4. An inspector shall adequately inspect underground improvements altered during construction of the pipeline. An inspection shall be conducted at the time of the replacement or repair of the underground improvements. An inspector shall be present on the site at all times at each phase and separate activity of the opening of the trench, the restoration of underground improvements, and backfilling. The pipeline company and its contractor shall keep an inspector continually informed of the work schedule and any schedule changes. If proper notice is given, construction shall not be delayed due to an inspector's failure to be present on the site.

5. If the pipeline company or its contractor does not comply with the requirements of this section, with the land restoration plan or line location, or with an independent agreement on land restoration executed in accordance with subsection 10, the county board of supervisors may petition the board for an order requiring corrective action to be taken. In addition, the county board of supervisors may file a complaint with the board seeking imposition of civil penalties under section 479B.21.

6. The pipeline company shall allow landowners and the inspector to view the proposed center line of the pipeline prior to commencing trenching operations to ensure that construction takes place in its proper location.

7. An inspector may temporarily halt the construction if the construction is not in compliance with this chapter and the standards adopted pursuant to this chapter, the land restoration plan, or the terms of an independent agreement with the pipeline company regarding land restoration or line location executed in accordance with subsection 10, until the inspector consults with the supervisory personnel of the pipeline company.

8. The board shall instruct inspectors appointed by the board of supervisors regarding the content of the statutes and rules and the inspectors' responsibility to require construction conforming with the standards provided by this chapter.

9. Petitioners for a permit for pipeline construction shall file with the petition a written land restoration plan showing how the requirements of this section, and of rules adopted pursuant to this section, will be met. The company shall provide copies of the plan to all landowners of property that will be disturbed by the construction.

10. This section does not preclude the application of provisions for protecting or restoring property that are different than those prescribed in this section, in rules adopted under this section, or in the land restoration plan, if the alternative provisions are contained in agreements independently executed by the pipeline company and the landowner, and if the alternative provisions are not inconsistent with state law or with rules adopted by the board. Independent agreements on land restoration or line location between the landowner and pipeline company shall be in writing and a copy provided to the county inspector.

11. For the purposes of this section, "construction" includes the removal of a previously constructed pipeline.

12. The requirements of this section shall apply only to pipeline construction projects commenced on or after June 1, 1999.

99 Acts, ch 85, §7, 11
Section amended

479B.29 Particular damage claims.

1. Compensable losses shall include, but are not limited to, all of the following:

a. Loss or reduced yield of crops or forage on the pipeline right-of-way, whether caused directly by construction or from disturbance of usual farm operations.

b. Loss or reduced yield of crops or yield from land near the pipeline right-of-way resulting from lack of timely access to the land or other disturbance of usual farm operations, including interference with irrigation.

c. Fertilizer, lime, or organic material applied by the landowner to restore land disturbed by construction to full productivity.

d. Loss of or damage to trees of commercial or other value that occurs at the time of construction, restoration, or at the time of any subsequent work by the pipeline company.

e. The cost of or losses in moving or relocating livestock, and the loss of gain by or the death or injury of livestock caused by the interruption or relocation of normal feeding.

f. Erosion on lands attributable to pipeline construction.

g. Damage to farm equipment caused by striking a pipeline, debris, or other material reasonably associated with pipeline construction while engaged in normal farming operations as defined in section 480.1.

2. A claim for damage for future crop deficiency within the easement strip shall not be precluded from renegotiation under section 6B.52 on the grounds that it was apparent at the time of settlement unless the settlement expressly releases the pipeline company from claims for damage to the productivity of the soil. The landowner shall notify the pipeline company in writing fourteen days prior to harvest in each year to assess crop deficiency.

99 Acts, ch 85, §8, 11
Section amended

479B.32 Reversion on nonuse.

1. If a pipeline right-of-way, or any part of the pipeline right-of-way, is wholly abandoned for pipeline purposes by the relocation of the pipeline, is not used or operated for a period of five consecutive years, or if the construction of the pipeline has been commenced and work has ceased and has not in good faith resumed for five years, the right-of-way may revert as provided in this section to the person who, at the time of the abandonment or nonuse, is the owner of the tract from which such right-of-way was taken. For purposes of this section, a pipeline or a pipeline right-of-way is not considered abandoned or unused if it is transporting product or is being actively maintained with reasonable anticipation of a future use.

2. To effect a reversion on nonuse of right-of-way, the owner or holder of purported fee title to such real estate shall serve notice upon the owner of such right-of-way easement and, if filed of record, successors in interest and upon any party in possession of the real estate. The written notice shall accurately describe the real estate and easement in question, set out the facts concerning ownership of the fee, ownership of the right-of-way easement, and the period of abandonment or nonuse, and notify the parties that such reversion shall be complete and final, and that the easement or other right shall be forfeited, unless the parties shall, within one hundred twenty days after the completed service of notice, file an affidavit with the county recorder of the county in which the real estate is located disputing the facts contained in the notice.

3. The notice shall be served in the same manner as an original notice under the Iowa rules of civil procedure, except that when notice is served by publication an affidavit shall not be required before publication. If an affidavit disputing the facts contained in the notice is not filed within one hundred twenty days, the party serving the notice

may file for record in the office of the county recorder a copy of the notice with proofs of service attached and endorsed, and when so recorded, the record shall be constructive notice to all persons of the abandonment, reversion, and forfeiture of such right-of-way.

4. Upon reversion of the easement, the landowner may require the pipeline company to remove any pipe or pipeline facility remaining on the property. Provisions of this chapter relating to damages shall apply when the pipeline is removed.

5. If a pipeline right-of-way is abandoned from pipeline use, but the pipe is not removed from the right-of-way, the pipeline company shall remain responsible for the additional costs of subsequent tiling as provided for in section 479B.31, shall mark the location of the line in response to a notice of proposed excavation in accordance with chapter 480, and shall remain subject to the damage provisions of this chapter in the event access to or excavation relating to the pipe is required. The landowner shall provide reasonable access to the pipeline in order to carry out the responsibilities of this subsection.

99 Acts, ch 85, §9, 11
NEW section

CHAPTER 481A

WILDLIFE CONSERVATION

481A.38 Prohibited acts — restrictions on the taking of wildlife — special licenses.

It is unlawful for a person to take, pursue, kill, trap or ensnare, buy, sell, possess, transport, or attempt to so take, pursue, kill, trap or ensnare, buy, sell, possess, or transport any game, protected non-game animals, fur-bearing animals or fur or skin of such animals, mussels, frogs, spawn or fish or any part thereof, except upon the terms, conditions, limitations, and restrictions set forth herein, and administrative rules necessary to carry out the purposes set out in section 481A.39, or as provided by the Code.

1. The commission may upon its own motion and after an investigation, alter, limit, or restrict the methods or means employed and the instruments or equipment used in taking wild mammals, birds subject to section 481A.48, fish, reptiles, and amphibians, if the investigation reveals that the action would be desirable or beneficial in promoting the interests of conservation, or the commission may, after an investigation when it is found there is imminent danger of loss of fish through natural causes, authorize the taking of fish by means found advisable to salvage imperiled fish populations.

The commission shall adopt a rule permitting a crossbow to be used only by individuals with disabilities who are physically incapable of using a

bow and arrow under the conditions in which a bow and arrow is permitted. The commission shall prepare an application to be used by an individual requesting the status. The application shall require the individual's physician to sign a statement declaring that the individual is not physically able to use a bow and arrow.

2. If the commission finds that the number of hunters licensed or the type of license issued to take deer or wild turkey should be limited or further regulated the commission shall conduct a drawing to determine which applicants shall receive a license and the type of license. Applications for licenses shall be received during a period established by the commission. At the end of the period a drawing shall be conducted. The commission may establish rules to issue licenses after the established application period. If an applicant receives a deer license which is more restrictive than licenses issued to others for the same period and place, the applicant shall receive a certificate with the license entitling the applicant to priority in the drawing for the less restrictive deer licenses the following year. The certificate must accompany that person's application the following year, or the applicant will not receive this priority. Persons purchasing a deer license for the gun season under this section and under section 483A.1 are not eligible for a gun deer-

hunting license under section 483A.24, except as authorized by rules of the department. This subsection does not apply to the hunting of wild turkey on a hunting preserve licensed under chapter 484B.

3. The commission shall issue a special turkey hunting license to either the owner or the tenant of a farm unit or a member of the owner's or tenant's immediate family if the person makes a written application to the commission and pays the fee provided for the regular turkey hunting license. The special license is valid only for hunting on the farm unit of the owner or tenant. Only one special license may be issued for a farm unit. The application must contain the consent of the owner if the tenant or tenant's family member applies for the license. A person purchasing a regular turkey hunting license is not eligible to purchase a special license under this subsection. Applications for the special turkey licenses must be received by the commission at least thirty days prior to the opening of the turkey hunting season. The special turkey hunting licensees are subject to all other laws regarding the hunting of turkeys.

4. The department and the commission shall exercise regulatory authority regarding seasons, bag limits, possession limits, locality, the method of taking, or the taking of fish and wildlife by members of the Sac and Fox tribe of the Mississippi in Iowa within the boundaries of the Sac and Fox tribe settlement in Tama county only to the extent provided in a written agreement between the tribal council of the Sac and Fox tribe of the Mississippi in Iowa and the department. The written agreement shall not be construed to supersede or impair the regulatory authority exercised by the commission pursuant to the federal Migratory Bird Treaty Act, the federal Migratory Bird Stamp Hunting Act, the federal Endangered Species Act, or other federal law. The department and the commission shall not unreasonably fail to enter into an agreement and shall pursue such an agreement in an expedient manner. This subsection shall become effective upon signing of the written agreement by the director of the department and the chairperson of the Sac and Fox tribe of the Mississippi in Iowa.

99 Acts, ch 39, §1
NEW subsection 4

481A.92 Traps — disturbing dens — tags for traps.

A person shall not use or attempt to use colony traps in taking, capturing, trapping, or killing any game or fur-bearing animals except muskrats as determined by rule of the commission. Box traps capable of capturing more than one game or fur-bearing animal at each setting are prohibited. A valid hunting license is required for box trapping cottontail rabbits and squirrels. All traps and snares used for the taking of fur-bearing animals shall have a metal tag attached plainly labeled with the user's name and address. All traps and

snares, except those which are placed entirely under water, shall be checked at least once every twenty-four hours. Officers appointed by the department may confiscate such traps and snares found in use that are not properly labeled or checked.

Except as otherwise provided, a person shall not use chemicals, explosives, smoking devices, mechanical ferrets, wire, tool, instrument, or water to remove fur-bearing animals from their dens. Humane traps, or traps designed to kill instantly, with a jaw spread, as originally manufactured, exceeding eight inches are unlawful to use except when placed entirely under water.

Conibear type traps and snares shall not be set on the right-of-way of a public road within two hundred yards of the entry to a private drive serving a residence without the permission of the occupant.

A snare when set shall not have a loop larger than eight inches in horizontal measurement except for a snare set with at least one-half of the loop under-water. A snare set on private land other than roadsides within thirty yards of a pond, lake, creek, drainage ditch, stream, or river shall not have a loop larger than eleven inches in horizontal measurement.

All snares shall have a functional deer lock which will not allow the snare loop to close smaller than two and one-half inches in diameter.

99 Acts, ch 40, §1
Unnumbered paragraph 1 amended

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 antlered deer during September, October, November, or December before the regular gun season, two thousand dollars and eighty hours of community service or, in lieu of the community service, a total of four thousand dollars.

h. For each deer, except as provided in paragraph “*g*”, and for each swan or crane, 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.

99 Acts, ch 58, §1
Subsection 1, paragraph h amended

CHAPTER 481C

WILD ANIMAL DEPREDATION PROCEDURES

481C.3 Funding.

Notwithstanding section 483A.30*, the revenue from nonresident deer and wild turkey hunting licenses shall first be used to pay the salaries, support, and maintenance of the wild animal depredation unit established pursuant to section 481C.1.

The remaining revenue from nonresident deer and wild turkey hunting licenses shall be used to meet the requirements of section 483A.30*.

*Section 483A.30 repealed effective December 31, 1999, by 97 Acts, ch 180, §7; corrective legislation is pending
Section not amended; footnote added

CHAPTER 483A

FISHING AND HUNTING LICENSES, CONTRABAND, AND GUNS

483A.24 When license not required — special licenses.

1. Owners or tenants of land, and their juvenile children, may hunt, fish or trap upon such lands and may shoot by lawful means ground squirrels, gophers, or woodchucks upon adjacent roads without securing a license so to do; except, special licenses to hunt deer and wild turkey shall be required of owners and tenants but they shall not be required to have a special wild turkey hunting license to hunt wild turkey on a hunting preserve licensed under chapter 484B.

2. *a.* As used in this subsection:

(1) “*Family member*” means a resident of Iowa who is the spouse or child of the owner or tenant and who resides with the owner or tenant.

(2) “*Farm unit*” means all parcels of land, not necessarily contiguous, which are operated as a unit for agricultural purposes and which are under the lawful control of the owner or tenant.

(3) “*Owner*” means an owner of a farm unit who is a resident of Iowa and who is one of the following:

(a) Is the sole operator of the farm unit.

(b) Makes all of the farm operation decisions but contracts for custom farming or hires labor for all or part of the work on the farm unit.

(c) Participates annually in farm operation decisions or cropping practices on specific fields of the farm unit that are rented to a tenant.

(d) Raises specialty crops on the farm unit including, but not limited to, orchards, nurseries, or tree farms that do not always produce annual income but require annual operating decisions about maintenance or improvement.

(e) Has all or part of the farm unit enrolled in a long-term agricultural land retirement program of the federal government.

An “*owner*” does not mean a person who owns a farm unit and who employs a farm manager or third party to operate the farm unit, or a person who owns a farm unit and who rents the entire farm unit to a tenant who is responsible for all farm operations. However, this paragraph does not apply to an owner who is a parent of the tenant and who resides in this state.

(4) “*Tenant*” means a person who is a resident of Iowa and who rents and actively farms a farm unit owned by another person. A member of the owner’s family may be a tenant. A person who works on the farm for a wage and is not a family member does not qualify as a tenant.

b. Upon written application on forms furnished by the department, the department shall issue annually without fee one deer or one wild turkey license, or both, to the owner of a farm unit or to a member of the owner’s family, but not to both, and to the tenant or to a member of the tenant’s family, but not to both. The deer hunting license or wild turkey hunting license issued shall be valid only on the farm unit for which an applicant qualifies pursuant to this subsection and shall be equivalent to the least restrictive license issued under section 481A.38. The owner or the tenant need not reside on the farm unit to qualify for a free license to hunt on that farm unit. A free deer hunting license issued pursuant to this subsection shall be valid during all shotgun deer seasons.

c. In addition to the free deer hunting license received, an owner of a farm unit or a member of the owner's family and the tenant or a member of the tenant's family may purchase a deer hunting license for any option offered to paying deer hunting licensees.

d. If the commission establishes a deer hunting season to occur in the first quarter of a calendar year that is separate from a deer hunting season that continues from the last quarter of the preceding calendar year, each owner and each tenant of a farm unit located within a zone where a deer hunting season is established, upon application, shall be issued a free deer hunting license for each of the two calendar quarters. Each license is valid only for hunting on the farm unit of the owner and tenant.

3. The director shall provide up to twenty-five nonresident deer hunting licenses for allocation as requested by a majority of a committee consisting of the majority leader of the senate, speaker of the house of representatives, and director of the department of economic development, or their designees. The licenses provided pursuant to the subsection shall be in addition to the number of nonresident licenses authorized pursuant to section 483A.8. The purpose of the special nonresident licenses is to allow state officials and local development groups to promote the state and its natural resources to nonresident guests and dignitaries. Photographs, videotapes, or any other form of media resulting from the hunting visitation shall not be used for political campaign purposes. The nonresident licenses shall be issued without application upon payment of the nonresident deer hunting license fee and the wildlife habitat fee. The licenses are valid in all zones open to deer hunting. The hunter safety and ethics education certificate requirement pursuant to section 483A.27 is waived for a nonresident issued a license pursuant to this subsection.

4. The director shall provide up to twenty-five nonresident wild turkey hunting licenses for allocation as requested by a majority of a committee consisting of the majority leader of the senate, speaker of the house of representatives, and director of the department of economic development, or their designees. The licenses provided pursuant to the subsection shall be in addition to the number of nonresident licenses authorized pursuant to section 483A.7. The purpose of the special nonresident licenses is to allow state officials and local development groups to promote the state and its natural resources to nonresident guests and dignitaries. Photographs, videotapes, or any other form of media resulting from the hunting visitation shall not be used for political campaign purposes. The nonresident licenses shall be issued without application upon payment of the nonresident wild turkey hunting license fee and the wildlife habitat fee. The licenses are valid in all zones open to wild turkey hunting. The hunter safety and ethics education

certificate requirement pursuant to section 483A.27 is waived for a nonresident issued a license pursuant to this subsection.

5. A resident of the state under sixteen years of age or a nonresident of the state under fourteen years of age is not required to have a license to fish in the waters of the state. However, residents under sixteen years of age and nonresidents under fourteen years of age must pay the trout fishing fee to possess trout or they must fish for trout with a licensed adult who has paid the trout fishing fee and limit their combined catch to the daily limit established by the commission.

6. No license shall be required of minor pupils of the state school for the blind, state school for the deaf, nor of minor residents of other state institutions under the control of an administrator of a division of the department of human services, nor shall any person who is on active duty with the armed forces of the United States, on authorized leave from a duty station located outside of this state, and a legal resident of the state of Iowa, be required to have a license to hunt or fish in this state. The military personnel shall carry their leave papers while hunting or fishing and, if a deer or wild turkey is taken, shall immediately contact a state conservation officer to obtain an appropriate tag to transport the animal. No license shall be required of residents of county care facilities or any person who is receiving old-age assistance under chapter 249.

7. A resident of the state under sixteen years of age is not required to have a hunting license to hunt game if accompanied by the minor's parent or guardian or in company with any other competent adult with the consent of the minor's parent or guardian, if the person accompanying the minor possesses a valid hunting license; however, there must be one licensed adult accompanying each person under sixteen years of age. The minor must have a deer hunting license to hunt deer and a wild turkey hunting license to hunt wild turkey.

8. A person having a dog entered in a licensed field trial is not required to have a hunting license or fur harvester license to participate in the event or to exercise the person's dog on the area on which the field trial is to be held during the twenty-four hour period immediately preceding the trial.

9. The commission shall issue without charge a special fishing license to residents of Iowa sixteen years or more of age who the commission finds have severe mental or physical disabilities. The commission is hereby authorized to prepare an application to be used by the person requesting the special license, which would require that the person's attending physician sign the form declaring that the person has a severe mental or physical disability and is eligible for exempt status.

10. No person shall be required to have a special wild turkey license to hunt wild turkey on a hunting preserve licensed under chapter 484B.

11. A lessee of a camping space at a campground may fish on a private lake or pond on the premises of the campground without a license if the lease confers an exclusive right to fish in common with the rights of the owner and other lessees.

12. The department may issue a permit, subject to conditions established by the department, which authorizes patients of a substance abuse facility, residents of health care facilities licensed under chapter 135C, and persons cared for in juvenile shelter care homes as provided for in chapter 232 to fish without a license as a supervised group.

13. Upon payment of the fee of thirty dollars for a lifetime hunting and fishing combined license, the department shall issue a hunting and fishing combined license to a resident of Iowa who is a veteran, as defined in section 35.1, who was disabled or was a prisoner of war during that veteran's military service. The department shall prepare an application to be used by a person requesting a hunting and fishing combined license under this subsection. The commission of veterans affairs shall assist the department in verifying the status or claims of applicants under this subsection. As

used in this subsection, "disabled" means entitled to compensation under the United States Code, Title 38, chapter 11.

14. The department shall issue without charge a special annual fishing or combined hunting and fishing license to residents of this state who have permanent disabilities and whose income falls below the federal poverty guidelines as published by the United States department of health and human services or residents of this state who are sixty-five years of age or older and whose income falls below the federal poverty guidelines as published by the United States department of health and human services. The commission shall provide for, by rule, an application to be used by an applicant requesting a special license. The commission shall require proof of age, income, and proof of permanent disability.

99 Acts, ch 180, §20
Subsection 13 amended

483A.30 Nonresident deer and turkey license fees. Repealed by 97 Acts, ch 180, § 7.

Repeal effective December 31, 1999; 97 Acts, ch 180, §7

CHAPTER 484B

HUNTING PRESERVES

484B.4 Application and license requirements.

1. A person who owns or controls by lease or otherwise for five or more years, a contiguous tract of land having an area of not less than three hundred twenty acres, and who desires to establish a hunting preserve, to propagate and sell game birds and their young or unhatched eggs, and shoot game birds and ungulates on the land, under this chapter or the rules of the commission, shall make application to the department for an operator's license. The application shall be made under oath of the applicant or under oath of one of its principal officers if the applicant is an association, corporation, or copartnership. Under the authority of this license, any property or facilities to be used for propagating, holding, processing, or pasturing of game birds or ungulates shall not be required to be contained within the contiguous land area used for hunting purposes. The application shall be accompanied by an operator's license fee of two hundred dollars.

2. Upon receipt of an application, the department or its authorized agent shall inspect the proposed hunting preserve and facilities described in

the application. If the department finds that the proposed hunting preserve meets the following requirements, the department may approve the application and issue a hunting preserve operator's license for the operation of the property and facilities described in the application with the rights and subject to the limitations in this chapter and the rules adopted by the commission:

a. The proposed hunting preserve contains at least three hundred twenty acres but not more than two thousand five hundred sixty acres.

b. The area of the proposed hunting preserve is contiguous.

c. The total area of all licensed hunting preserves and the proposed hunting preserve will not exceed three percent of the land area of the county.

d. The game birds or ungulates released on the preserve will not be detrimental to wildlife.

e. The proposed hunting preserve will not interfere with the normal activities of migratory birds.

3. All hunting preserve operator's licenses shall expire on March 31 of each year.

99 Acts, ch 208, §36
Subsection 2, paragraph c stricken and former paragraphs d-f redesignated as c-e

CHAPTER 486A

UNIFORM PARTNERSHIP ACT

Prior to January 1, 2001, this chapter applies to partnerships other than partnerships that are continuing the business of a dissolved partnership under section 486.41 on or after January 1, 1999, and to partnerships which voluntarily elect to be governed by this chapter; on or after January 1, 2001, this chapter applies to all partnerships; 98 Acts, ch 1201, §79, 82
For provisions applicable to partnerships which are not governed by this chapter prior to January 1, 2001, see chapter 486

486A.906 Effect of merger.

1. When a merger takes effect all of the following apply:

a. The separate existence of every partnership or limited partnership that is a party to the merger, other than the surviving entity, ceases.

b. All property owned by each of the merged partnerships or limited partnerships vests in the surviving entity.

c. All obligations of every partnership or limited partnership that is a party to the merger become the obligations of the surviving entity.

d. An action or proceeding pending against a partnership or limited partnership that is a party to the merger may be continued as if the merger had not occurred, or the surviving entity may be substituted as a party to the action or proceeding.

2. The secretary of state of this state is the agent for service of process in an action or proceeding against a surviving foreign partnership or limited partnership to enforce an obligation of a domestic partnership or limited partnership that is a party to a merger. The surviving entity shall promptly notify the secretary of state of the mailing address of its chief executive office and of any change of address. Upon receipt of process, the secretary of state shall mail a copy of the process to the surviving foreign partnership or limited partnership.

3. A partner of the surviving partnership or limited partnership is liable for all of the following:

a. All obligations of a party to the merger for which the partner was personally liable before the merger.

b. All other obligations of the surviving entity incurred before the merger by a party to the merger, but those obligations may be satisfied only out of property of the surviving entity.

c. Except as otherwise provided in section 486A.306, all obligations of the surviving entity incurred after the merger takes effect, but those obligations may be satisfied only out of property of the surviving entity if the partner is a limited partner.

4. If the obligations incurred before the merger by a party to the merger are not satisfied out of the property of the surviving partnership or limited partnership, the general partners of that party immediately before the effective date of the merger shall contribute the amount necessary to satisfy that party's obligations to the surviving entity, in the manner provided in section 486A.807 or in chapter 487 or under the law of the jurisdiction in which the party was formed, as the case may be, as if the merged party were dissolved.

5. A partner of a party to a merger who does not become a partner of the surviving partnership or limited partnership is dissociated from the entity, of which that partner was a partner, as of the date the merger takes effect. The surviving entity shall cause the partner's interest in the entity to be purchased under section 486A.701 or another statute specifically applicable to that partner's interest with respect to a merger. The surviving entity is bound under section 486A.702 by an act of a general partner dissociated under this subsection, and the partner is liable under section 486A.703 for transactions entered into by the surviving entity after the merger takes effect.

99 Acts, ch 114, §40

Subsection 3, paragraphs b and c amended

CHAPTER 490A

LIMITED LIABILITY COMPANIES

490A.1504 Who may organize.

One or more individuals having capacity to contract and licensed to practice a profession in this state in which the professional limited liability

company is to be authorized to practice, may organize a professional limited liability company.

99 Acts, ch 208, §37

Section amended

CHAPTER 499A

MULTIPLE HOUSING

499A.14 Taxation.

The real estate shall be taxed in the name of the cooperative, and each member of the cooperative shall pay that member's proportionate share of the tax in accordance with the proration formula set forth in the bylaws, and each member occupying an apartment as a residence shall receive that member's proportionate homestead tax credit and each

veteran of the military services of the United States identified as such under the laws of the state of Iowa or the United States shall receive as a credit that member's veterans tax benefit as prescribed by the laws of the state of Iowa.

Homestead credit, chapter 425
Veterans exemption, §426A.11
Section not amended; footnote reference change applied

CHAPTER 499B

HORIZONTAL PROPERTY (CONDOMINIUMS)

499B.11 Real property tax and special assessments — levy on each apartment.

1. All real property taxes and special assessments shall be assessed and levied on each apartment and its respective appurtenant fractional share or percentage of the land, general common elements and limited common elements where applicable as such apartments and appurtenances are separately owned, and not on the entire horizontal property regime.

2. An apartment meeting either of the following conditions shall be classified as follows:

a. An apartment used for human habitation on January 1, 1999, or an apartment intended for use for human habitation in a horizontal property regime pursuant to a declaration submitting a parcel of real property to a horizontal property regime pursuant to section 499B.3, which was recorded prior to January 1, 1999, shall be classified as residential real estate as long as the apartment is used for human habitation.

b. An apartment intended for use for human habitation included in a development plan for a horizontal property regime which was approved by the city or county having jurisdiction over the real property included in the development plan prior to January 1, 1999, and which is included substantially in accordance with the development plan in an extension of a horizontal property regime established pursuant to a declaration submitting a parcel of contiguous real estate to a horizontal property regime pursuant to section 499B.3, which was recorded prior to January 1, 1999, shall be classified as residential real estate as long as the apartment is used for human habitation.

c. This subsection is repealed December 31, 2004.

3. Any exemption from taxes that may exist on real property or the ownership thereof shall not be denied by virtue of the registration of the property under the provisions of this chapter.

99 Acts, ch 187, §1, 2
Subsection 1 amended
NEW subsection 2 and former subsection 2 renumbered as 3

CHAPTER 501

COOPERATIVES

Statement of purpose; 96 Acts, ch 1010, §1

501.101 Definitions.

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

1. "Articles" means the cooperative's articles of association.

2. "Authorized person" means a person who is one of the following:

a. A farming entity.
b. A person who owns at least one hundred fifty acres of agricultural land and receives as rent

a share of the crops or the animals raised on the land if that person is a natural person or a general partnership as organized under chapter 486 or 486A in which all partners are natural persons.

c. An employee of the cooperative who performs at least one thousand hours of service for the cooperative in each calendar year.

3. "Board" means the cooperative's board of directors.

4. “*Cooperative*” means a cooperative association organized under this chapter or converted to this chapter pursuant to section 501.601.

5. “*Farming*” means the same as defined in section 9H.1.

6. “*Farming entity*” means any one of the following:

a. A natural person or a fiduciary for a natural person who regularly participates in physical labor or operations management in a farming operation and files schedule F as part of the person’s annual form 1040 or form 1041 filing with the United States internal revenue service.

b. A family farm corporation, family farm limited liability company, family farm limited partnership, or family trust, as defined in section 9H.1.

c. A general partnership as organized under chapter 486 or 486A in which all the partners are natural persons actively engaged in farming as provided in section 9H.1.

7. “*Interest*” means a voting interest or other interest in a cooperative as described in the cooperative’s articles of association.

8. “*Interest holder*” means a person who owns an interest in a cooperative, whether or not that interest has voting rights.

9. “*Member*” means a person who owns a voting interest in a cooperative.

10. “*Membership*” means the interest established by a member owning a voting interest.

11. “*Voting interest*” means an interest in a cooperative that has voting rights.

99 Acts, ch 96, §40, 41
Subsection 2, paragraph b amended
Subsection 6, paragraph c amended

501.701 Records.

1. A cooperative shall keep as permanent records minutes of all meetings of its members and board of directors, a record of all actions taken by the members or board of directors without a meeting, and a record of all actions taken by a committee of the board of directors in place of the board of directors on behalf of the cooperative.

2. A cooperative shall maintain appropriate accounting records.

3. A cooperative or its agent shall maintain a record of its interest holders in a form that permits preparation of a list of the names and addresses of all interest holders in alphabetical order by class of interests showing the number and class of interests held by each.

4. A cooperative shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

5. A cooperative shall keep a copy of the following records:

a. Its articles or restated articles of association and all amendments to them currently in effect.

b. Its bylaws or restated bylaws and all amendments to them currently in effect.

c. Resolutions adopted by its board of directors creating one or more classes or series of interests, and fixing their relative rights, preferences, and limitations, if the interests issued pursuant to those resolutions are outstanding.

d. The minutes of all members’ meetings, and records of all action taken by members without a meeting, for the past three years.

e. All written communications to interest holders generally within the past three years, including the financial statements furnished for the past three years under section 501.711.

f. A list of the names and business addresses of its current directors and officers.

g. Its most recent annual report delivered to the secretary of state under section 501.713.

99 Acts, ch 96, §42
Subsection 5, paragraph g amended

501.702 Inspection of records by interest holders.

1. An interest holder of a cooperative is entitled to inspect and copy, during regular business hours at the cooperative’s principal office, any of the records of the cooperative described in section 501.701, subsection 5, if the interest holder gives the cooperative written notice of the interest holder’s demand at least five business days before the date on which the interest holder wishes to inspect and copy.

2. An interest holder of a cooperative is entitled to inspect and copy, during regular business hours at a reasonable location specified by the cooperative, any of the following records of the cooperative if the interest holder meets the requirements of subsection 3 and gives the cooperative written notice of the interest holder’s demand at least five business days before the date on which the interest holder wishes to inspect and copy any of the following:

a. Excerpts from minutes of any meeting of the board of directors, records of any action of a committee of the board of directors while acting in place of the board of directors on behalf of the cooperative, minutes of any meeting of the members, and records of action taken by the members or board of directors without a meeting, to the extent not subject to inspection under subsection 1 of this section.

b. Accounting records of the cooperative.

c. The record of interest holders.

3. An interest holder may inspect and copy the records described in subsection 2 only if:

a. The interest holder’s demand is made in good faith and for a proper purpose.

b. The interest holder describes with reasonable particularity the interest holder’s purpose and the records the interest holder desires to inspect.

c. The records are directly connected with the interest holder’s purpose.

4. The right of inspection granted by this section shall not be abolished or limited by a cooperative's articles of association or bylaws.

5. This section does not affect either of the following:

a. The right of a member to obtain information under section 501.304 or the right of an interest holder to obtain information, if the interest holder is in litigation with the cooperative, to the same extent as any other litigant.

b. The power of a court, independently of this chapter, to compel the production of cooperative records for examination.

99 Acts, ch 96, §43
Subsection 5, paragraph a amended

501.713 Annual report for secretary of state.

1. Each cooperative authorized to transact business in this state shall deliver to the secretary of state for filing an annual report that sets forth all of the following:

a. The name of the cooperative.

b. The address of its registered office and the name of its registered agent at that office in this state, together with the consent of any new registered agent.

c. The address of its principal office.

d. The names and addresses of the president, secretary, treasurer, and one member of the board of directors.

2. Information in the annual report must be current as of the first day of January of the year in which the report is due. The report shall be executed on behalf of the cooperative and signed as provided in section 501.105 or by any other per-

son authorized by the board of directors of the cooperative.

3. The first annual report shall be delivered to the secretary of state between January 1 and April 1 of the first even-numbered year following the calendar year in which a cooperative was organized. Subsequent annual reports must be delivered to the secretary of state between January 1 and April 1 of the following calendar years. A filing fee for the annual report shall be determined by the secretary of state.

4. If an annual report does not contain the information required by this section, the secretary of state shall promptly notify the reporting cooperative in writing and return the report to the cooperative for correction.

5. 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, provided that the form contains the information required in section 501.106. If the secretary of state determines that an annual report does not contain the information required by this section but otherwise meets the requirements of section 501.106 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, effective as provided in section 501.105, before returning the annual report to the cooperative as provided in this section. A statement of change of registered office or agent pursuant to this subsection shall be executed by a person authorized to execute the annual report.

99 Acts, ch 96, §44
Subsection 5 amended

CHAPTER 502

UNIFORM SECURITIES ACT (Blue Sky Law)

502.102 Definitions.

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

1. "Administrator" means the commissioner of insurance or the deputy appointed pursuant to section 502.601.

2. An "affiliate" of, or a person "affiliated" with, a specified person, means a person who directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the person specified.

3. "Agent" means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities. "Agent" does not include an individual who represents:

a. An issuer in doing any of the following:

(1) Effecting transactions in a security exempted by section 502.202, subsection 1, 2, 3, 4, 6, 10, 11, 12, 13, or 16, or a security issued by an industrial loan company licensed under chapter 536A.

(2) Effecting transactions exempted by section 502.203.

(3) Effecting transactions in a federal covered security as described in sections 18(b)(3) and 18(b)(4)(D) of the Securities Act of 1933 as amended in Pub. L. No. 104-290.

(4) Effecting transactions with an existing employee, member, manager, partner, or director of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state.

b. A broker-dealer in effecting a transaction in this state which is limited to a transaction provided in section 15(h)(2) of the Securities Exchange Act of 1934.

"Agent" also does not include any other individual who is not within the intent of this subsection whom the administrator by rule or order designates. A partner, member, manager, officer, or director of a broker-dealer or issuer, or a person occupying a similar status or performing similar functions, is an agent only if such person otherwise comes within this definition.

4. "Agricultural cooperative association" means any one of the following:

a. An association of persons organized pursuant to chapter 497 for purposes of conducting an agricultural or dairy business on a cooperative plan, as described in section 497.1.

b. A cooperative association organized pursuant to chapter 498 for purposes of conducting an agricultural, livestock, horticultural, or dairy business on a cooperative plan and acting as a cooperative selling agency, as described in section 498.2.

c. An agricultural association as defined in section 499.2, and organized pursuant to chapter 499.

d. Any other entity which is organized on a cooperative basis under the laws of this state for the purpose of engaging in the activities of an agricultural association as defined in section 499.2.

5. "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for such person's own account. "Broker-dealer" does not include:

a. An agent;

b. An issuer;

c. A bank when acting on its own account or when exercising trust or fiduciary powers permitted for banks under applicable state or federal laws and regulations providing for the organization, operation, supervision, and examination of such banks;

d. An insurance company which effects transactions in its own accounts;

e. Other persons not within the intent of this subsection whom the administrator by rule or order designates.

6. "Federal covered adviser" means a person who is registered under section 203 of the Investment Advisers Act of 1940, 15 U.S.C. § 80(b) et seq. "Federal covered adviser" does not include a person who is excluded from the definition of "investment adviser" as provided in subsection 11, paragraph "c", subparagraphs (1) through (7).

7. "Federal covered security" means any security that is a covered security under section 18(b) of the Securities Act of 1933 or rules or regulations adopted under the Securities Act of 1933.

8. "Fraud", "deceit" and "defraud" are not limited to common law deceit.

9. "Guaranteed" means guaranteed as to payment of principal, interest or dividends.

10. "Interest at the legal rate" means the interest rate for judgments specified in section 535.3.

11. a. "Investment adviser" means any person who, for compensation, does any of the following:

(1) Engages in the business of providing investment advisory services by advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities.

(2) As a part of a regular business, issues or promulgates analyses or reports concerning securities.

b. "Investment adviser" includes a financial planner or other person who, as an integral component of other financially related services, does either of the following:

(1) Provides investment advisory services to others for compensation and as part of a business.

(2) Holds oneself out as providing investment advisory services to others for compensation.

c. "Investment adviser" does not include a person who is any of the following:

(1) An investment adviser representative.

(2) A bank, savings institution, or trust company.

(3) An attorney licensed to practice law in this state, a certified public accountant licensed pursuant to chapter 542C, a professional engineer licensed pursuant to chapter 542B, or a certified teacher, if the person's performance of these services is solely incidental to the practice of the person's profession.

(4) An attorney licensed to practice law in this state or a certified public accountant licensed pursuant to chapter 542C who does not do any of the following:

(a) Exercise investment discretion regarding the assets of a client or maintain custody of the assets of a client for the purpose of investing the assets, except when the person is acting as a bona fide fiduciary in a capacity such as an executor, administrator, trustee, estate or trust agent, guardian, or conservator.

(b) Accept or receive directly or indirectly any commission, fee, or other remuneration contingent upon the purchase or sale of any specific security by a client of such person.

(c) Provide advice regarding the purchase or sale of specific securities. However, this subparagraph subdivision (c) shall not apply when the advice about specific securities is based on a financial statement analysis or tax considerations that are reasonably related to and in connection with the person's profession.

(5) A broker-dealer or its agent whose performance of these services is solely incidental to the conduct of its business as a broker-dealer and who receives no special compensation for them.

(6) A publisher of any bona fide newspaper, news column, newsletter, news magazine, or business or financial publication or service, whether

communicated in hard copy form, or by electronic means, or otherwise, that does not consist of the rendering of advice on the basis of the specific investment situation of each client.

(7) A person who is excluded from the definition of "investment adviser" under section 202(a)(11) of the Investment Advisers Act of 1940.

(8) A person who is a federal covered adviser.

(9) A person not within the intent of this subsection as the administrator may by rule or order designate.

d. As used in this subsection, "compensation" does not include a commission, fee, or a combination of a commission and a fee, which is paid to an insurance agent licensed under chapter 522, if the insurance agent receives the commission, fee, or the combination of a commission and a fee, for the sale of insurance as regulated pursuant to Title XIII, subtitle 1.

12. a. "Investment adviser representative" means an individual including but not limited to a partner, officer, director, or an individual occupying a similar status or performing similar functions as a partner, officer, or director, except clerical or ministerial personnel, if both of the following apply:

(1) The individual is employed by or associated with an investment adviser that is registered or required to be registered under this chapter, or who is employed by or associated with a federal covered adviser.

(2) The individual does any of the following:

(a) Makes any recommendations or otherwise renders advice regarding securities.

(b) Manages accounts or portfolios of clients.

(c) Determines which recommendation or advice regarding securities should be given.

(d) Solicits, offers, or negotiates for the sale of or sells investment advisory services.

(e) Supervises employees who perform any of the functions in subparagraphs (a) through (d).

b. "Investment adviser representative" does not include any other person not within the intent of this subsection as the administrator may by rule or order designate.

13. "Issuer" means any person who issues or proposes to issue any security, except that

a. With respect to certificates of deposit, voting trust certificates, or collateral trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors or persons performing similar functions or of the fixed, restricted management, or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued; and

b. With respect to a fractional undivided interest in an oil, gas, or other mineral lease or in payments out of production under a lease, right, or royalty, the term "issuer" means the owner of an

interest in the lease or payments out of production under a lease, right, or royalty, whether whole or fractional, who creates fractional interests for the purpose of sale.

c. With respect to a viatical settlement contract, "issuer" means a person involved in creating, transferring, or selling to an investor any interest in such a contract, including but not limited to fractional or pooled interests, but does not include an agent or a broker-dealer.

14. "Nonissuer" means not directly or indirectly for the benefit of the issuer.

15. "Person" means an individual, a corporation, a limited liability company, a partnership, an association, a joint stock company, a trust, a fiduciary, an unincorporated organization, a government, or a political subdivision of a government.

16. a. "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition or exchange of, a security or interest in a security for value.

b. "Offer" or "offer to sell" includes every attempt or offer to exchange or dispose of, or solicitation of an offer to buy, a security or interest in a security for value.

c. A security given or delivered with, or as a bonus on account of, a purchase of a security or any other thing is offered and sold for value as part of the subject of the purchase.

d. A purported gift of assessable stock is considered to involve an offer and sale.

e. Except to the extent that the administrator provides otherwise by rule or order, an offer or sale of a security that is convertible into or entitles its holder to acquire another security of the same or another issuer is an offer also of the other security, whether the right to convert or acquire is exercisable immediately or in the future.

f. The terms defined in this subsection do not include:

(1) Any bona fide pledge or loan; or

(2) Any stock split, other than a reverse stock split, or security dividend payable with respect to the securities of a corporation in the same or any other class of securities of such corporation, provided nothing of value, including the surrender of a right or an option to receive a cash or property dividend, is given by security holders for the security dividend.

17. "Securities Act of 1933", "Securities Exchange Act of 1934", "Public Utility Holding Company Act of 1935", "Investment Advisers Act of 1940", "Investment Company Act of 1940", "Internal Revenue Code", and "Agricultural Marketing Act" mean the federal statutes of those names.

18. "Securities and exchange commission" means the United States securities and exchange commission as established pursuant to 15 U.S.C. § 78(d).

19. "Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in a profit

sharing agreement; collateral trust certificate; pre-organization certificate or subscription; transferable share; investment contract; viatical settlement contract, or any fractional or pooled interest in such contract; voting trust certificate; certificate of deposit for a security; fractional undivided interest in an oil, gas, or other mineral lease or in payments out of production under such a lease, right, or royalty; an interest in a limited liability company or in a limited liability partnership or any class or series of such interest, including any fractional or other interest in such interest; or, in general, any interest or instrument commonly known as a "security", or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. "Security" does not include an insurance or endowment policy or annuity contract under which an insurance company promises to pay money either in a lump sum or periodically for life or for some other specified period. "Security" also does not include an interest in a limited liability company or a limited liability partnership if the person claiming that such an interest is not a security proves that all of the members of the limited liability company or limited liability partnership are actively engaged in the management of the limited liability company or limited liability partnership; provided that the evidence that members vote or have the right to vote, or the right to information concerning the business and affairs of the limited liability company or limited liability partnership, or the right to participate in management, shall not establish, without more, that all members are actively engaged in the management of the limited liability company or limited liability partnership.

20. "State" means any state, territory or possession of the United States, the District of Columbia and Puerto Rico.

21. "Viatical settlement contract" means an agreement for the purchase, sale, assignment, transfer, devise, or bequest of any portion of the death benefit or ownership of a life insurance policy or contract, for consideration which is less than the expected death benefit of the life insurance policy or contract.

22. For the purposes of sections 502.211 through 502.218, unless the context otherwise requires:

a. "Associate" means a person acting jointly or in concert with another for the purpose of acquiring, holding or disposing of, or exercising any voting rights attached to the equity securities of a target company.

b. "Beneficial owner" includes, but is not limited to, any person who directly or indirectly, through any contract, arrangement, understanding, or relationship, has or shares the power to vote or direct the voting of a security or has or shares the power to dispose of or otherwise direct the disposition of

the security. A person is the beneficial owner of securities beneficially owned by any relative or spouse or relative of the spouse residing in the home of the person, any trust or estate in which the person owns ten percent or more of the total beneficial interest or serves as trustee or executor, any corporation or entity in which the person owns ten percent or more of the equity, and any affiliate or associate of the person.

c. "Beneficial ownership" includes, but is not limited to, the right, exercisable within sixty days, to acquire securities through the exercise of options, warrants, or rights or the conversion of convertible securities. The securities subject to these options, warrants, rights, or conversion privileges held by a person are outstanding for the purpose of computing the percentage of outstanding securities of the class owned by the person, but are not outstanding for the purpose of computing the percentage of the class owned by any other person.

d. "Equity security" means any stock or similar security, and includes the following:

(1) Any security convertible, with or without consideration, into a stock or similar security.

(2) Any warrant or right to subscribe to or purchase a stock of similar security.

(3) Any security carrying a warrant or right to subscribe to or purchase a stock or similar security.

(4) Any other security which the administrator deems to be of a similar nature and considers necessary or appropriate, according to rules prescribed by the administrator for the public interest and protection of investors, to be treated as an equity security.

e. "Offeree" means the beneficial owner, who is a resident of this state, of equity securities which an offeror offers to acquire in connection with a takeover offer.

f. "Offeror" means a person who makes or in any manner participates in making a takeover offer. It does not include a supervised financial institution or broker-dealer loaning funds to an offeror in the ordinary course of its business, or any supervised financial institution, broker-dealer, attorney, accountant, consultant, employee, or other person furnishing information or advice to or performing ministerial duties for an offeror, and who does not otherwise participate in the takeover offer.

g. "Takeover offer":

(1) Means the offer to acquire any equity securities of a target company from a resident of this state pursuant to a tender offer or request or invitation for tenders, if after the acquisition of all securities acquired pursuant to the offer either of the following are true:

(a) The offeror would be directly or indirectly a beneficial owner of more than ten percent of any class of the outstanding equity securities of the target company.

(b) The beneficial ownership by the offeror of any class of the outstanding equity securities of the

target company would be increased by more than five percent. However, this provision does not apply if after the acquisition of all securities acquired pursuant to the offer, the offeror would not be directly or indirectly a beneficial owner of more than ten percent of any class of the outstanding equity securities of the target company.

(2) Does not include the following:

(a) An offer in connection with the acquisition of a security which, together with all other acquisitions by the offeror of securities of the same class of equity securities of the target company, would not result in the offeror having acquired more than two percent of this class of securities during the preceding twelve-month period.

(b) An offer by the target company to acquire its own equity securities if such offer is subject to section 13(e) of the Securities Exchange Act of 1934.

(c) An offer in which the target company is an insurance company or insurance holding company subject to regulation by the commissioner of insurance, a financial institution subject to regulation by the superintendent of banking or the superintendent of savings and loan associations, or a public utility subject to regulation by the utilities division of the department of commerce.

h. "Target company" means an issuer of publicly traded equity securities which has at least twenty percent of its equity securities beneficially held by residents of this state and has substantial assets in this state. For the purposes of this chapter, an equity security is publicly traded if a trading market exists for the security. A trading market exists if the security is traded on a national securities exchange, whether or not registered pursuant to the Securities Exchange Act of 1934, or on the over-the-counter market.

99 Acts, ch 134, §1-3
 Subsection 13, NEW paragraph c
 Subsection 19 amended
 NEW subsection 21 and former subsection 21 renumbered as 22

502.202 Exempt securities.

The following securities are exempted from sections 502.201 and 502.602:

1. Any security, including a revenue obligation, issued or guaranteed by the United States, any state, any political subdivision of a state, or any agency or corporate or other instrumentality of one or more of the foregoing; or any certificate of deposit for any of the foregoing. However, this exemption shall not include any revenue obligation payable from payments to be made in respect of property or money used under a lease, sale or loan arrangement by or for a nongovernmental industrial or commercial enterprise, unless such payments are or will be made or unconditionally guaranteed by a person whose securities are exempt from registration under this chapter by (a) subsection 7, 8, or 17, or (b) subsection 9, provided the issuer first files with the administrator a written notice specifying the terms of the offer and the administrator does

not by order disallow the exemption within fifteen days thereafter.

2. Any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any such province, any agency or corporate or other instrumentality of one or more of the foregoing, or any other foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor.

3. Any security issued by and representing an interest in or a debt of, or guaranteed by, any bank organized under the laws of the United States, or any bank or trust company organized and supervised under the laws of this state.

4. Any security issued by and representing an interest in or a debt of, or guaranteed by, any federal savings and loan association, or any savings and loan or similar association organized and supervised under the laws of this state.

5. Any security issued by and representing an interest in or a debt of, or guaranteed by, any insurance company organized under the laws of this state and authorized to do business in this state.

6. Any security issued or guaranteed by any federal credit union or any credit union or similar association organized and supervised under the laws of this state.

7. Any security issued or guaranteed by a public utility or holding company which is any of the following:

a. A registered holding company under the Public Utility Holding Company Act of 1935 or a subsidiary of such a company within the meaning of that Act.

b. Regulated in respect of its rates and charges by a governmental authority of the United States or any state.

c. Regulated in respect of the issuance or guarantee of the security by a governmental authority of the United States, any state, Canada, or any Canadian province.

8. Any security listed or approved for listing upon notice of issuance on the New York Stock Exchange, the American Stock Exchange, or any other national securities exchange registered under the Securities Exchange Act of 1934 and designated by rule of the administrator; any other security of the same issuer which is of senior or substantially equal rank; any security called for by subscription rights or warrants so listed or approved; or any warrant or right to purchase or subscribe to any of the foregoing.

9. Any security issued by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic or reformatory purposes, or as a chamber of commerce or trade or professional association; provided the issuer first files with the administrator a written notice specifying the terms of the offer and the administrator does not by

order disallow the exemption within fifteen days thereafter.

10. Commercial paper which is a promissory note, draft, bill of exchange, or banker's acceptance which satisfies the following criteria:

a. It evidences an obligation to pay cash within nine months after the date of issuance, exclusive of days of grace.

b. It is issued in denominations of at least fifty thousand dollars.

c. It receives a rating in one of the three highest rating categories from a nationally recognized statistical rating organization.

The exemption under this subsection applies to a renewal of an obligation under this subsection which is likewise limited, and to a guarantee of such an obligation or of a renewal.

11. A security issued in connection with an employee stock purchase, option, savings, pension, profit sharing or similar benefit plan.

12. A stock or similar security, including a patronage refund certificate, issued by:

a. A cooperative housing corporation described in paragraph 1 of subsection "b" of section 216, of the Internal Revenue Code, if its activities are limited to the ownership, leasing, management, or construction of residential properties for its members, and activities incidental thereto; or

b. A mutual or cooperative organization, including a cooperative association organized in good faith under and for any of the purposes enumerated in chapters 497, 498, 499, and 501 that deals in commodities or supplies goods or services in transactions primarily with and for the benefit of its members, if:

(1) Such stock or similar security is part of a class issuable only to persons who deal in commodities with, or obtain goods or services from, the issuer;

(2) Such stock or similar security is transferable only to the issuer or a successor in interest of the transferor who qualifies for membership in such mutual or cooperative organization; and

(3) No dividends other than patronage refunds are payable to holders of such stock or similar security except on a complete or partial liquidation.

13. A security issued by an agricultural cooperative association, provided the following conditions are satisfied:

a. A commission or remuneration must not be paid or provided either directly or indirectly for the sale, except as permitted by the administrator by rule or by order issued upon written application showing good cause for allowance of a commission or other remuneration.

b. If the securities to be issued are notes or other evidences of indebtedness and are issued after July 1, 1991, the issuer must file with the administrator a written notice specifying the name of the issuer, the date of the issuer's organization, the name of a contact person, a copy of the issuer's cur-

rent audited financial statement, the types of security or securities to be offered, and the class of persons to whom the offer will be made in accordance with such rules as prescribed by the administrator.

14. Any security issued by a corporation formed under chapter 496B.

15. Any security issued by the agricultural development authority under chapter 175.

16. Any security representing a membership camping contract which is registered pursuant to section 557B.2 or exempt under section 557B.4.

17. On or after January 1, 1989, a security designated or approved for designation upon notice of issuance on the national association of securities dealers automated quotations — national market system (NASDAQ/NMS); any other security of the same issuer which is of senior or substantially equal rank; a security called for by subscription rights or warrants designated or approved for designation upon notice of issuance on the NASDAQ/NMS; or a warrant or right to purchase or subscribe to any of the foregoing categories in this subsection.

18. Any security representing a time-share interval as defined in section 557A.2.

19. A viatical settlement contract, or fractional or pooled interest in such contract, provided any of the following conditions are satisfied:

a. The assignment, transfer, sale, devise, or bequest of a death benefit of a life insurance policy or contract, is made by the viator to an insurance company as provided under Title 13, subtitle 1.

b. The assignment, transfer, sale, devise, or bequest of a life insurance policy or contract, for any value less than the expected death benefit, is made by the viator to a family member or other person who enters into no more than one such agreement in a calendar year.

c. A life insurance policy or contract is assigned to a bank, savings bank, savings and loan association, credit union, or other licensed lending institution as collateral for a loan.

d. Accelerated benefits are exercised as provided in the life insurance policy or contract and consistent with applicable law.

99 Acts, ch 134, §4; 99 Acts, ch 166, §1
Subsection 12, paragraph b, unnumbered paragraph 1 amended
NEW subsection 19

502.302 Registration and notice filing procedures.

1. A broker-dealer, agent, investment adviser, or investment adviser representative may obtain an initial or renewal license by filing with the administrator, or an organization which the administrator by rule designates, an application together with a consent to service of process pursuant to section 502.609 and the appropriate filing fee. The application shall contain information the administrator requires by rule concerning the applicant's form and place of organization, proposed method of doing business and financial condition, and the quali-

fications and experience of the applicant. In the case of a broker-dealer or investment adviser, the application shall include the qualifications and experience of any partner, officer, director or controlling person, any injunction or administrative order or conviction of a misdemeanor involving securities and any conviction of a felony, and any other matters which the administrator determines are relevant to the application. In addition, in the case of an investment adviser, the application shall include any information to be furnished or disseminated to any client or prospective client, and any other information which the administrator determines is relevant to the application. If no denial order is in effect and no proceeding is pending under section 502.304, registration becomes effective at noon of the sixtieth day after a completed application or an amendment completing the application is filed, unless waived by the applicant. The administrator may by rule or order specify an earlier effective date.

2. Except with respect to federal covered advisers whose only clients are those described in section 502.301, subsection 3, paragraph "b", a federal covered adviser shall file with the administrator, prior to acting as a federal covered adviser in this state, such documents as have been filed with the securities and exchange commission as the administrator, by rule or order, may require.

3. Every applicant for initial or renewal registration as a broker-dealer or investment adviser shall pay a filing fee of two hundred dollars. Every applicant for initial or renewal registration as an agent or investment adviser representative shall pay a filing fee of thirty dollars. However, an investment adviser representative is not required to pay a filing fee if the investment adviser is a sole proprietorship or the substantial equivalent and the investment adviser representative is the same individual as the investment adviser. A filing fee is not refundable. Every person acting as a federal covered adviser in this state, except with respect to federal covered advisers whose only clients are those described in section 502.301, subsection 3, paragraph "b", shall pay an initial and renewal notice filing fee of one hundred dollars.

4. A registered broker-dealer, federal covered adviser, or investment adviser may file an application for registration of a successor, whether or not the successor is then in existence, for the unexpired portion of the year. There shall be no filing fee.

5. The administrator may by rule or order require a minimum capital for broker-dealers subject to the limitations of section 15 of the Securities Exchange Act of 1934. The administrator by rule or order may also establish minimum financial requirements for investment advisers, subject to the limitations of section 222 of the Investment Advisers Act of 1940, which may include different requirements for those investment advisers who maintain custody of client funds or securities or

who have discretionary authority over client funds or securities and those investment advisers who do not.

6. The administrator may by rule or order require investment advisers who have custody of or discretionary authority over client funds or securities to post bonds in amounts as the administrator may prescribe, subject to the limitations of section 222 of the Investment Advisers Act of 1940 and may determine conditions on the bonds. A bond shall not be required of any investment adviser whose minimum financial requirements, which may be defined by rule, exceed the amounts required by the administrator. Every bond shall provide for suit on the bond by the person who has a cause of action under this chapter and, if the administrator by rule or order requires, by any person who has a cause of action not arising under this chapter. Every bond shall provide that a suit shall not be maintained to enforce liability on the bond unless brought within the time limitations of section 502.504.

7. The administrator may by rule or order impose such other conditions in connection with registration under this chapter as are deemed appropriate, in the public interest or for the protection of investors.

99 Acts, ch 166, §2
Subsection 3 amended

502.304 Denial, revocation, suspension, and withdrawal of registration.

1. The administrator may by order deny, suspend, or revoke a registration or may censure, impose a civil penalty upon, or bar an applicant, registrant, or any officer, director, partner, or person occupying a similar status or performing similar functions for a registrant. A person barred under this subsection may be prohibited by the administrator from employment with a registered broker-dealer or investment adviser. The administrator may restrict the person barred from engaging in any activity for which registration is required. Any action by the administrator under this subsection may be taken if the order is found to be in the public interest and it is found that the applicant or registrant or, in the case of a broker-dealer or investment adviser, a partner, an officer, or a director, a person occupying a similar status or performing similar functions, or a person directly or indirectly controlling the broker-dealer or investment adviser:

a. Has filed an application for registration which as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact;

b. Has willfully violated or willfully failed to comply with any provision of this chapter or a predecessor act or any rule or order under this chapter or a predecessor act;

c. Has been convicted within the past ten years of

(1) Any misdemeanor involving a security or any aspect of the securities business, or

(2) Any felony;

d. Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities, insurance, or commodities business;

e. Is the subject of an order of the administrator denying, suspending, or revoking registration as a broker-dealer, agent, investment adviser, investment adviser representative, or insurance agent;

f. Is the subject of an adjudication or order entered after notice and opportunity for hearing, within the past ten years by a securities or commodities agency, an administrator of another state, or a court of competent jurisdiction, that reflects that the person has violated the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, or the Commodity Exchange Act, a securities or commodities law of any other state, or a United States postal service fraud order. However, the administrator may not do either of the following:

(1) Institute a revocation or suspension proceeding under this paragraph more than one year from the final agency order relied on or, if the order has been appealed, the final court decision.

(2) Enter an order under this paragraph on the basis of an order under another state law unless that order was based on facts which would currently constitute a ground for an order under this section.

g. Has engaged in dishonest or unethical practices in the securities business;

h. Is insolvent, either in the equity or bankruptcy sense; but the administrator may not enter an order against a broker-dealer or investment adviser under this paragraph without a finding of insolvency as to the broker-dealer or investment adviser;

i. Is not qualified on the basis of such factors as training, experience and knowledge of the securities business;

j. Has failed reasonably to supervise an agent or employee in the case of a broker-dealer, or an investment adviser representative or employee in the case of an investment adviser;

k. Has been denied the right to do business in the securities industry, or the person's authority to do business in the securities industry has been revoked for cause by another state, federal, or foreign governmental agency or by a self-regulatory organization; or

l. Has been the subject of a final order in a criminal, civil, injunctive, or administrative action for securities, commodities, or fraud-related violations of the laws of this state or another state, federal, or foreign governmental unit.

m. Does any of the following:

(1) Has willfully violated the law of a foreign jurisdiction governing or regulating any aspect of the business of securities or banking.

(2) Within the past five years, has been the subject of an action of a securities regulator of a foreign jurisdiction denying, revoking, or suspending the right to engage in the business of securities as a broker-dealer, agent, investment adviser, or investment adviser representative.

(3) Is the subject of an action of any securities exchange or self-regulatory organization operating under the authority of the securities regulator of a foreign jurisdiction suspending or expelling such person from membership in such exchange or self-regulatory organization.

n. Does either of the following:

(1) Refuses to allow or otherwise impedes the securities bureau from conducting an audit, examination, inspection, or investigation as provided under section 502.303 or 502.603, including by withholding or concealing records or refusing to furnish records, if the records are required to be kept either under this chapter or under rules adopted under this chapter or by the securities bureau acting under this chapter.

(2) Refuses securities bureau access to any office or location within an office to conduct an audit, examination, inspection, or investigation.

2. The administrator may not institute a suspension or revocation proceeding under subsection 1, paragraphs "c" through "f", on the basis of a fact known to the administrator when registration became effective unless the proceeding is instituted within ninety days after the effective date.

3. The administrator may by order summarily postpone or suspend registration pending final determination of any proceeding under this section. Upon the entry of the order, the administrator shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is an agent or investment adviser representative, that it has been entered and of the reasons therefor and that within fifteen days after the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the administrator, the order will remain in effect until it is modified or vacated by the administrator. If a hearing is requested or ordered, the administrator, after notice of and opportunity for hearing, may modify or vacate the order or extend it until final determination.

4. a. If the administrator finds that any registrant or applicant for registration is no longer in existence or has ceased to do business as a broker-

dealer, agent, investment adviser, or investment adviser representative, or is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian, or cannot be located after search, the administrator may by order revoke the registration or application.

b. If the administrator finds that the applicant or registrant for registration has abandoned the application or registration, the administrator may enter an order of abandonment, and limit or eliminate further consideration of the application or registration, as provided by the administrator. The administrator may enter an order under this paragraph if notice is sent to the applicant or registrant, and either the administrator does not receive a response by the applicant or registrant within forty-five days from the date that the notice was delivered, or action is not taken by the applicant or registrant within the time specified by the administrator in the notice, whichever is later.

5. Withdrawal from registration as a broker-dealer, agent, investment adviser, or investment adviser representative becomes effective thirty days after receipt of an application to withdraw or within such shorter period of time as the administrator may by order determine, unless a proceeding to deny, suspend, or revoke a registration is pending when the application is filed or a proceeding to deny, suspend, or revoke a registration, or to impose conditions upon the withdrawal is instituted within thirty days after the application is filed. If a proceeding is pending or instituted, withdrawal becomes effective at such time and upon such conditions as the administrator by order determines. If no proceeding is pending or instituted and withdrawal automatically becomes effective, the administrator may nevertheless institute a revocation or suspension proceeding under subsection 1 within one year after withdrawal became effective and enter a revocation or suspension order as of the last date on which registration was effective.

6. A person who directly or indirectly controls a broker-dealer or agent is subject to the same sanctions applicable to an applicant or registrant under this section, unless the person proves that the person did not know, and was not grossly negligent in failing to know, of the existence of facts by reason of which the liability is alleged to exist.

7. No order may be entered under any part of this section except the first sentence of subsection 3 without compliance with the Iowa administrative procedure Act.

8. A civil penalty levied under subsection 1 shall not exceed one thousand dollars per violation per person and shall not exceed one hundred thousand dollars in a single proceeding against any one person. All administrative fines received shall be deposited in the general fund of the state.

99 Acts, ch 166, §3, 4
Subsection 5 amended
NEW subsection 6 and former subsections 6 and 7 renumbered as 7 and 8

502.305 Examination of investment adviser representative and exemption from examination.

The administrator may adopt rules requiring the passage of an examination by an individual who is required to be registered under this chapter as an investment adviser representative. However, a person who is registered as an investment adviser representative between January 1, 1999, and December 31, 1999, shall not be required to pass an examination for as long as the person maintains a continuous registration.

99 Acts, ch 166, §5
Section amended

502.503 Joint and several liability; contribution; indemnity.

1. Affiliates of a person liable under section 502.401, 502.501, 502.502, 502.502A, or 502.604, partners, principal executive officers or directors of such person, persons occupying a similar status or performing similar functions for such person, persons (whether employees of such person or otherwise) who materially aid and abet in the act or transaction constituting the violation, and broker-dealers or agents who materially aid and abet in the act or transaction constituting the violation, are also liable jointly and severally with and to the same extent as such person, unless one of the following applies:

a. With respect to section 502.501, section 502.502, subsections 1 and 5, or section 502.502A, a person liable under this subsection proves that the person did not know, and in the exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist.

b. With respect to section 502.401, section 502.502, subsections 2 and 3, and section 502.604 a person liable under this subsection proves that the person did not know, and was not grossly negligent in failing to know, of the existence of the facts by reason of which the liability is alleged to exist.

2. Any person liable under this chapter shall have a right of indemnification against any affiliate whose willful violation of any provision of this chapter gave rise to such liability. Any person liable under this chapter shall have a right of contribution against all other persons similarly liable, except that no person whose willful violation of any provision of this chapter has given rise to any civil liability shall have any right of contribution against any other person guilty merely of a negligent violation.

99 Acts, ch 166, §6
Subsection 1 amended

502.504 Time limitations on rights of action.

1. No action shall be maintained to enforce any liability created under either section 502.501 or

section 502.503, subsection 1 insofar as it relates to section 502.501 unless brought within two years after the violation upon which it is based.

2. No action shall be maintained to enforce any liability created under either section 502.502 or section 502.503, subsection 1, insofar as it relates to section 502.502, unless brought within the shorter of the following two periods:

a. Five years after the act or transaction constituting the violation; or

b. Two years after the plaintiff receives actual notice of, or upon the exercise of reasonable diligence should have known of, the facts constituting the violation.

3. No action shall be maintained to enforce any right of indemnification or contribution created by section 502.503, subsection 2, unless brought within one year after final judgment based upon the liability for which the right of indemnification or contribution exists.

4. No purchaser may commence an action under section 502.501, 502.502 or 502.503 if:

a. Before suit is commenced, the purchaser has received a written offer:

(1) Stating in reasonable detail why liability under such section may have arisen and fairly advising the purchaser of the purchaser's rights;

(2) Offering to repurchase the security for cash, payable on delivery of the security, equal to the consideration paid, together with interest at the legal rate from the date of payment, less the amount of any income or distributions, in cash or in kind, received thereon or, if the purchaser no longer owns the security, offering to pay the purchaser upon acceptance of the offer an amount in cash equal to the damages computed in accordance with section 502.502, subsection 1; and

(3) Stating that the offer may be accepted by the purchaser at any time within a specified period of not less than thirty days after the date of receipt thereof, or such shorter period as the administrator may by rule prescribe; and

b. The purchaser has failed to accept such offer in writing within the specified period.

5. No seller may commence an action under section 502.501, 502.502 or 502.503 if:

a. Before suit is commenced, the seller has received a written offer:

(1) Stating in reasonable detail why liability under such section may have arisen and fairly advising the seller of the seller's rights;

(2) Offering to return the security plus the amount of any income or distributions, in cash or in kind, received thereon upon payment of the consideration received, or, if the purchaser no longer owns the security, offering to pay the seller upon acceptance of the offer an amount in cash equal to the damages computed in accordance with section 502.502, subsection 2; and

(3) Stating that the offer may be accepted by the seller at any time within a specified period of not less than thirty days after the date of receipt thereof, or such shorter period as the administrator may by rule prescribe; and

b. The seller has failed to accept the offer in writing within the specified period.

6. Offers under subsection 4 or 5 shall be in the form and contain the information the administrator by rule prescribes. Every offer under either subsection shall be delivered to the offeree personally or sent by certified mail addressed to the offeree at the offeree's last known address. If an offer is not performed in accordance with its terms, suit by the offeree under section 502.501, 502.502 or 502.503 shall be permitted without regard to subsections 4 and 5 of this section.

7. This section shall not apply to actions filed by the administrator pursuant to section 502.604.

99 Acts, ch 166, §7
NEW subsection 7

502.604 Cease and desist orders — injunctions.

If it appears to the administrator that a person has engaged or is about to engage in an act or practice constituting a violation of this chapter or any rule or order adopted or issued pursuant to this chapter, the administrator may do either or both of the following:

1. Issue an order directed at the person requiring the person to cease and desist from engaging in such act or practice.

2. Bring an action in the district court to enjoin the act or practice and to enforce compliance with this chapter or a rule or order adopted or issued pursuant to this chapter. Upon a proper showing, the court may do all of the following:

a. Grant a permanent or temporary injunction, restraining order, asset freeze, accounting, writ of attachment, writ of general or special execution, writ of mandamus, or other equitable or ancillary relief.

b. Appoint a receiver or conservator for the defendant or the defendant's assets.

c. Order the administrator to take charge and control of a party's property, including but not limited to managing rents and profits, collecting debts, and acquiring and disposing of property.

d. Order the rescission, restitution, or disgorgement directed at any person who has engaged in an act constituting a violation of this chapter, or a rule or order adopted or issued pursuant to this chapter.

e. Order the payment of prejudgment and post-judgment interest.

The administrator shall not be required to post a bond.

99 Acts, ch 166, §8
Subsection 2 amended

CHAPTER 504A

IOWA NONPROFIT CORPORATION ACT

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, Code 1989, 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 voluntarily 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 direc-

tors, 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 biennial 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, Code 1989. 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, Code 1989, 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, Code 1989, 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, Code 1989, 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 corporation 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, 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 the corporation does not comply with this chapter, setting forth the name of the corporation with the changes which the board elects to make to the name 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 of each resolution. The 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 the instrument and deliver the certificate to the corporation or its representative. The secretary of state shall not file any biennial report of any foreign corporation subject to this subsection unless and until the corporation has fully complied with the provisions of this paragraph and, in such event, the foreign corporation is subject to the penalties prescribed in this chapter for failure to file the report within the time as provided in this chapter.

9. No corporation to which the provisions of this chapter apply shall be subject to the provisions of chapter 504, Code 1989.

10. The provisions of sections 504A.96 and 504A.97 shall apply to any action required or permitted to be taken under this section.

11. Except as otherwise provided in this section, existing corporations shall continue to be governed by the laws of this state heretofore applicable thereto.

12. Corporations existing under chapter 504, Code 1989, 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, 1997. 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, 1997, is terminated, effective July 1, 1997. A corpo-

ration 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.

99 Acts, ch 96, §45-47
 Subsection 3, unnumbered paragraph 1 amended
 Subsection 3, paragraph e, unnumbered paragraph 1 amended
 Subsections 5, 6, 9, and 12 amended

CHAPTER 505

INSURANCE DIVISION

505.8 General powers and duties.

1. The commissioner of insurance shall be the head of the division, and shall have general control, supervision, and direction over all insurance business transacted in the state, and shall enforce all the laws of the state relating to such insurance.

2. The commissioner shall, subject to chapter 17A, establish, publish, and enforce rules not inconsistent with law for the enforcement of this subtitle and for the enforcement of the laws, the administration and supervision of which are imposed on the division, including rules to establish fees sufficient to administer the laws, where appropriate fees are not otherwise provided for in rule or statute.

3. The commissioner shall supervise all transactions relating to the organization, reorganization, liquidation, and dissolution of domestic insurance corporations, and all transactions leading up to the organization of such corporations.

4. The commissioner shall also supervise the sale in the state of all stock, certificates, or other evidences of interest, either by domestic or foreign insurance companies or organizations proposing to engage in any insurance business.

5. The commissioner shall, on an annual basis, prepare a report identifying the premium volume of nonqualified insurance annuities issued by domestic insurance companies doing at least a volume of five million dollars per annum, and relating that to projections for increased volume of such sales.

Domestic insurance companies shall cooperate with the commissioner in providing information to develop the reports under this subsection.

6. The commissioner shall supervise all health insurance purchasing cooperatives providing services or operating within the state and the organization of domestic cooperatives. The commissioner may admit nondomestic health insurance purchasing cooperatives under the same standards as domestic cooperatives.

99 Acts, ch 114, §41
 Subsection 2 amended

505.16 Applications for insurance — test restrictions — duties of commissioner.

1. A person engaged in the business of insurance shall not require a test of an individual in connection with an application for insurance for the presence of an antibody to the human immunodeficiency virus unless the individual provides a written release on a form approved by the insurance commissioner. The form shall include information regarding the purpose, content, use, and meaning of the test, disclosure of test results including information explaining the effect of releasing the information to a person engaged in the business of insurance, the purpose for which the test results may be used, and other information approved by the insurance commissioner. The form shall also authorize the person performing the test to provide the results of the test to the insurance company subject to rules of confidentiality, consistent with section 141A.9, approved by the insurance commissioner. As used in this section, "a person engaged in the business of insurance" includes hospital service corporations organized under chapter 514 and health maintenance organizations subject to chapter 514B.

2. The insurance commissioner shall approve rules for carrying out this section including rules relating to the preparation of information to be provided before and after a test and the protection of confidentiality of personal and medical records of insurance applicants and policyholders.

99 Acts, ch 181, §17
 Subsection 1 amended

505.17 Confidential information.

Information, records, and documents utilized for the purpose of, or in the course of, investigation, regulation, or examination of an insurance company or insurance holding company, received by the division from some other governmental entity which treats such information, records, and documents as confidential, are confidential and shall not be disclosed by the division and are not subject to subpoena. Such information, records, and docu-

ments do not constitute a public record under chapter 22.

The disclosure of confidential information, administrative or judicial orders which contain confidential information, or information regarding other action of the division which is not a public record subject to disclosure, to other insurance and financial regulatory officials may be permitted by the commissioner provided that those officials are sub-

ject to, or agree to comply with, standards of confidentiality comparable to those imposed on the commissioner.

99 Acts, ch 165, §1
Section amended

505.20 Health accounting standards — duties of commissioner. Repealed by 99 Acts, ch 114, § 54.

CHAPTER 508

LIFE INSURANCE COMPANIES

508.31A Funding agreements.

1. A life insurance company organized under this chapter may issue funding agreements. The issuance of a funding agreement under this section is deemed to be doing insurance business. For purposes of this section, “*funding agreement*” means an agreement for an insurer to accept and accumulate funds and to make one or more payments at future dates in amounts that are not based on mortality or morbidity contingencies. A funding agreement does not constitute life insurance, an annuity, or other insurance authorized by section 508.29, and does not constitute a security as defined in section 502.102.

2. *a.* Funding agreements may be issued to the following:

(1) A person authorized by a state or foreign country to engage in an insurance business or a subsidiary of such business.

(2) A person for the purpose of funding any of the following:

(a) Benefits under an employee benefit plan as defined in the federal Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et seq., maintained in the United States or in a foreign country.

(b) Activities of an organization exempt from taxation pursuant to section 501c of the Internal Revenue Code, or any similar organization in any foreign country.

(c) A program of the United States government, another state government or political subdivision of such state, or of a foreign country, or any agency or instrumentality of any such government, political subdivision, or foreign country.

(d) An agreement providing for periodic payments in satisfaction of a claim.

(e) A program of an institution which has assets in excess of twenty-five million dollars.

b. A funding agreement shall be for a total amount of not less than one million dollars.

c. An amount under a funding agreement shall not be guaranteed or credited except upon reasonable assumptions as to investment income and expenses and on a basis equitable to all holders of funding agreements of a given class. Such funding agreements shall not provide for payments to or by the insurer based on mortality or morbidity contingencies.

d. Amounts paid to the insurer pursuant to a funding agreement, and proceeds applied under optional modes of settlement, may be allocated by the insurer to one or more separate accounts pursuant to section 508A.1.

3. A funding agreement is a class 2 claim under section 507C.42, subsection 2.

4. The commissioner may adopt rules to implement funding agreements.

99 Acts, ch 3, §1, 2

1999 amendment to subsection 3 applies retroactively to July 1, 1998; 99 Acts, ch 3, §2

Subsection 3 amended

CHAPTER 508B

CONVERSION FROM MUTUAL COMPANY TO STOCK COMPANY

508B.1 Definitions.

As used in this chapter, unless the context clearly indicates otherwise:

1. “*Commissioner*” means the commissioner of insurance.

2. “*Mutual life insurance company*” or “*mutual company*” means a level premium and natural pre-

mium life insurance company authorized under chapter 508 upon the mutual plan and includes a domestic company which meets the requirements of section 508.12.

3. *a.* “*Plan of conversion*” or “*conversion plan*” means a plan authorized by section 508B.3 and, in the case of plans authorized by section 508B.3, sub-

sections 1 and 3, includes a procedure by which the mutual company's participating policies and contracts in force on the effective date of the conversion plan are operated by the reorganized company as a closed block of participating business for the exclusive benefit of the policies and contracts included, for dividend purposes only; to which are allocated assets of the mutual company in an amount which together with anticipated revenue from the business is reasonably expected to be sufficient to support the business; and which includes, but is not limited to, provisions for payment of claims and reasonable expenses, and provisions for continuation of current payable dividend scales if the experience underlying the scales continues, and a procedure for appropriate adjustments in the scales if the experience changes. However, at the option of the mutual company, some or all classes of group policies and contracts shall not be placed in the closed block but shall continue to be eligible to receive dividends based on the experience of the class or classes.

b. If any amount of the policyholders' consideration as specified in section 508B.3, subsection 3, paragraph "b", for certain classes of policies or contracts is to be paid in the form of increased annual dividends to the policyholders in those classes, that amount is to be added to the assets allocated as provided in paragraph "a" and is to be paid to those classes.

4. "Policyholder" means a person, determined by the mutual company, who is the holder of a policy or annuity contract for the purposes of section 508B.3, subsection 1, 2, or 3.

5. "Policyholders' membership interest" means all policyholders' rights as members of the mutual company including, but not limited to, rights to vote and participate in any distribution of surplus whether or not incident to liquidation of the mutual company.

6. "Reorganized company" means the domestic stock company into which a mutual company has been converted, converted and merged, or converted and consolidated.

7. "Stock life insurance company" or "stock company" means a life insurance company authorized under chapter 508 upon the stock plan and includes a domestic company which meets the requirements of section 508.12.

99 Acts, ch 165, §2
Subsection 6 amended

508B.6 Approval of plan by policyholders — notice of election — effective date.

The plan of conversion shall be submitted to and shall not take effect until approved by two thirds of the policyholders of the mutual company voting on the plan. Notice of a meeting for the purpose of voting on the conversion plan shall be provided by mail to each policyholder entitled to vote in accordance with the articles of incorporation or bylaws of the mutual company. Each policyholder entitled to vote

may cast one vote unless otherwise provided in the articles of incorporation or bylaws of the mutual company. Voting shall be by ballot, in person or by proxy. A quorum shall consist of a quorum as defined in the articles of incorporation or bylaws of the mutual company. A copy of the plan of conversion, or a summary of the plan of conversion, shall accompany the notice of meeting and election. The notice of meeting may contain the notice of any planned public hearing. An approved plan of conversion shall take effect on the date specified in the plan.

99 Acts, ch 165, §3
Section amended

508B.12 Amendments — withdrawal.

At any time before the conversion, if done pursuant to rules issued by the commissioner or as may otherwise be required by the commissioner, the board of directors of a mutual company may amend the conversion plan. An amendment to a conversion plan is subject to the prior approval of the commissioner. The board of directors of a mutual company may withdraw the plan of conversion at any time prior to the conversion.

99 Acts, ch 165, §4
Section amended

508B.13 Prohibitions on certain offers to acquire shares.

Prior to and for a period of five years following the effective date of the conversion, and in the case of the plans of conversion specified in subsections 1 and 3 of section 508B.3, five years following the date of distribution of consideration to the policyholders in exchange for their membership interests, a person, other than the reorganized company, other than an employee benefit plan or employee benefit trust sponsored by the reorganized company, or as otherwise specifically provided for in the plan of conversion, shall not directly or indirectly acquire or offer to acquire the beneficial ownership of more than five percent of any class of voting security of the reorganized company, and a person, other than the reorganized company or other than an employee benefit plan or employee benefit trust sponsored by the reorganized company, who acquires five percent or more of any class of voting security of the reorganized company prior to the conversion or as specifically provided for in the plan of conversion, shall not directly or indirectly acquire or offer to acquire the beneficial ownership of additional voting securities of the reorganized company, unless the acquisition is approved by the commissioner as not being contrary to the interests of the policyholders of the reorganized company or its life insurance company subsidiary and by the board of directors of the reorganized company. The commissioner and the board of directors may consider the factors set forth in section 490.1108. The provisions of section 521A.3, except subsection 4, paragraph "a", shall be applicable to a proposed acquisition subject to this section. An approved plan

of conversion may include a stock option plan. As used in this section, "*beneficial ownership*" means, with respect to a security, the sole or shared power to vote or direct the voting of the security or the sole power to dispose or direct the disposition of the security.

99 Acts, ch 165, §5
Section amended

508B.14 Limitation of actions — security for attorney fees.

The commissioner's order approving or disapproving a plan of conversion shall be considered final agency action under chapter 17A.

An action challenging the validity of a conversion plan, or any part of a conversion plan, shall not be commenced more than one hundred eighty days following the date of approval by the commissioner.

The reorganized company or a defendant may petition the court in such an action to give security for the reasonable attorney fees which may be incurred by any party to the action. The amount of the security may be increased or decreased in the discretion of the court having jurisdiction if a showing is made that the security provided is or may become inadequate or excessive.

99 Acts, ch 165, §6
Section amended

CHAPTER 509

GROUP INSURANCE

509.3 Provisions as part of accident or health policy.

All policies of group accident or health insurance or combination thereof issued in this state shall contain in substance the following provisions:

1. The policy shall have a provision that a copy of the application, if any, of the policyholder shall be attached to the policy when issued, that all statements made by the policyholder or by the persons insured shall be deemed representations and not warranties, and that no statement made by any person insured shall be used in any contest unless a copy of the instrument containing the statement is or has been furnished to such person.

2. A provision that the company will issue to the policyholder for delivery to each person insured under such policy an individual certificate setting forth a statement as to the insurance protection to which the person is entitled, to whom the insurance benefits are payable, and such provisions of the policy as are, in the opinion of the commissioner of insurance, necessary to inform the holder thereof as to the holder's rights under the policy.

3. A provision that to the group or class thereof originally insured shall be added, from time to time, all new persons eligible to insurance in such group or class.

4. A provision that if the insurance on a person or insurance on a person and the person's dependents covered by the policy ceases because of termination of employment or of membership in the class, the person and the person's dependents may continue their accident or health insurance under the group policy and may subsequently apply for a converted policy without evidence of insurability, as provided in chapter 509B.

5. A provision shall be made available to policyholders, under group policies covering vision care services or procedures, for payment of necessary medical or surgical care and treatment provided by

an optometrist licensed under chapter 154 if the care and treatment are provided within the scope of the optometrist's license and if the policy would pay for the care and treatment if the care and treatment were provided by a person engaged in the practice of medicine or surgery as licensed under chapter 148 or 150A. The policy shall provide that the policyholder may reject the coverage or provision if the coverage or provision for services which may be provided by an optometrist is rejected for all providers of similar vision care services as licensed under chapter 148, 150A, or 154. This subsection applies to group policies delivered or issued for delivery after July 1, 1983, and to existing group policies on their next anniversary or renewal date, or upon expiration of the applicable collective bargaining contract, if any, whichever is later. This subsection does not apply to blanket, short-term travel, accident only, limited or specified disease, or individual or group conversion policies, or policies designed only for issuance to persons for coverage under Title XVIII of the Social Security Act, or any other similar coverage under a state or federal government plan.

6. A provision shall be made available to policyholders under group policies covering diagnosis and treatment of human ailments for payment or reimbursement for necessary diagnosis or treatment provided by a chiropractor licensed under chapter 151, if the diagnosis or treatment is provided within the scope of the chiropractor's license and if the policy would pay or reimburse for the diagnosis or treatment by a person licensed under chapter 148, 150, or 150A of the human ailment, irrespective of and disregarding variances in terminology employed by the various licensed professions in describing the human ailment or its diagnosis or its treatment. The policy shall provide that the policyholder may reject the coverage or provision if the coverage or provision for diagnosis

or treatment of a human ailment by a chiropractor is rejected for all providers of diagnosis or treatment for similar human ailments licensed under chapter 148, 150, 150A, or 151. A policy of group health insurance may limit or make optional the payment or reimbursement for lawful diagnostic or treatment service by all licensees under chapters 148, 150, 150A, and 151 on any rational basis which is not solely related to the license under or the practices authorized by chapter 151 or is not dependent upon a method of classification, categorization, or description based directly or indirectly upon differences in terminology used by different licensees in describing human ailments or their diagnosis or treatment. This subsection applies to group policies delivered or issued for delivery after July 1, 1986, and to existing group policies on their next anniversary or renewal date, or upon expiration of the applicable collective bargaining contract, if any, whichever is later. This subsection does not apply to blanket, short-term travel, accident-only, limited or specified disease, or individual or group conversion policies, or policies under Title XVIII of the Social Security Act, or any other similar coverage under a state or federal government plan.

7. A provision shall be made available to policyholders, under group policies covering hospital, medical, or surgical expenses, for payment of covered services determined to be medically necessary provided by registered nurses certified by a national certifying organization, which organization shall be identified by the Iowa board of nursing pursuant to rules adopted by the board, if the services are

within the practice of the profession of a registered nurse as that practice is defined in section 152.1, under terms and conditions agreed upon between the insurer and the policyholder, subject to utilization controls. This subsection shall not require payment for nursing services provided by a certified nurse practicing in a hospital, nursing facility, health care institution, physician's office, or other noninstitutional setting if the certified nurse is an employee of the hospital, nursing facility, health care institution, physician, or other health care facility or health care provider. This subsection applies to group policies delivered or issued for delivery in this state on or after July 1, 1989, and to existing group policies on their next anniversary or renewal dates, or upon expiration of the applicable collective bargaining contract, if any, whichever is later. This subsection does not apply to blanket, short-term travel, accident only, limited or specified disease, or individual or group conversion policies, policies rated on a community basis, or policies designed only for issuance to persons for eligible coverage under Title XVIII of the federal Social Security Act, or any other similar coverage under a state or federal government plan.

In addition to the provisions required in subsections 1 through 8, the commissioner shall require provisions through the adoption of rules implementing the federal Health Insurance Portability and Accountability Act, Pub. L. No. 104-191.

99 Acts, ch 75, §2
Subsection 6 stricken and former subsections 7 and 8 renumbered as 6 and 7

CHAPTER 509A

GROUP INSURANCE FOR PUBLIC EMPLOYEES

509A.1 Authority of governing body.

The governing body of the state, school district, or any institution supported in whole or in part by public funds may establish plans for and procure group insurance, health or medical service, or health flexible spending accounts* as described in section 125 of the Internal Revenue Code of 1986 for the employees of the state, school district, or tax-supported institution.

99 Acts, ch 200, §20

*"State employee health flexible spending accounts" probably intended; corrective legislation is pending
Section amended

509A.13A Continuation of group insurance covering spouses.

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

a. "Eligible retired state employee" means a former employee of the government of the state of Iowa, including but not limited to any departments, agencies, boards, bureaus, or commissions

of the state of Iowa, who is receiving the minimum level of retirement benefits for eligibility under this section and who is participating in a state health or medical group insurance plan which covers the former employee and the former employee's spouse at the time of the death of the former employee.

b. "Minimum level of retirement benefits for eligibility under this section" means any of the following:

(1) The eligible retired state employee has received retirement benefits under the retirement system established in chapter 97A based upon the completion of at least twenty-two years of membership service.

(2) The eligible retired state employee has received retirement benefits under the retirement system established in chapter 97B.

(3) The eligible retired state employee has received retirement benefits under the retirement system established in chapter 602, article 9.

c. “State health or medical group insurance plan” means a health or medical group insurance plan for employees of the state.

2. Notwithstanding any provision of law to the contrary, in the event of the death of an eligible retired state employee, the surviving spouse of the eligible retired state employee whose insurance would otherwise terminate because of the death of the eligible retired state employee may elect to continue to be a member of the state health or medical

group insurance plan by requesting continuation in writing to the department of personnel within thirty-one days after the death of the eligible retired state employee. The surviving spouse shall pay the total premium for the state health or medical group insurance plan and shall have the same rights to change programs or coverage as state employees.

99 Acts, ch 200, §21
 Subsection 1, paragraph b, subparagraph (3) amended

CHAPTER 511

PROVISIONS APPLICABLE TO LIFE INSURANCE COMPANIES AND ASSOCIATIONS

511.28 Service of process.

Any notice or process, with three copies of the notice or process, may be mailed to the commissioner at Des Moines, Iowa, in a certified mail letter addressed to the commissioner by the commissioner’s official title. The commissioner shall acknowledge service on behalf of the defendant foreign insurance company by writing, giving the date of receipt of the notice or process, and shall return the notice or process in a certified mail letter to the clerk of the court in which the suit is pending, addressed to the clerk by the clerk’s official title, and shall also

mail a copy, with a copy of the commissioner’s acknowledgment of service written thereon, in a certified mail letter addressed to the person or corporation named or designated by such company in the written instrument. Notice or process received prior to 10 a.m. shall be forwarded the same working day. Notice or process received after 10 a.m. shall be forwarded the next working day. A fee of fifteen dollars must accompany the request for notice or process.

99 Acts, ch 165, §7
 Section amended

CHAPTER 513B

SMALL GROUP HEALTH COVERAGE

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 insurance coverages 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 assess-

ments 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 insurance coverages 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 indebtedness 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 health insurance coverage.

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 a 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 insurance coverages 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 health insurance coverage 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 insurance coverages 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 insurance coverages delivered or issued for delivery during such calendar year to small employers in this state by reinsuring carriers.

(2) The formula established pursuant to subparagraph (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 insurance coverages 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 insurance coverages 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 insurance coverages and to premiums from newly issued health insurance coverages 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 insurance coverages delivered or issued for delivery to small employers in this state by reinsuring carriers.

(4) If assessments in each of two consecutive calendar 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.

15. The board of the Iowa small employer health reinsurance program, on an ongoing basis, shall review the program and make recommendations as to the continued cost effectiveness of the program to the commissioner, which recommendations may include proposed modifications or suspension of operation of the program. In making such a review, the board shall consider such factors as the population reinsured by the program, the premiums and assessments paid to the program, the number and percentage of carriers electing to utilize the program, health care reform measures implemented in the state, as well as other factors deemed relevant by the board. The commissioner, upon finding that the program is not cost effective, may make modifications to the program or suspend the operation of the program by rule.

CHAPTER 513C

INDIVIDUAL HEALTH INSURANCE MARKET REFORM

513C.7 Availability of coverage.

1. A carrier or an organized delivery system, as a condition of issuing individual health benefit plans in this state, shall make available a basic or standard health benefit plan to an eligible individual who applies for a plan and agrees to make the required premium payments and to satisfy other reasonable provisions of the basic or standard health benefit plan. A carrier or an organized delivery system is not required to issue a basic or standard health benefit plan to an individual who meets any of the following criteria:

a. The individual is covered or is eligible for coverage under a health benefit plan provided by the individual's employer or is covered as the spouse or dependent of another individual covered or eligible for coverage under a health benefit plan provided by that individual's employer.

b. An eligible individual who does not apply for a basic or standard health benefit plan within sixty-three days of a qualifying event or within sixty-three days upon becoming ineligible for qualifying existing coverage.

c. The individual is covered or is eligible for any continued group coverage under section 4980b of the Internal Revenue Code, sections 601 through 608 of the federal Employee Retirement Income Security Act of 1974, sections 2201 through 2208 of the federal Public Health Service Act, or any state-required continued group coverage. For purposes of this subsection, an individual who would have been eligible for such continuation of coverage, but is not eligible solely because the individual or other responsible party failed to make the required coverage election during the applicable time period, is deemed to be eligible for such group coverage until the date on which the individual's continuing group coverage would have expired had an election been made.

2. A carrier or an organized delivery system shall issue the basic or standard health benefit plan to an individual currently covered by an underwritten benefit plan issued by that carrier or an organized delivery system at the option of the individual. This option must be exercised within sixty-three days of notification of a premium rate increase applicable to the underwritten benefit plan.

3. *a.* A carrier shall file with the commissioner, in a form and manner prescribed by the commissioner, the basic or standard health benefit plan. A basic or standard health benefit plan filed pursuant to this paragraph may be used by a carrier beginning thirty days after it is filed unless the commissioner disapproves of its use.

The commissioner may at any time, after providing notice and an opportunity for a hearing to the

carrier, disapprove the continued use by a carrier of a basic or standard health benefit plan on the grounds that the plan does not meet the requirements of this chapter.

b. An organized delivery system shall file with the director, in a form and manner prescribed by the director, the basic or standard health benefit plan to be used by the organized delivery system. A basic or standard health benefit plan filed pursuant to this paragraph may be used by the organized delivery system beginning thirty days after it is filed unless the director disapproves of its use.

The director may at any time, after providing notice and an opportunity for a hearing to the organized delivery system, disapprove the continued use by an organized delivery system of a basic or standard health benefit plan on the grounds that the plan does not meet the requirements of this chapter.

4. *a.* The individual basic or standard health benefit 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 preexisting condition shall not be defined more restrictively than any of the following:

(1) A condition that would cause an ordinarily prudent person to seek medical advice, diagnosis, care, or treatment during the twelve 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 twelve months immediately preceding the effective date of coverage.

(3) A pregnancy existing on the effective date of coverage.

b. A carrier or an organized delivery system shall waive any time period applicable to a preexisting condition exclusion or limitation period with respect to particular services in an individual health benefit plan for the period of time an individual was previously covered by qualifying previous coverage that provided benefits with respect to such services, provided that the qualifying previous coverage was continuous to a date not more than sixty-three days prior to the effective date of the new coverage. For purposes of this section, periods of coverage under medical assistance provided pursuant to chapter 249A or Medicare coverage provided pursuant to Title XVIII of the federal Social Security Act shall not be counted with respect to the sixty-three day requirement.

5. A carrier or an organized delivery system is not required to offer coverage or accept applications pursuant to subsection 1 from any individual

not residing in the carrier's or the organized delivery system's established geographic access area.

6. A carrier or an organized delivery system shall not modify a basic or standard health benefit plan with respect to an individual 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.

99 Acts, ch 165, §9, 10
 Subsection 1, paragraph a amended
 Subsection 4, paragraph b amended

CHAPTER 514

NONPROFIT HEALTH SERVICE CORPORATIONS

514.7 Contracts — approval by commissioner — provisions to be available.

The contracts by any such corporation with the subscribers for health care service shall at all times be subject to the approval of the commissioner of insurance. The commission shall require that participating pharmacies be reimbursed by the pharmaceutical service corporation at rates or prices equal to rates or prices charged nonsubscribers, unless the commissioner determines otherwise to prevent loss to subscribers.

A provision shall be available in approved contracts with hospital and medical service corporate subscribers under group subscriber contracts or plans covering vision care services or procedures, for payment of necessary medical or surgical care and treatment provided by an optometrist licensed under chapter 154, if the care and treatment are provided within the scope of the optometrist's license and if the subscriber contract would pay for the care and treatment if it were provided by a person engaged in the practice of medicine or surgery as licensed under chapter 148 or 150A. The subscriber contract shall also provide that the subscriber may reject the coverage or provision if the coverage or provision for services which may be provided by an optometrist is rejected for all providers of similar vision care services as licensed under chapter 148, 150A, or 154. This paragraph applies to group subscriber contracts delivered after July 1, 1983, and to group subscriber contracts on their anniversary or renewal date, or upon the expiration of the applicable collective bargaining contract, if any, whichever is the later. This paragraph does not apply to contracts designed only for issuance to subscribers eligible for coverage under Title XVIII of the Social Security Act, or any other similar coverage under a state or federal government plan.

A provision shall be made available in approved contracts with hospital and medical subscribers under group subscriber contracts or plans covering diagnosis and treatment of human ailments, for payment or reimbursement for necessary diagnosis or treatment provided by a chiropractor licensed under chapter 151 if the diagnosis or treatment is provided within the scope of the chiropractor's license and if the subscriber contract

would pay or reimburse for the diagnosis or treatment of the human ailment, irrespective of and disregarding variances in terminology employed by the various licensed professions in describing the human ailment or their diagnosis or treatment, if it were provided by a person licensed under chapter 148, 150, or 150A. The subscriber contract shall also provide that the subscriber may reject the coverage or provision if the coverage or provision for diagnosis or treatment of a human ailment by a chiropractor is rejected for all providers of diagnosis or treatment for similar human ailments licensed under chapter 148, 150, 150A or 151. A group subscriber contract may limit or make optional the payment or reimbursement for lawful diagnostic or treatment service by all licensees under chapters 148, 150, 150A, and 151 on any rational basis which is not solely related to the license under or the practices authorized by chapter 151 or is not dependent upon a method of classification, categorization, or description based upon differences in terminology used by different licensees in describing human ailments or their diagnosis or treatment. This paragraph applies to group subscriber contracts delivered after July 1, 1986, and to group subscriber contracts on their anniversary or renewal date, or upon the expiration of the applicable collective bargaining contract, if any, whichever is the later. This paragraph does not apply to contracts designed only for issuance to subscribers eligible for coverage under Title XVIII of the Social Security Act, or any other similar coverage under a state or federal government plan.

A provision shall be available in approved contracts with hospital and medical service corporate subscribers under group subscriber contracts or plans covering medical and surgical service, for payment of covered services determined to be medically necessary provided by certified registered nurses certified by a national certifying organization, which organization shall be identified by the Iowa board of nursing pursuant to rules adopted by the board, if the services are within the practice of the profession of a registered nurse as that practice is defined in section 152.1, under terms and conditions agreed upon between the corporation and subscriber group, subject to utilization controls. This paragraph shall not require payment for nurs-

ing services provided by a certified registered nurse practicing in a hospital, nursing facility, health care institution, a physician's office, or other noninstitutional setting if the certified registered nurse is an employee of the hospital, nursing facility, health care institution, physician, or other health care facility or health care provider. This paragraph applies to group subscriber contracts delivered in this state on or after July 1, 1989, and to group subscriber contracts on their anniversary or renewal date, or upon the expiration of the applicable collective bargaining contract, if any, whichever is the later. This paragraph does not apply to limited or specified disease or individual contracts or contracts designed only for issuance to subscribers eligible for coverage under Title XVIII of the federal Social Security Act, contracts which are rated on a community basis, or any other similar coverage under a state or federal government plan.

99 Acts, ch 75, §3

Unnumbered paragraph 3 stricken

514.21 Utilization review program.

A utilization review program shall be established for purposes of health care cost control, according to usual and customary third-party insurance payment or reimbursement procedures, by a corporation subject to this chapter and by physician providers as defined in section 135.1 and registered nurse providers licensed under chapter 152. This utilization review program shall not be used directly or indirectly to circumvent the provisions for payment or reimbursement to providers of health care services as provided in section 509.3, subsections 6 and 7, and section 514.7.

Section not amended; internal reference changes applied

514.23 Mutualization plan.

1. A corporation organized and governed by this chapter may become a mutual insurer under a

plan which is approved by the commissioner of insurance. The plan shall state whether the insurer will be organized as a for-profit corporation pursuant to chapter 490 or 491 or a nonprofit corporation pursuant to chapter 504A. Upon consummation of the plan, the corporation shall fully comply with the requirements of the law that apply to a mutual insurance company. If the insurer is to be organized under chapter 504A, then at least seventy-five percent of the initial board of directors of the mutual insurer so formed shall be policyholders who are also nonproviders of health care. All directors comprising this initial board of directors shall be selected by an independent committee appointed by the state commissioner of insurance. This independent committee shall consist of seven to eleven persons who are current policyholders, who are nonproviders of health care, and who are not directors of a corporation subject to this chapter. For purposes of this subsection, a "nonprovider of health care" is an individual who is not any of the following:

a. A "provider" as defined in section 514B.1, subsection 7.

b. A person who has material financial or fiduciary interest in the delivery of health care services or a related industry.

c. An employee of an institution which provides health care services.

d. A spouse or a member of the immediate family of a person described in paragraphs "a" through "c".

2. A corporation organized and governed by this chapter which becomes a mutual insurer under this section shall continue as a mutual insurer to be governed by the provisions of section 514.7 and shall also be governed by section 509.3, subsection 6.

Section not amended; internal reference change applied

CHAPTER 514B

HEALTH MAINTENANCE ORGANIZATIONS

514B.1 Definitions — services required or available.

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

1. "Basic health care services" means services which an enrollee might reasonably require in order to be maintained in good health, including as a minimum, emergency care, inpatient hospital and physician care, and outpatient medical services rendered within or outside of a hospital.

2. "Commissioner" means the commissioner of insurance.

3. "Enrollee" means an individual who is enrolled in a health maintenance organization.

4. "Evidence of coverage" means any certificate, agreement or contract issued to an enrollee setting out the coverage to which the enrollee is entitled.

5. a. "Health care services" means services included in the furnishing to any individual of medical or dental care, or hospitalization, or incident to the furnishing of such care or hospitalization, as well as the furnishing to any person of all other services for the purposes of preventing, alleviating, curing, or healing human illness, injury, or physical disability.

b. The health care services available to enrollees under prepaid group plans covering vision care

services or procedures, shall include a provision for payment of necessary medical or surgical care and treatment provided by an optometrist licensed under chapter 154, if performed within the scope of the optometrist's license, and the plan would pay for the care and treatment when the care and treatment were provided by a person engaged in the practice of medicine or surgery as licensed under chapter 148 or 150A. The plan shall provide that the plan enrollees may reject the coverage for services which may be provided by an optometrist if the coverage is rejected for all providers of similar vision care services as licensed under chapter 148, 150A, or 154. This paragraph applies to services provided under plans made after July 1, 1983, and to existing group plans on their next anniversary or renewal date, or upon the expiration of the applicable collective bargaining contract, if any, whichever is the later. This paragraph does not apply to enrollees eligible for coverage under Title XVIII of the Social Security Act or any other similar coverage under a state or federal government plan.

c. The health care services available to enrollees under prepaid group plans covering diagnosis and treatment of human ailments, shall include a provision for payment of necessary diagnosis or treatment provided by a chiropractor licensed under chapter 151 if the diagnosis or treatment is provided within the scope of the chiropractor's license and if the plan would pay or reimburse for the diagnosis or treatment of human ailment, irrespective of and disregarding variances in terminology employed by the various licensed professions in describing the human ailment or its diagnosis or its treatment, if it were provided by a person licensed under chapter 148, 150, or 150A. The plan shall also provide that the plan enrollees may reject the coverage for diagnosis or treatment of a human ailment by a chiropractor if the coverage is rejected for all providers of diagnosis or treatment for similar human ailments licensed under chapter 148, 150, 150A, or 151. A prepaid group plan of health care services may limit or make optional the payment or reimbursement for lawful diagnostic or treatment service by all licensees under chapters 148, 150, 150A, and 151 on any rational basis which is not solely related to the license under or the practices authorized by chapter 151 or is not dependent upon a method of classification, categorization, or description based upon differences in terminology used by different licensees in describing human ailments or their diagnosis or treatment. This paragraph applies to services provided under plans made after July 1, 1986, and to existing group plans on their next anniversary or renewal date, or upon the expiration of the applicable collective bargaining contract, if any, whichever is the later. This paragraph does not apply to enrollees eligible for coverage under Title XVIII of the Social Security Act, or any other similar coverage under a state or federal government plan.

d. The health care services available to enrollees under prepaid group plans covering hospital, medical, or surgical expenses, may include, at the option of the employer purchaser, a provision for payment of covered services determined to be medically necessary provided by a certified registered nurse certified by a national certifying organization, which organization shall be identified by the Iowa board of nursing pursuant to rules adopted by the board, if the services are within the practice of the profession of a registered nurse as that practice is defined in section 152.1, under terms and conditions agreed upon between the employer purchaser and the health maintenance organization, subject to utilization controls. This paragraph shall not require payment for nursing services provided by a certified registered nurse practicing in a hospital, nursing facility, health care institution, a physician's office, or other noninstitutional setting if the certified registered nurse is an employee of the hospital, nursing facility, health care institution, physician, or other health care facility or health care provider. This paragraph applies to services provided under plans within this state made on or after July 1, 1989, and to existing group plans on their next anniversary or renewal date, or upon the expiration of the applicable collective bargaining contract, if any, whichever is later. This paragraph does not apply to enrollees eligible for coverage under an individual contract or coverage designed only for issuance to enrollees eligible for coverage under Title XVIII of the federal Social Security Act, or under coverage which is rated on a community basis, or any other similar coverage under a state or federal government plan.

6. "Health maintenance organization" means any person, who:

a. Provides either directly or through arrangements with others, health care services to enrollees on a fixed prepayment basis;

b. Provides either directly or through arrangements with other persons for basic health care services; and,

c. Is responsible for the availability, accessibility and quality of the health care services provided or arranged.

7. "Provider" means any physician, hospital, or person as defined in chapter 4 which is licensed or otherwise authorized in this state to furnish health care services.

99 Acts, ch 75, §4
Subsection 5, paragraph c stricken and former paragraphs d and e relettered as c and d

514B.4 Applicant for certificate of authority.

The commissioner shall determine whether the applicant for a certificate of authority, with respect to health care services to be furnished:

1. Has demonstrated the willingness and potential ability to assure the availability, accessibil-

ity, and continuity of service through adequate personnel and facilities.

2. Has arrangements established in accordance with rules adopted by the commissioner for a continuous review of health care processes and outcomes. If a health maintenance organization is accredited by the national committee on quality assurance, or another accreditation entity approved by the commissioner, an external peer review under rules of the commissioner shall not be applicable. However, at the discretion of the commissioner, an on-site inspection of the health maintenance organization may be conducted.

3. Has a procedure established in accordance

with rules adopted by the commissioner to develop, compile, evaluate, and report statistics relating to the cost of its operations, the pattern of utilization of its services, the availability and accessibility of its services, and other matters as may be reasonably required by the commissioner.

The commissioner, in administering this section and sections 514B.25 and 514B.26, may contract with qualified persons to make recommendations concerning the determinations required to be made by the commissioner. Such recommendations may be accepted in full or in part by the commissioner.

99 Acts, ch 165, §11
Subsection 2 amended

CHAPTER 514C

SPECIAL HEALTH AND ACCIDENT INSURANCE COVERAGES

514C.14 Continuity of care — pregnancy.

1. Except as provided under subsection 2 or 3, a carrier, as defined in section 513B.2, an organized delivery system authorized under 1993 Iowa Acts, chapter 158, or a plan established pursuant to chapter 509A for public employees, which terminates its contract with a participating health care provider, shall continue to provide coverage under the contract to a covered person in the second or third trimester of pregnancy for continued care from such health care provider. Such persons may continue to receive such treatment or care through postpartum care related to the child birth and delivery. Payment for covered benefits and benefit levels shall be according to the terms and conditions of the contract.

2. A covered person who makes an involuntary change in health plans may request that the new health plan cover the services of the covered person's physician specialist who is not a participating health care provider under the new health plan, if the covered person is in the second or third trimester of pregnancy. Continuation of such coverage shall continue through postpartum care related to the child birth and delivery. Payment for covered benefits and benefit levels shall be according to the terms and conditions of the new health plan contract.

3. A carrier, organized delivery system, or plan established under chapter 509A, which terminates the contract of a participating health care provider for cause shall not be liable to pay for health care services provided by the health care provider to a covered person following the date of termination.

99 Acts, ch 41, §1
NEW section

514C.15 Treatment options.

A carrier, as defined in section 513B.2; an organized delivery system authorized under 1993 Iowa

Acts, chapter 158, and licensed by the director of public health; or a plan established pursuant to chapter 509A for public employees, shall not prohibit a participating provider from, or penalize a participating provider for, doing either of the following:

1. Discussing treatment options with a covered individual, notwithstanding the carrier's, organized delivery system's, or plan's position on such treatment option.

2. Advocating on behalf of a covered individual within a review or grievance process established by the carrier, organized delivery system, or chapter 509A plan, or established by a person contracting with the carrier, organized delivery system, or chapter 509A plan.

99 Acts, ch 41, §2
NEW section

514C.16 Emergency room services.

1. A carrier, as defined in section 513B.2; an organized delivery system authorized under 1993 Iowa Acts, chapter 158, and licensed by the director of public health; or a plan established pursuant to chapter 509A for public employees, which provides coverage for emergency services, is responsible for charges for emergency services provided to a covered individual, including services furnished outside any contractual provider network or preferred provider network. Coverage for emergency services is subject to the terms and conditions of the health benefit plan or contract.

2. Prior authorization for emergency services shall not be required. All services necessary to evaluate and stabilize an emergency medical condition shall be considered covered emergency services.

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

a. "Emergency medical condition" means a medical condition that manifests itself by symp-

toms of sufficient severity, including but not limited to severe pain, that an ordinarily prudent person, possessing average knowledge of medicine and health, could reasonably expect the absence of immediate medical attention to result in one of the following:

(1) Placing the health of the individual, or with respect to a pregnant woman, the health of the woman or her unborn child, in serious jeopardy.

(2) Serious impairment to bodily function.

(3) Serious dysfunction of a bodily organ or part.

b. “*Emergency services*” means covered inpatient and outpatient health care services that are furnished by a health care provider who is qualified to provide the services that are needed to evaluate or stabilize an emergency medical condition.

99 Acts, ch 41, §3
NEW section

514C.17 Continuity of care — terminal illness.

1. Except as provided under subsection 2 or 3, if a carrier, as defined in section 513B.2, an organized delivery system authorized under 1993 Iowa Acts, chapter 158, or a plan established pursuant to chapter 509A for public employees, terminates its contract with a participating health care provider, a covered individual who is undergoing a specified course of treatment for a terminal illness or a related condition, with the recommendation of the covered individual’s treating physician licensed under chapter 148, 150, or 150A, may continue to receive coverage for treatment received from the covered individual’s physician for the terminal illness or a related condition, for a period of up to ninety days. Payment for covered benefits and benefit levels shall be according to the terms and conditions of the contract.

2. A covered person who makes a change in health plans involuntarily may request that the new health plan cover services of the covered person’s treating physician licensed under chapter 148, 150, or 150A, who is not a participating health care provider under the new health plan, if the covered person is undergoing a specified course of treatment for a terminal illness or a related condition. Continuation of such coverage shall continue for up to ninety days. Payment for covered benefits and benefit levels shall be according to the terms and conditions of the contract.

3. Notwithstanding subsections 1 and 2, a carrier, organized delivery system, or plan established under chapter 509A which terminates the contract of a participating health care provider for cause shall not be required to cover health care services provided by the health care provider to a covered person following the date of termination.

99 Acts, ch 41, §4
NEW section

514C.18 Diabetes coverage.

1. Notwithstanding the uniformity of treatment requirements of section 514C.6, a policy or contract providing for third-party payment or prepayment of health or medical expenses shall provide coverage benefits for the cost associated with equipment, supplies, and self-management training and education for the treatment of all types of diabetes mellitus when prescribed by a physician licensed under chapter 148, 150, or 150A. Coverage benefits shall include coverage for the cost associated with all of the following:

a. Blood glucose meter and glucose strips for home monitoring.

b. Payment for diabetes self-management training and education only under all of the following conditions:

(1) The physician managing the individual’s diabetic condition certifies that such services are needed under a comprehensive plan of care related to the individual’s diabetic condition to ensure therapy compliance or to provide the individual with necessary skills and knowledge to participate in the management of the individual’s condition.

(2) The diabetic self-management training and education program is certified by the Iowa department of public health. The department shall consult with the American diabetes association, Iowa affiliate, in developing the standards for certification of diabetes education programs as follows:

(*a.*) Initial training shall cover up to ten hours of initial outpatient diabetes self-management training within a continuous twelve-month period for each individual that meets any of the following conditions:

(*i.*) A new onset of diabetes.

(*ii.*) Poor glycemic control as evidenced by a glycosylated hemoglobin of nine and five-tenths or more in the ninety days before attending the training.

(*iii.*) A change in treatment regimen from no diabetes medications to any diabetes medication, or from oral diabetes medication to insulin.

(*iv.*) High risk for complications based on poor glycemic control; documented acute episodes of severe hypoglycemia or acute severe hyperglycemia occurring in the past year during which the individual needed third-party assistance for either emergency room visits or hospitalization.

(*v.*) High risk based on documented complications of a lack of feeling in the foot or other foot complications such as foot ulcer or amputation, proliferative or proliferative retinopathy or prior laser treatment of the eye, or kidney complications related to diabetes, such as macroalbuminuria or elevated creatinine.

(*b.*) An individual who receives the initial training shall be eligible for a single follow-up training session of up to one hour each year.

2. *a.* This section applies to the following classes of third-party payment provider contracts or policies delivered, issued for delivery, continued, or renewed in this state on or after July 1, 1999:

(1) Individual or group accident and sickness insurance providing coverage on an expense-incurred basis.

(2) An individual or group hospital or medical service contract issued pursuant to chapter 509, 514, or 514A.

(3) An individual or group health maintenance organization contract regulated under chapter 514B.

(4) Any other entity engaged in the business of insurance, risk transfer, or risk retention, which is subject to the jurisdiction of the commissioner.

(5) A plan established pursuant to chapter 509A for public employees.

(6) An organized delivery system licensed by the director of public health.

b. This section shall not apply to accident only, specified disease, short-term hospital or medical, hospital confinement indemnity, credit, dental, vision, Medicare supplement, long-term care, basic hospital and medical-surgical expense coverage as defined by the commissioner, disability income insurance coverage, coverage issued as a supplement to liability insurance, workers' compensation or similar insurance, or automobile medical payment insurance.

99 Acts, ch 75, §1; 99 Acts, ch 208, §58
NEW section

CHAPTER 514F

UTILIZATION AND COST CONTROL

514F4 Utilization review requirements.

1. A third-party payor which provides health benefits to a covered individual residing in this state shall not conduct utilization review, either directly or indirectly, under a contract with a third-party who does not meet the requirements established for accreditation by the utilization review accreditation commission, national committee on quality assurance, or another national accreditation entity recognized and approved by the commissioner.

2. This section does not apply to any utilization review performed solely under contract with the federal government for review of patients eligible for services under any of the following:

a. Title XVIII of the federal Social Security Act.

b. The civilian health and medical program of the uniformed services.

c. Any other federal employee health benefit plan.

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

a. "Third-party payor" means:

(1) An insurer subject to chapter 509 or 514A.

(2) A health service corporation subject to chapter 514.

(3) A health maintenance organization subject to chapter 514B.

(4) A preferred provider arrangement.

(5) A multiple employer welfare arrangement.

(6) A third-party administrator.

(7) A fraternal benefit society.

(8) A plan established pursuant to chapter 509A for public employees.

(9) Any other benefit program providing payment, reimbursement, or indemnification for health care costs for an enrollee or an enrollee's eligible dependents.

b. "Utilization review" means a program or process by which an evaluation is made of the necessity, appropriateness, and efficiency of the use of health care services, procedures, or facilities given or proposed to be given to an individual within this state. Such evaluation does not apply to requests by an individual or provider for a clarification, guarantee, or statement of an individual's health insurance coverage or benefits provided under a health insurance policy, nor to claims adjudication. Unless it is specifically stated, verification of benefits, preauthorization, or a prospective or concurrent utilization review program or process shall not be construed as a guarantee or statement of insurance coverage or benefits for any individual under a health insurance policy.

99 Acts, ch 41, §5
NEW section

514F5 Experimental treatment review.

1. A carrier, as defined in section 513B.2, an organized delivery system authorized under 1993 Iowa Acts, chapter 158, or a plan established pursuant to chapter 509A for public employees, that limits coverage for experimental medical treatment, drugs, or devices, shall develop and implement a procedure to evaluate experimental medical treatments and shall submit a description of the procedure to the division of insurance. The procedure shall be in writing and must describe the process used to determine whether the carrier, organized delivery system, or chapter 509A plan will provide coverage for new medical technologies and new uses of existing technologies. The procedure, at a minimum, shall require a review of information from appropriate government regulatory agencies and published scientific literature concerning new medical technologies, new uses of ex-

isting technologies, and the use of external experts in making decisions. A carrier, organized delivery system, or chapter 509A plan shall include appropriately licensed or qualified professionals in the evaluation process. The procedure shall provide a process for a person covered under a plan or contract to request a review of a denial of coverage because the proposed treatment is experimental. A

review of a particular treatment need not be reviewed more than once a year.

2. A carrier, organized delivery system, or chapter 509A plan that limits coverage for experimental treatment, drugs, or devices shall clearly disclose such limitations in a contract, policy, or certificate of coverage.

99 Acts, ch 41, §6
NEW section

CHAPTER 514I

HEALTHY AND WELL KIDS IN IOWA PROGRAM

514I.5 HAWK-I board.

1. A HAWK-I board for the HAWK-I program is established. The board shall meet not less than ten times annually, for the purposes of establishing policy for, directing the department on, and adopting rules for the program. The board shall consist of seven members, including all of the following:

- a. The commissioner of insurance, or the commissioner's designee.
- b. The director of the department of education, or the director's designee.
- c. The director of public health, or the director's designee.
- d. Four public members appointed by the governor and subject to confirmation by the senate. The public members shall be members of the general public who have experience, knowledge, or expertise in the subject matter embraced within this chapter.
- e. Two members of the senate and two members of the house of representatives, serving as ex officio members. The legislative members of the board shall be appointed by the majority leader of the senate, after consultation with the president of the senate, and by the minority leader of the senate, and by the speaker of the house, after consultation with the majority leader, and by the minority leader of the house of representatives. Legislative members shall receive compensation pursuant to section 2.12.

2. A public member shall not have a conflict of interest with the administrative contractor.

3. Members appointed by the governor and legislative members of the board shall serve two-year terms. The filling of positions reserved for the public representatives, vacancies, membership terms, payment of compensation and expenses, and removal of the 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. Public members of the board are also eligible to receive compensation as provided in section 7E.6. The members shall select a chairperson on an annual basis from among the membership of the board.

4. The board shall approve any contract entered into pursuant to this chapter. All contracts entered into pursuant to this chapter shall be made available to the public.

5. The department of human services shall act as support staff to the board.

6. The board may receive and accept grants, loans, or advances of funds from any person and may receive and accept from any source contributions of money, property, labor, or any other thing of value, to be held, used, and applied for the purposes of the program.

7. The HAWK-I board shall do all of the following:

- a. Develop the criteria to be included in a request for proposals for the selection of any administrative contractor for the program.
- b. Define, in consultation with the department, the regions of the state for which plans are offered in a manner as to ensure access to services for all children participating in the program.
- c. Approve the benefit package design, review the benefit package design on a periodic basis, and make necessary changes in the benefit design to reflect the results of the periodic reviews.
- d. Develop, with the assistance of the department, an outreach plan, and provide for periodic assessment of the effectiveness of the outreach plan. The plan shall provide outreach to families of children likely to be eligible for assistance under the program, to inform them of the availability of and to assist the families in enrolling children in the program. The outreach efforts may include, but are not limited to, a comprehensive statewide media campaign, solicitation of cooperation from programs, agencies, and other persons who are likely to have contact with eligible children, including but not limited to those associated with the educational system, and the development of community plans for outreach and marketing.

e. In consultation with the clinical advisory committee, select a single, nationally recognized functional health assessment form for an initial assessment of all eligible children participating in the program, establish a baseline for comparison

purposes, and develop appropriate indicators to measure the health status of eligible children participating in the program.

f. Review, in consultation with the department, and take necessary steps to improve interaction between the program and other public and private programs which provide services to the population of eligible children. The board, in consultation with the department, shall also develop and implement a plan to improve the medical assistance program in coordination with the HAWK-I program, including but not limited to a provision to coordinate eligibility between the medical assistance program and the HAWK-I program, and to provide for common processes and procedures under both programs to reduce duplication and bureaucracy.

g. By January 1, annually, prepare, with the assistance of the department, and submit a report to the governor, the general assembly, and the council on human services, concerning the board's activities, findings, and recommendations.

h. Solicit input from the public regarding the program and related issues and services.

i. Perform periodic random reviews of enrollee applications to assure compliance with program eligibility and enrollment policies. Quality assurance reports shall be made based upon the data maintained by the administrative contractor.

j. Establish and consult with a clinical advisory committee to make recommendations to the board regarding the clinical aspects of the HAWK-I program.

k. Prescribe the elements to be included in a health improvement program plan required to be developed by a participating insurer. The elements shall include but are not limited to health maintenance and prevention and health risk assessment.

l. Establish an advisory committee to make recommendations to the board and to the general assembly on or before January 1, 1999, concerning the provision of health insurance coverage to children with special health care needs under the program. The committee shall include individuals with experience in, knowledge of, or expertise in this area. The recommendations shall address, but are not limited to, all of the following:

(1) The definition of the target population of children with special health care needs for the purposes of determining eligibility under the program.

(2) Eligibility options for and assessment of children with special health care needs for eligibility.

(3) Benefit options for children with special health care needs.

(4) Options for enrollment of children with special health care needs in and disenrollment of children with special health care needs from qualified child health plans utilizing a capitated fee form of payment.

(5) The appropriateness and quality of care for children with special health care needs.

(6) The coordination of health services provided for children with special health care needs under the program with services provided by other publicly funded programs.

8. The HAWK-I board, in consultation with the department of human services, shall adopt rules which address, but are not limited to addressing, all of the following:

a. Implementation and administration of the program.

b. The program application form. The form shall include a request for information regarding other health insurance coverage for each child.

c. Criteria for the selection of an administrative contractor for the program.

d. Qualifying standards for selecting participating insurers for the program.

e. The benefits to be included in a qualified child health plan which are those included in a benchmark or benchmark equivalent plan and which comply with Title XXI of the federal Social Security Act. Benefits covered shall include but are not limited to all of the following:

(1) Inpatient hospital services including medical, surgical, intensive care unit, mental health, and substance abuse services.

(2) Nursing care services including skilled nursing facility services.

(3) Outpatient hospital services including emergency room, surgery, lab, and x-ray services and other services.

(4) Physician services, including surgical and medical, and including office visits, newborn care, well-baby and well-child care, immunizations, urgent care, specialist care, allergy testing and treatment, mental health visits, and substance abuse visits.

(5) Ambulance services.

(6) Physical therapy.

(7) Speech therapy.

(8) Durable medical equipment.

(9) Home health care.

(10) Hospice services.

(11) Prescription drugs.

(12) Dental services including preventive services.

(13) Medically necessary hearing services.

(14) Vision services including corrective lenses.

f. Standards for program eligibility. The standards shall not discriminate on the basis of diagnosis. Within a defined group of covered eligible children, the standards shall not cover children of higher income families without covering children of families with lower incomes. The standards shall not deny eligibility based on a child having a preexisting medical condition.

g. Presumptive eligibility criteria for the program.

h. The amount of any cost sharing under the program which shall be assessed on a sliding fee scale based on family income, which provides for a minimum amount of cost sharing, and which complies with federal law.

i. The reasons for disenrollment including, but not limited to, nonpayment of premiums, eligibility for medical assistance or other insurance coverage, admission to a public institution, relocation from the area, and change in income.

j. Conflict of interest provisions applicable to the administrative contractor and participating insurers, and between public members of the board and the administrative contractor and participating insurers.

k. Penalties for breach of contract or other violations of requirements or provisions under the program.

l. A mechanism for participating insurers to report any rebates received to the department.

m. The reasons allowed for approval of an application in cases in which prior employer-sponsored coverage ended less than six months prior to the determination of eligibility for the HAWK-I program. The reasons established by rule shall include, but are not limited to, all of the following:

(1) Loss of employment due to factors other than voluntary termination.

(2) Death of a parent.

(3) Change in employment to a new employer that does not provide an option for dependent coverage.

(4) Change of address so that no employer-sponsored coverage is available.

(5) Discontinuation of health benefits to all employees of the applicant's employer.

(6) Expiration of the coverage periods established by the federal Consolidated Omnibus Budget Reconciliation Act of 1986, Pub. L. No. 99-272, as amended.

(7) Self-employment.

(8) Termination of health benefits due to a long-term disability.

(9) Termination of dependent coverage due to an extreme economic hardship on the part of either the employee or the employer, as determined by rule.

(10) Substantial reduction in either lifetime medical benefits or benefit category available to an employee and dependents under an employer's health care plan.

If the board determines that the allowance of the six-month period from the time of dropping coverage to be eligible for participation in the HAWK-I program is insufficient to effectively deter applicants or employers of applicants from discontinuing employer-sponsored dependent care coverage for the purpose of participation in the HAWK-I pro-

gram, the board may adopt rules to extend the time period to a period not to exceed twelve months.

n. The data to be maintained by the administrative contractor including data to be collected for the purposes of quality assurance reports.

99 Acts, ch 208, §38
Subsection 7, paragraph d amended

514I.7 Administrative contractor.

1. An administrative contractor shall be selected by the HAWK-I board through a request for proposals process.

2. The administrative contractor shall do all of the following:

a. Determine individual eligibility for program enrollment based upon review of completed applications and supporting documentation. The administrative contractor shall not enroll a child who has group health coverage or any child who has dropped coverage in the previous six months, unless the coverage was involuntarily lost or unless the reason for dropping coverage is allowed by rule of the board.

b. Enroll qualifying children in the program with maintenance of a supporting eligibility file or database.

c. Forward names of children who appear to be eligible for medical assistance or other public health insurance coverage to local department of human services offices or other appropriate person or agency for follow up and retain the identifying data on children who are referred.

d. Monitor and assess the medical care provided through or by participating insurers as well as complaints and grievances.

e. Verify and forward to the department participating insurers' payment requests.

f. Develop and issue appropriate approval, denial, and cancellation notifications to inform applicants and enrollees of the status of the applicant's or enrollee's eligibility to participate in the program. Additionally, the administrative contractor shall process applications, including verifications and mailing of approvals and denials, within ten working days of receipt of the application, unless the application cannot be processed within this period for a reason that is beyond the control of the administrative contractor.

g. Create and maintain eligibility files that are compatible with the data system of the department including, but not limited to, data regarding beneficiaries, enrollment dates, disenrollments, and annual financial redeterminations.

h. Make program applications available through the mail and through local sites, as determined by the department, including, but not limited to, schools, local health departments, local department of human services offices, and other locations.

- i. Provide electronic access to the administrative contractor's database to the department.
- j. Provide periodic reports to the department for administrative oversight and monitoring of federal requirements.
- k. Perform annual financial reviews of eligibility for each beneficiary.
- l. Receive completed applications and verifications at a central location.
- m. Collect and track monthly family premiums to assure that payments are current.
- n. Notify each participating insurer of new program enrollees who are enrolled by the administrative contractor in that participating insurer's plan.
- o. Verify the number of program enrollees with each participating insurer for determination of the amount of premiums to be paid to each participating insurer.
- p. Maintain data for the purpose of quality assurance reports as required by rule of the board.

99 Acts, ch 208, §39
 Subsection 2, paragraph a stricken and former paragraphs b–q redesignated as a–p

514I.11 HAWK-I trust fund.

1. A HAWK-I trust fund is created in the state treasury under the authority of the department of human services, in which all appropriations and other revenues of the program such as grants, contributions, and participant payments shall be deposited and used for the purposes of the program. The moneys in the fund shall not be considered revenue of the state, but rather shall be funds of the program.

2. The trust fund shall be separate from the general fund of the state and shall not be considered part of the general fund of the state. The moneys in the trust fund are not subject to section 8.33 and shall not be transferred, used, obligated, appropriated, or otherwise encumbered, except to provide for the purposes of this chapter. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys deposited in the trust fund shall be credited to the trust fund.

99 Acts, ch 203, §52
 NEW section

CHAPTER 514J

EXTERNAL REVIEW OF HEALTH CARE COVERAGE DECISIONS

Chapter effective January 1, 2000; 99 Acts, ch 41, §22

514J.1 Legislative intent.

It is the intent of the general assembly to provide a mechanism for the appeal of a denial of coverage based on medical necessity.

99 Acts, ch 41, §7, 22
 Section effective January 1, 2000; 99 Acts, ch 41, §22
 NEW section

514J.2 Definitions.

1. “*Carrier*” means an entity subject to the insurance laws and regulations of this state, or subject to the jurisdiction of the commissioner, performing utilization review, including an insurance company offering sickness and accident plans, a health maintenance organization, a nonprofit health service corporation, a plan established pursuant to chapter 509A for public employees, or any other entity providing a plan of health insurance, health care benefits, or health care services.

2. “*Commissioner*” means the commissioner of insurance.

3. “*Coverage decision*” means a final adverse decision based on medical necessity. This definition does not include a denial of coverage for a service or treatment specifically listed in plan or evidence of coverage documents as excluded from coverage.

4. “*Enrollee*” means an individual, or an eligible dependent, who receives health care benefits coverage through a carrier or organized delivery system.

5. “*Independent review entity*” means a reviewer or entity, certified by the commissioner pursuant to section 514J.6.

6. “*Organized delivery system*” means an organized delivery system authorized under 1993 Iowa Acts, chapter 158, and licensed by the director of public health, and performing utilization review.

99 Acts, ch 41, §8, 22
 Section effective January 1, 2000; 99 Acts, ch 41, §22
 NEW section

514J.3 Exclusions.

This chapter does not apply to a hospital confinement indemnity, credit, dental, vision, long-term care, disability income insurance coverage, coverage issued as a supplement to liability insurance, workers compensation or similar insurance, or automobile medical payment insurance.

99 Acts, ch 41, §9, 22
 Section effective January 1, 2000; 99 Acts, ch 41, §22
 NEW section

514J.4 External review request — fee.

1. At the time of a coverage decision, the carrier or organized delivery system shall notify the enrollee in writing of the right to have the coverage decision reviewed under the external review process.

2. The enrollee, or the enrollee's treating health care provider acting on behalf of the enrollee, may file a written request for external review of the coverage decision with the commissioner. The

request must be filed within sixty days of the receipt of the coverage decision. However, the enrollee's treating health care provider does not have a duty to request external review.

3. The request for external review must be accompanied by a twenty-five dollar filing fee. The commissioner may waive the filing fee for good cause. The filing fee shall be refunded if the enrollee prevails in the external review process.

99 Acts, ch 41, §10, 22

Section effective January 1, 2000; 99 Acts, ch 41, §22
NEW section

514J.5 Certification of request — eligibility.

1. The commissioner shall have two business days from receipt of a request for an external review to certify the request. The commissioner shall certify the request if the following criteria are satisfied:

a. The enrollee was covered by the carrier or organized delivery system at the time the service or treatment was proposed.

b. The enrollee has been denied coverage based on a determination by the carrier or organized delivery system that the proposed service or treatment does not meet the definition of medical necessity as defined in the enrollee's evidence of coverage.

c. The enrollee, or the enrollee's treating health care provider acting on behalf of the enrollee, has exhausted all internal appeal mechanisms provided under the carrier's or the organized delivery system's contract.

d. The written request for external review was filed within sixty days of receipt of the coverage decision.

2. The commissioner shall notify the enrollee, or the enrollee's treating health care provider acting on behalf of the enrollee, and the carrier or organized delivery system in writing of the decision.

3. The carrier or organized delivery system has three business days to contest the eligibility of the request for external review with the commissioner. If the commissioner finds that the request for external review is not eligible for full review, the commissioner, within two business days, shall notify the enrollee, or the enrollee's treating health care provider acting on behalf of the enrollee, in writing of the reasons that the request for external review is not eligible for full review.

99 Acts, ch 41, §11, 22

Section effective January 1, 2000; 99 Acts, ch 41, §22
NEW section

514J.6 Independent review entities.

1. The commissioner shall solicit names of independent review entities from carriers, organized delivery systems, and medical and health care professional associations.

2. Independent review entities include, but are not limited to, the following:

a. Medical peer review organizations.

b. Nationally recognized health experts or institutions.

3. The commissioner shall certify independent review entities to conduct external reviews. An individual who conducts an external review as or as part of a certified independent review entity shall be a health care professional and satisfy both of the following requirements:

a. Hold a current unrestricted license to practice medicine or a health profession in the United States. A health care professional who is a physician shall also hold a current certification by a recognized American medical specialty board. A health care professional who is not a physician shall also hold a current certification by such professional's respective specialty board.

b. Have no history of disciplinary actions or sanctions, including, but not limited to, the loss of staff privileges or any participation restriction taken or pending by any hospital or state or federal government regulatory agency.

4. Each independent review entity shall have a quality assurance program on file with the commissioner that ensures the timeliness and quality of the reviews, the qualifications and independence of the experts, and the confidentiality of medical records and review materials.

5. The commissioner shall certify independent review entities every two years.

99 Acts, ch 41, §12, 22

Section effective January 1, 2000; 99 Acts, ch 41, §22
NEW section

514J.7 External review.

The external review process shall meet the following criteria:

1. The carrier or organized delivery system, within three business days of a receipt of an eligible request for an external review from the commissioner, shall do all of the following:

a. Select an independent review entity from the list certified by the commissioner. The independent review entity shall be an expert in the treatment of the medical condition under review. The independent review entity shall not be a subsidiary of, or owned or controlled by the carrier or organized delivery system, or owned or controlled by a trade association of carriers or organized delivery systems of which the carrier or organized delivery system is a member.

b. Notify the enrollee, and the enrollee's treating health care provider, of the name, address, and phone number of the independent review entity and of the enrollee's and treating health care provider's right to submit additional information. The enrollee, or the enrollee's treating health care provider acting on behalf of the enrollee, may object to the independent review entity selected by the carrier or organized delivery system by notifying the commissioner within three business days of the receipt of notice from the carrier or organized delivery system. The commissioner shall have two busi-

ness days from receipt of the objection to consider the reasons set forth in support of the objection, to select an independent review entity, and to provide the notice required by this subsection to the enrollee, the enrollee's treating health care provider, and the carrier or organized delivery system.

c. Provide any information submitted to the carrier or organized delivery system by the enrollee or the enrollee's treating health care provider in support of the request for coverage of a service or treatment under the carrier's or organized delivery system's appeal procedures.

d. Provide any other relevant documents used by the carrier or organized delivery system in determining whether the proposed service or treatment should have been provided.

2. The enrollee, or the enrollee's treating health care provider, may provide any information submitted in support of the internal review, and other newly discovered relevant information. The enrollee shall have ten business days from the mailing date of the final notification of the independent review entity's selection to provide this information. Failure to provide the information within ten days shall be ground for rejection of consideration of the information by the independent review entity.

3. The independent review entity shall notify the enrollee and the enrollee's treating health care provider of any additional medical information required to conduct the review within five business days of receipt of the documentation required under subsection 1. The requested information shall be submitted within five days. Failure to provide the information shall be ground for rejection of consideration of the information by the independent review entity. The carrier or organized delivery system shall be notified of this request.

4. The independent review entity shall submit its decision as soon as possible, but not more than thirty days from the independent review entity's receipt of the request for review. The decision shall be mailed to the enrollee, or the treating health care provider acting on behalf of the enrollee, and the carrier or organized delivery system.

5. The confidentiality of any medical records submitted shall be maintained pursuant to applicable state and federal laws.

99 Acts, ch 41, §13, 22

Section effective January 1, 2000; 99 Acts, ch 41, §22
NEW section

514J.8 Expedited review.

An expedited review shall be conducted within seventy-two hours of notification to the commissioner if the enrollee's treating health care provider states that delay would pose an imminent or serious threat to the enrollee.

99 Acts, ch 41, §14, 22

Section effective January 1, 2000; 99 Acts, ch 41, §22
NEW section

514J.9 Funding.

All reasonable fees and costs of the independent review entity in conducting an external review shall be paid by the carrier or organized delivery system.

99 Acts, ch 41, §15, 22

Section effective January 1, 2000; 99 Acts, ch 41, §22
NEW section

514J.10 Reporting.

Each carrier and organized delivery system shall file an annual report with the commissioner containing all of the following:

1. The number of external reviews requested.
2. The number of the external reviews certified by the commissioner.
3. The number of coverage decisions which were upheld by an independent review entity.

The commissioner shall prepare a report by January 31 of each year.

99 Acts, ch 41, §16, 22

Section effective January 1, 2000; 99 Acts, ch 41, §22
NEW section

514J.11 Immunity.

An independent review entity conducting a review under this chapter is not liable for damages arising from determinations made under the review process. This does not apply to any act or omission by the independent review entity made in bad faith or involving gross negligence.

99 Acts, ch 41, §17, 22

Section effective January 1, 2000; 99 Acts, ch 41, §22
NEW section

514J.12 Standard of review.

Review by the independent review entity is de novo. The standard of review to be used by an independent review entity shall be whether the health care service or treatment denied by the carrier or organized delivery system was medically necessary as defined by the enrollee's evidence of coverage subject to Iowa law and consistent with clinical standards of medical practice. The independent review entity shall take into consideration factors identified in the review record that impact the delivery of or describe the standard of care for the medical service or treatment under review. The medical service or treatment recommended by the enrollee's treating health care provider shall be upheld upon review so long as it is found to be medically necessary and consistent with clinical standards of medical practice.

99 Acts, ch 41, §18, 22

Section effective January 1, 2000; 99 Acts, ch 41, §22
NEW section

514J.13 Effect of external review decision.

The review decision by the independent review entity conducting the review is binding upon the carrier or organized delivery system. The enrollee or the enrollee's treating health care provider acting on behalf of the enrollee may appeal the review

decision by the independent review entity conducting the review by filing a petition for judicial review either in Polk county district court or in the district court in the county in which the enrollee resides. The petition for judicial review must be filed within fifteen business days after the issuance of the review decision. The findings of fact by the independent review entity conducting the review are conclusive and binding on appeal. The carrier or organized delivery system shall follow and comply with the review decision of the independent review entity conducting the review, or the decision of the court on appeal. The carrier or organized delivery system and the enrollee's treating health care provider shall not be subject to any penalties, sanctions, or award of damages for following and complying in good faith with the review decision of the

independent review entity conducting the review or decision of the court on appeal. The enrollee or the enrollee's treating health care provider may bring an action in Polk county district court or in the district court in the county in which the enrollee resides to enforce the review decision of the independent review entity conducting the review or the decision of the court on appeal.

99 Acts, ch 41, §19, 22

Section effective January 1, 2000; 99 Acts, ch 41, §22
NEW section

514J.14 Rules.

The commissioner shall adopt rules pursuant to chapter 17A as are necessary to administer this chapter.

99 Acts, ch 41, §20, 22

Section effective January 1, 2000; 99 Acts, ch 41, §22
NEW section

CHAPTER 514K

HEALTH CARE PLAN INFORMATION

514K.1 Health care plan disclosures — information to enrollees.

1. A health maintenance organization, an organized delivery system, or an insurer using a preferred provider arrangement shall provide to each of its enrollees at the time of enrollment, and shall make available to each prospective enrollee upon request, written information as required by rules adopted by the commissioner and the director of public health. The information required by rule shall include, but not be limited to, all of the following:

- a. A description of the plan's benefits and exclusions.
- b. Enrollee cost-sharing requirements.
- c. A list of participating providers.
- d. Disclosure of the existence of any drug formularies used and, upon request, information

about the specific drugs included in the formulary.

e. An explanation for accessing emergency care services.

f. Any policies addressing investigational or experimental treatments.

g. The methodologies used to compensate providers.

h. Performance measures as determined by the commissioner and the director.

i. Information on how to access internal and external grievance procedures.

2. The commissioner and the director shall annually publish a consumer guide providing a comparison by plan on performance measures, network composition, and other key information to enable consumers to better understand plan differences.

99 Acts, ch 41, §21
NEW section

CHAPTER 515

INSURANCE OTHER THAN LIFE

515.26 Directors.

The affairs of a company organized as provided by this chapter shall be managed by a number of directors, of not less than five nor more than twenty-one. In the case of a mutual company, all such directors shall be policyholders.

99 Acts, ch 165, §12
Section amended

515.35 Investments.

1. *General considerations.* The following considerations apply in the interpretation of this section:

a. This section applies to the investments of insurance companies other than life insurance companies.

b. The purpose of this section is to protect and further the interests of policyholders, claimants, creditors, and the public by providing standards for the development and administration of programs for the investment of the assets of companies organized under this chapter. These standards, and the investment programs developed by companies, shall take into account the safety of the company's principal, investment yield and growth, stability in the value of the investment, and liquidity necessary to meet the company's expected business needs, and investment diversification.

c. Financial terms relating to insurance companies have the meanings assigned to them under statutory accounting methods. Financial terms relating to companies other than insurance companies have the meanings assigned to them under generally accepted accounting principles.

d. Investments shall be valued in accordance with the valuation procedures established by the national association of insurance commissioners, unless the commissioner requires or finds another method of valuation reasonable under the circumstances.

e. If an investment qualifies under more than one subsection, a company may elect to hold the investment under the subsection of its choice. This section does not prevent a company from electing to hold an investment under a subsection different from the one under which it previously held the investment.

2. *Definitions.* For purposes of this section:

a. *"Admitted assets"*, for purposes of computing percentage limitations on particular types of investments, means the assets which are authorized to be shown on the national association of insurance commissioner's annual statement blank as admitted assets as of the December 31 immediately preceding the date the company acquires the investment.

b. *"Clearing corporation"* means as defined in section 554.8102.

c. *"Custodian bank"* means a bank or trust company that is supervised and examined by state or federal authority having supervision over banks and is acting as custodian for a clearing corporation.

d. *"Issuer"* means as defined in section 554.8201.

e. *"Member bank"* means a national bank, state bank, or trust company which is a member of the United States federal reserve system.

f. *"National securities exchange"* means an exchange registered under section 6 of the Securities Exchange Act of 1934 or an exchange regulated under the laws of the Dominion of Canada.

g. *"Obligations"* includes bonds, notes, debentures, transportation equipment certificates, domestic repurchase agreements, and obligations for the payment of money not in default as to payments of principal and interest on the date of in-

vestment, which constitute general obligations of the issuer or payable only out of certain revenues or certain funds pledged or otherwise dedicated for payment of principal and interest on the obligations. A lease is an obligation if the lease is assigned to the insurer and is nonterminable by the lessee upon foreclosure of any lien upon the leased property, and if rental payments are sufficient to amortize the investment over the primary lease term.

3. *Investments in name of company or nominee and prohibitions.*

a. A company's investments shall be held in its own name or the name of its nominee, except as follows:

(1) Investments may be held in the name of a clearing corporation or of a custodian bank or in the name of the nominee of either on the following conditions:

(a) The clearing corporation, custodian bank, or nominee must be legally authorized to hold the particular investment for the account of others.

(b) When the investment is evidenced by a certificate and held in the name of a custodian bank or the nominee of a custodian bank, a written agreement shall provide that certificates so deposited shall at all times be kept separate and apart from other deposits with the depository, so that at all times they may be identified as belonging solely to the company making the deposit.

(c) If a clearing corporation is to act as depository, the investment may be merged or held in bulk in the name of the clearing corporation or its nominee with other investments deposited with the clearing corporation by any other person, if a written agreement between the clearing corporation and the company provides that adequate evidence of the deposit is to be obtained and retained by the company or a custodian bank.

(2) A company may loan stocks or obligations held by it under this chapter to a broker-dealer registered under the Securities Exchange Act of 1934 or a member bank. The loan must be evidenced by a written agreement which provides all of the following:

(a) That the loan will be fully collateralized by cash, cash equivalents, or obligations issued or guaranteed by the United States or an agency or an instrumentality of the United States, and that the collateral will be adjusted as necessary each business day during the term of the loan to maintain the required collateralization in the event of market value changes in the loaned securities or collateral.

If the loan is fully collateralized by cash, the reinvestment of the cash may be made in either individual securities or a pooled fund comprised of individual securities. If such reinvestment is made in individual securities, such securities must mature in less than ninety days. If such reinvestment is made in a pooled fund, the average maturity of the

securities comprising such pooled fund must be less than ninety days. Individual securities and securities comprising the pooled fund shall be investment grade.

(b) That the loan may be terminated by the company at any time, and that the borrower will return the loaned stocks or obligations or equivalent stocks or obligations within five business days after termination.

(c) That the company has the right to retain the collateral or use the collateral to purchase investments equivalent to the loaned securities if the borrower defaults under the terms of the agreement, and that the borrower remains liable for any losses and expenses incurred by the company due to default that are not covered by the collateral.

(3) A company may participate through a member bank in the United States federal reserve book-entry system, and the records of the member bank shall at all times show that the investments are held for the company or for specific accounts of the company.

(4) An investment may consist of an individual interest in a pool of obligations or a fractional interest in a single obligation if the certificate of participation or interest or the confirmation of participation or interest in the investment is issued in the name of the company or the name of the custodian bank or the nominee of either and if the interest is evidenced by the certificate or confirmation is, if held by a custodian bank, kept separate and apart from the investments of others so that at all times the participation may be identified as belonging solely to the company making the investment.

(5) Transfers of ownership of investments held as described in paragraph "a", subparagraph (1), subparagraph subdivision (c), and subparagraphs (3) and (4) may be evidenced by bookkeeping entry on the books of the issuer of the investment, its transfer or recording agent, or the clearing corporation without physical delivery of certificate, if any, evidencing the company's investment.

b. Except as provided in paragraph "a", subparagraph (5), if an investment is not evidenced by a certificate, adequate evidence of the company's investment shall be obtained from the issuer or its transfer or recording agent and retained by the company, a custodian bank, or clearing corporation. Adequate evidence, for purposes of this paragraph, means a written receipt or other verification issued by the depository or issuer or a custodian bank which shows that the investment is held for the company.

4. *Investments.* Except as otherwise permitted by this section, a company organized under this chapter may invest in the following and no other:

a. *United States government obligations.* Obligations issued or guaranteed by the United States or an agency or instrumentality of the United States.

b. *Certain development bank obligations.* Obligations issued or guaranteed by the international bank for reconstruction and development, the Asian development bank, the inter-American development bank, the export-import bank, the world bank, or any United States government-sponsored organization of which the United States is a member, if the principal and interest is payable in United States dollars. A company shall not invest more than five percent of its total admitted assets in the obligations of any one of these banks or organizations, and shall not invest more than a total of ten percent of its total admitted assets in the obligations authorized by this paragraph.

c. *State obligations.* Obligations issued or guaranteed by a state of the United States, or a political subdivision of a state, or an instrumentality of a state or political subdivision of a state.

d. *Canadian government obligations.* Obligations issued or guaranteed by the Dominion of Canada, or by an agency or province of Canada, or by a political subdivision of a province, or by an instrumentality of any of those provinces or political subdivisions.

e. *Corporate and business trust obligations.* Obligations issued, assumed, or guaranteed by a corporation or business trust organized under the laws of the United States or a state of the United States, or the laws of Canada or a province of Canada, provided that a company shall not invest more than five percent of its admitted assets in the obligations of any one corporation or business trust.

Aggregate investments in below investment grade bonds shall not exceed five percent of assets.

f. *Stocks.* A company may invest in common stocks, common stock equivalents, mutual fund shares, securities convertible into common stocks or common stock equivalents, or preferred stocks issued or guaranteed by a corporation incorporated under the laws of the United States or a state of the United States, or the laws of Canada or a province of Canada.

(1) Stocks purchased under this section shall not exceed one hundred percent of capital and surplus. With the approval of the commissioner, a company may invest any amount in common stocks, preferred stocks, or other securities of one or more subsidiaries provided that after such investments the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(2) A company shall not invest more than ten percent of its capital and surplus in the stocks of any one corporation.

g. *Real estate mortgages.* Mortgages and other interest-bearing securities that are first liens upon real estate located within this state or any other state of the United States. However, a mortgage or other security does not qualify as an investment under this paragraph if at the date of acquisition the total indebtedness secured by the lien

exceeds seventy-five percent of the value of the property that is subject to the lien. Improvements shall not be considered in estimating value unless the owner contracts to keep them insured during the life of the loan in one or more reliable fire insurance companies authorized to transact business in this state and for a sum at least equal to the excess of the loan above seventy-five percent of the value of the ground, exclusive of improvements, and unless this insurance is payable in case of loss to the company investing its funds as its interest may appear at the time of loss. For the purpose of this section, a lien upon real estate shall not be held or construed to be other than a first lien by reason of the fact that drainage or other improvement assessments have been levied against the real estate covered by the lien, whether or not the installment of the assessments have matured, but in determining the value of the real estate for loan purposes the amount of drainage or other assessment tax that is unpaid shall be first deducted.

h. Real estate.

(1) Except as provided in subparagraphs (2), (3), and (4) of this paragraph, a company may acquire, hold, and convey real estate only as follows:

(a) Real estate mortgaged to it in good faith as security for loans previously contracted, or for moneys due.

(b) Real estate conveyed to it in satisfaction of debts previously contracted in the course of its dealings.

(c) Real estate purchased at sales on judgments, decrees, or mortgages obtained or made for debts previously contracted in the course of its dealings.

(d) Real estate subject to a contract for deed under which the company holds the vendor's interest to secure the payments the vendee is required to make under the contract.

All real estate specified in subdivisions (a), (b), and (c) of this subparagraph shall be sold and disposed of within three years after the company acquires title to it, or within three years after the real estate ceases to be necessary for the accommodation of the company's business, and the company shall not hold any of those properties for a longer period unless the company elects to hold the property under another paragraph of this section, or unless the company procures a certificate from the commissioner of insurance that its interest will suffer materially by the forced sale of those properties and that the time for the sale is extended to the time the commissioner directs in the certificate.

(2) A company may acquire, hold, and convey real estate as required for the convenient accommodation and transaction of its business.

(3) A company may acquire real estate or an interest in real estate as an investment for the production of income, and may hold, improve, or otherwise develop, subdivide, lease, sell, and convey real estate so acquired directly or as a joint venture or

through a limited or general partnership in which the company is a partner.

(4) A company may also acquire and hold real estate if the purpose of the acquisition is to enhance the sale value of real estate previously acquired and held by the company under this paragraph, and if the company expects the real estate so acquired to qualify under subparagraph (2) or (3) of this paragraph within three years after acquisition.

(5) A company may, after securing the written approval of the commissioner, acquire and hold real estate for the purpose of providing necessary living quarters for its employees. However, the company shall dispose of the real estate within three years after it has ceased to be necessary for that purpose unless the commissioner agrees to extend the holding period upon application by the company.

(6) A company shall not invest more than twenty-five percent of its total admitted assets in real estate. The cost of a parcel of real estate held for both the accommodation of business and for the production of income shall be allocated between the two uses annually. A company shall not invest more than ten percent of its total admitted assets in real estate held under subparagraph (3) of this paragraph.

(7) A company is not required to divest itself of real estate assets owned or contracted for prior to July 1, 1982, in order to comply with the limitations established under this paragraph.

i. Foreign investments. Obligations of and investments in foreign countries, as follows:

(1) A company may acquire and hold other investments in foreign countries that are required to be held as a condition of doing business in those countries, so long as such investments are of substantially the same types as those eligible for investment under this section.

(2) A company shall not invest more than two percent of its admitted assets in the stocks or stock equivalents of foreign corporations or business trusts, other than the stocks or stock equivalents of foreign corporations or business trusts incorporated or formed under the laws of Canada, and then only if the stocks or stock equivalents of such foreign corporations or business trusts are regularly traded on the New York, London, Paris, Zurich, Hong Kong, Toronto, or Tokyo stock exchange, or a similar exchange approved by the commissioner by rule or order.

(3) A company may invest in the obligations of a foreign government other than Canada or of a corporation incorporated under the laws of a foreign government other than Canada. Any such governmental obligation must be valid, legally authorized and issued, and on the date of acquisition have predominantly investment qualities and characteristics as provided by rule. Any such corporate obligation must on the date of acquisition have investment qualities and characteristics, and must

not have speculative elements which are predominant, as provided by rule. A company shall not invest more than two percent of its admitted assets in the obligations of a foreign government other than Canada. A company shall not invest more than two percent of its admitted assets in the obligations of a corporation incorporated under the laws of a foreign government other than a corporation incorporated under the laws of Canada.

(4) A company shall not invest more than ten percent of its admitted assets in foreign investments pursuant to this paragraph.

j. Personal property under lease. Personal property for intended lease or rental by the company in the United States or Canada. A company shall not invest more than five percent of its admitted assets under this paragraph.

k. Collateral loans. Obligations secured by the pledge of an investment authorized by paragraphs "a" through "j", subject to the following conditions:

(1) The pledged investment shall be legally assigned or delivered to the company.

(2) The pledged investment shall at the time of purchase have a market value of at least one hundred ten percent of the amount of the unpaid balance of the obligations.

(3) The company shall reserve the right to declare the obligation immediately due and payable if at any time after purchase the security depreciates to the point where the investment would not qualify under subparagraph (2) of this paragraph. However, additional qualifying security may be pledged to allow the investment to remain qualified.

l. Options transactions.

(1) A domestic fire and casualty company may only engage in the following transactions in options on an exchange and only when in accordance with the rules of the exchange on which the transactions take place:

(a) The sale of exchange-traded covered options.

(b) The purchase of exchange-traded covered options solely in closing purchase transactions.

(2) The commissioner shall adopt rules pursuant to chapter 17A regulating option sales under this subparagraph.

m. Venture capital funds. Shares or equity interests in venture capital funds which agree to invest an amount equal to at least fifty percent of the investments by a company in small businesses having their principal offices within this state and having either more than one half of their assets within this state or more than one half of their employees employed within this state. A company shall not invest more than five percent of its capital

and surplus under this paragraph. For purposes of this paragraph, "venture capital fund" means a corporation, partnership, proprietorship, or other entity formed under the laws of the United States, or a state, district, or territory of the United States, whose principal business is or will be the making of investments in, and the provision of significant managerial assistance to, small businesses which meet the small business administration definition of small business. "Equity interests" means limited partnership interests and other equity interests in which liability is limited to the amount of the investment, but does not mean general partnership interests or other interests involving general liability.

n. Other investments.

(1) A company organized under this chapter may invest up to two percent of its admitted assets in securities or property of any kind, without restrictions or limitations except those imposed on business corporations in general.

(2) A company organized under this chapter may invest its assets in any additional forms not specifically included in paragraphs "a" through "o" when authorized by rules adopted by the commissioner.

o. Rules. The commissioner may adopt rules pursuant to chapter 17A to carry out the purposes and provisions of this section.

99 Acts, ch 165, §13

Subsection 3, paragraph a, subparagraph (2), subparagraph subdivision (a) amended

515.74 Service of process.

Any notice or process, with three copies of the notice or process, may be mailed to the commissioner at Des Moines, Iowa, in a certified mail letter addressed to the commissioner by the commissioner's official title. The commissioner shall acknowledge service on behalf of the defendant foreign insurance company by writing, giving the date of receipt of the notice or process, and shall return the notice or process in a certified mail letter to the clerk of the court in which the suit is pending, addressed to the clerk by the clerk's official title, and shall also mail a copy, with a copy of the commissioner's acknowledgment of service written thereon, in a certified mail letter addressed to the person or corporation named or designated by such company in the written instrument. Notice or process received prior to 10 a.m. shall be forwarded the same working day. Notice or process received after 10 a.m. shall be forwarded the next working day. A fee of fifteen dollars must accompany the request for notice or process.

99 Acts, ch 165, §14

Section amended

CHAPTER 518

COUNTY MUTUAL INSURANCE ASSOCIATIONS

518.2 Articles — approval.

An organization shall present to the commissioner of insurance for approval its articles of incorporation, which shall show its name, objects and purposes, the time and place of the annual meeting of the members, and the location of its principal place of business, and any subsequent amendments to its articles. The commissioner of insurance shall submit the articles of incorporation and any subsequent amendments to the articles to the attorney general for examination, and if found by the attorney general to be in accordance with the provisions of this chapter and the Constitution and the laws of the state, the attorney general shall certify such fact on the articles of incorporation and on any amendments to the articles and return them to the commissioner. Articles of incorporation and amendments to the articles shall not be approved by the commissioner or recorded unless certified by the attorney general.

99 Acts, ch 165, §15
Section amended

518.17 Reinsurance.

A county mutual insurance association may re-

insure a part or all of its risks with any association operating under the provisions of this chapter, or with any other association or company licensed in this state and authorized to write the kinds of insurance enumerated in section 518.11.

Reinsurance sufficient to protect the financial stability of the state mutual association is also required. Reinsurance coverage obtained by a county mutual insurance association shall not expose the association to a loss of more than fifteen percent from surplus in any calendar year. The commissioner of insurance may require additional reinsurance if necessary to protect the policyholders of the association.

99 Acts, ch 165, §16
Section amended

518.25 Surplus.

An association organized under this chapter shall at all times maintain a surplus of not less than fifty thousand dollars or one-tenth of one percent of the gross property risk in force, whichever is greater.

99 Acts, ch 165, §17
Section amended

CHAPTER 518A

MUTUAL CASUALTY ASSESSMENT
INSURANCE ASSOCIATIONS**518A.1A Plan of organization.**

An entity seeking to organize as or convert to a state mutual insurance association shall submit a plan of organization to the commissioner for approval.

99 Acts, ch 165, §18
NEW section

518A.8 Articles — approval.

An organization shall present to the commissioner of insurance for approval its articles of incorporation, which shall show its name, objects, and purposes, the time and place of the annual meeting of the members, and the location of its principal place of business, and any subsequent amendments. The commissioner shall submit the articles of incorporation and any subsequent amendments to the articles to the attorney general for examination, and if found by the attorney general to be in accordance with the provisions of this chapter and the Constitution and the laws of this state, the attorney general shall certify such fact on the articles of incorporation and on any amendments to the articles and

return them to the commissioner. Articles of incorporation and amendments to the articles shall not be approved by the commissioner or recorded unless certified by the attorney general.

99 Acts, ch 165, §19
Section stricken and rewritten

518A.10 Advance assessments. Repealed by 99 Acts, ch 165, § 23.

518A.13 Policies with fixed premiums. Repealed by 99 Acts, ch 165, § 23.

518A.17 Hail assessments — payment of losses. Repealed by 99 Acts, ch 165, § 23.

518A.28 Decree — receivership. Repealed by 99 Acts, ch 165, § 23.

518A.37 Surplus.

An association organized under this chapter shall at all times maintain a surplus of not less than one hundred thousand dollars, or one-tenth of

one percent of the gross property risk in force, whichever is greater.

99 Acts, ch 165, §20
Section amended

518A.44 Reinsurance.

A state mutual insurance association may reinsure a part or all of its risks with any association operating under the provisions of this chapter, or with any other association or company licensed in this state and authorized to write the kinds of in-

surance enumerated in section 518A.1.

Reinsurance sufficient to protect the financial stability of the state mutual association is required. Reinsurance coverage obtained by an association shall not expose the association to a loss of more than fifteen percent from surplus in any calendar year. The commissioner of insurance may require additional reinsurance if necessary to protect the policyholders of the association.

99 Acts, ch 165, §21
Section stricken and rewritten

CHAPTER 519

LIABILITY INSURANCE — CERTAIN PROFESSIONS

519.11 Liability to assessments.

The provisions as to maximum liability of members to assessments when assets are insufficient and to assessments when the corporation is insolvent, found in sections 518A.9 and 518A.14, shall

apply to all mutual insurance corporations organized under this chapter.

99 Acts, ch 165, §22
Section amended

CHAPTER 522A

SALE OF INSURANCE BY VEHICLE RENTAL COMPANIES

522A.1 Purpose.

The purpose of this chapter is to provide for the limited licensing of rental companies when a motor vehicle rental company sells travel or automobile-related insurance products or coverage in connection with and incidental to the rental of vehicles.

99 Acts, ch 143, §1
NEW section

522A.2 Definitions.

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

1. “*Commissioner*” means the commissioner of insurance appointed pursuant to section 505.2.

2. “*Counter employee*” means any employee at least eighteen years of age employed by a rental company that offers the products described in this chapter.

3. “*Limited licensee*” means a person at least eighteen years of age or an entity authorized to sell certain insurance coverages relating to the rental of vehicles.

4. “*Rental agreement*” means any written agreement setting forth the terms and conditions governing the use of a vehicle provided by a rental company for rental.

5. “*Rental company*” means any person or entity in the business of primarily providing vehicles intended for the private transportation of passengers to the public under a rental agreement for a period not to exceed ninety days.

6. “*Rental period*” means the term of the rental agreement.

7. “*Renter*” means any person obtaining the use of a vehicle from a rental company under the terms of a rental agreement for a period not to exceed ninety days.

8. “*Vehicle*” means a motor vehicle under section 321.1 used for the private transportation of passengers, including passenger vans, minivans, and sport utility vehicles, or used for the transportation of cargo with a gross vehicle weight of less than twenty-six thousand and one pounds and not requiring the operator to possess a commercial driver’s license, including cargo vans, pickup trucks, and trucks.

99 Acts, ch 143, §2
NEW section

522A.3 Limited licenses.

1. Notwithstanding the provisions of chapter 522, the commissioner may issue a limited license to a rental company that has complied with the requirements of this chapter. The limited license shall authorize the limited licensee to offer or sell insurance with the rental of vehicles.

2. As a prerequisite for issuance of a limited license under this section, a written application for a limited license, which is signed by an officer of the applicant, shall be filed with the commissioner. The application shall be in a form and contain information prescribed by the commissioner. The applica-

tion shall include a list of all rental locations where the rental company intends to conduct business. An updated list shall be provided to the commissioner within thirty business days from any date on which the list is amended.

3. If a provision of this section is violated by a limited licensee, the commissioner may, after notice and a hearing, revoke or suspend a limited license issued under this section, or impose any other penalties, including suspending permission for the transaction of insurance offers or sales at specific rental locations where violations of this section have occurred, as the commissioner deems to be necessary or convenient to carry out the purposes of this section.

4. A rental company licensed pursuant to this section may offer or sell insurance issued by an insurance carrier authorized to do business in this state and only in connection with and incidental to the rental of a vehicle. A renter shall not be required to purchase coverage in order to rent a vehicle. The type of insurance offered or sold by a limited licensee, whether at the rental office or by preselection of coverage in a master, corporate, group rental, or individual agreement, may be in any of the following general categories:

a. Personal accident insurance covering the risks of travel, including, but not limited to, accident and health insurance that provides coverage, as applicable, to a renter and other rental vehicle occupants for accidental death or dismemberment and reimbursement for medical expenses resulting from an accident that occurs during the rental period.

b. Liability insurance that provides coverage, as applicable, to a renter and other authorized drivers of rental vehicles for liability arising from the operation of the rental vehicle.

c. Personal effects insurance that provides coverage, as applicable, to a renter and other vehicle occupants for the loss of, or damage to, personal effects that occurs during the rental period.

d. Roadside assistance and emergency sickness protection programs.

5. Insurance shall only be sold by a limited licensee pursuant to this section if all of the following apply:

a. The rental period of the rental agreement does not exceed ninety consecutive days.

b. At every rental location where a rental agreement is executed, brochures or other written materials are readily available to a prospective renter that include all of the following information:

(1) A clear and correct summary of the material terms of coverage offered to renters, including the identity of the insurer.

(2) A disclosure that the coverage offered by the rental company may provide a duplication of coverage already provided by a renter's personal automobile insurance policy, homeowner's insur-

ance policy, personal liability insurance policy, or other source of coverage.

(3) A statement that the purchase by a renter of the types of coverage specified in this section is not required in order to rent a vehicle.

(4) A description of the process for filing a claim in the event a renter elects to purchase coverage and in the event of a claim.

c. Evidence of coverage in the rental agreement is provided to every renter who elects to purchase such coverage.

d. A fee, compensation, or commission is not paid to an employee by a rental company dependent solely on the sale of insurance under any limited license issued pursuant to this section.

6. Any limited license issued under this section shall authorize a counter employee of the limited licensee to act individually on behalf, and under the supervision, of the limited licensee with respect to the offer and sale of coverage specified in this section.

7. A rental company counter employee must successfully pass an examination covering the insurance products offered for sale by the rental company in connection with and incidental to the rental of vehicles by the rental company. The examination shall be approved and administered by the insurance division or a vendor approved by the insurance division pursuant to section 522A.6. The counter employee shall file an application with the commissioner for an individual license. Any application shall be deemed approved unless the commissioner notifies the rental company of the denial or rejection of the application within thirty days of receiving the application. An application shall not include requirements greater in scope than defined in this section.

8. A limited licensee pursuant to this section shall not be required to treat moneys collected from renters purchasing insurance when renting vehicles as moneys received in a fiduciary capacity, provided that the charges for coverage are itemized and are ancillary to a rental agreement. The offer or sale of insurance not in conjunction with a rental agreement shall not be permitted.

9. A limited licensee under this section shall not advertise, represent, or otherwise hold itself out or hold any of its employees out as licensed insurers, insurance agents, or insurance brokers.

10. A limited licensee shall not engage in this state in any of the following:

a. A trade practice defined in chapter 507B as, or determined pursuant to section 507B.6 to be, an unfair method of competition or an unfair or deceptive act or practice in the business of insurance.

b. An illegal sales practice or unfair trade practice as defined in rules adopted pursuant to chapter 17A by the commissioner.

11. An individual license, authorization, and certification to offer or sell insurance products un-

der this chapter shall expire when the counter employee's employment terminates with the rental company.

99 Acts, ch 143, §3
NEW section

522A.4 Term of limited license.

A limited license issued pursuant to this chapter is valid for three years and may be renewed without examination if the renewal application is received in a timely manner.

99 Acts, ch 143, §4
NEW section

522A.5 Fees.

The fee for a counter employee license shall be fifty dollars per counter employee. In no case shall any combined fees exceed one thousand dollars in any calendar year for any one rental company or limited license or licensee or renewal license.

99 Acts, ch 143, §5
NEW section

522A.6 Vendor qualifications.

If a qualified vendor is available, the commissioner shall utilize the qualified vendor closest in proximity to where the counter employee is employed to meet the requirements in section 522A.3. A vendor shall have at least two years teaching experience relating to the topic of the products described in this chapter. For purposes of this section, the commissioner may approve a rental company that meets the requirements of this section as a qualifying vendor to administer the requirements in section 522A.3.

99 Acts, ch 143, §6
NEW section

522A.7 Rules.

The commissioner shall adopt rules necessary for the administration of this chapter.

99 Acts, ch 143, §7
NEW section

CHAPTER 523A

FUNERAL SERVICES AND MERCHANDISE

523A.5 Scope of chapter — definitions.

1. This chapter applies only to the sale of funeral services, funeral merchandise, or a combination of these.

2. As used in this chapter:

a. *"Funeral services"* means one or more services to be provided at the time of the final disposition of a dead human body, including but not limited to services necessarily or customarily provided in connection with a funeral, or services necessarily or customarily provided in connection with the interment, entombment, or cremation of a dead human body, or a combination of these. "Funeral services" does not include perpetual care or maintenance.

b. *"Funeral merchandise"* means one or more types of personal property to be used at the time of the final disposition of a dead human body, including but not limited to clothing, caskets, vaults, and interment receptacles. "Funeral merchandise" does not include real property, and does not include grave markers, tombstones, ornamental merchandise, and monuments.

c. *"Commissioner"* means the commissioner of

insurance or the deputy appointed under section 502.601.

d. *"Inner burial container"* means a container in which human remains are placed for burial or entombment and, if only one container is used for purposes of burial or entombment, includes a container designed to serve the same function as merchandise commonly known as burial vaults, urn vaults, grave boxes, grave liners, and lawn crypts.

e. *"Prepaid contract"* means a written contract or other agreement executed by a seller in which the seller promises to deliver merchandise or services upon the future death of a person named or implied in the agreement.

99 Acts, ch 166, §9
Subsection 2, NEW paragraph e

523A.6 Compliance with other laws.

The seller of a prepaid contract for the purchase of funeral services or funeral merchandise shall comply with chapter 555A. A person failing to comply with chapter 555A is subject to the remedies and penalties provided in that chapter.

99 Acts, ch 166, §10
Section amended

CHAPTER 523B

BUSINESS OPPORTUNITY PROMOTIONS

523B.1 Definitions.

1. *"Administrator"* means the commissioner of insurance or the deputy appointed under section 502.601.

2. *"Advertising"* means a circular, prospectus, advertisement, or other material, or a communication by radio, television, pictures, or similar means

used in connection with an offer or sale of a business opportunity.

3. *a. "Business opportunity"* means a contract or agreement, between a seller and purchaser, express or implied, orally or in writing, at an initial investment exceeding five hundred dollars, where the parties agree that the seller or a person recommended by the seller is to provide to the purchaser any products, equipment, supplies, materials, or services for the purpose of enabling the purchaser to start a business, and the seller represents, directly or indirectly, orally or in writing, any of the following:

(1) The seller or a person recommended by the seller will provide locations or assist the purchaser in finding locations for the use or operation of vending machines, racks, display cases, or other similar devices, on premises which are not owned or leased by the purchaser or seller.

(2) The seller or a person recommended by the seller will provide or assist the purchaser in finding outlets or accounts for the purchaser's products or services.

(3) The seller or a person specified by the seller will purchase any or all products made, produced, fabricated, grown, bred, or modified by the purchaser.

(4) The purchaser will derive income from the business which exceeds the price paid to the seller.

(5) The seller will refund all or part of the price paid to the seller, or repurchase any of the products, equipment, or supplies provided by the seller or a person recommended by the seller, if the purchaser is dissatisfied with the business.

(6) The seller will provide a marketing plan.

b. "Business opportunity" does not include any of the following:

(1) An offer or sale of an ongoing business operated by the seller which is to be sold in its entirety.

(2) An offer or sale of a business opportunity to an ongoing business where the seller will provide products, equipment, supplies, or services which are substantially similar to the products, equipment, supplies, or services sold by the purchaser in connection with the purchaser's ongoing business.

(3) An offer or sale of a business opportunity which involves a marketing plan made in conjunction with the licensing of a federally registered trademark or federally registered service mark provided that the seller has a minimum net worth of one million dollars as determined on the basis of the seller's most recent audited financial statement prepared within thirteen months of the first offer in this state. Net worth may be determined on a consolidated basis if the seller is at least eighty percent owned by one person and that person expressly guarantees the obligations of the seller with regard to the offer or sale of a business opportunity claimed to be excluded under this subparagraph.

(4) An offer or sale of a business opportunity by an executor, administrator, sheriff, receiver, trustee in bankruptcy, guardian, or conservator, or a judicial offer or sale of a business opportunity.

(5) The renewal or extension of a business opportunity contract or agreement entered into under this chapter or prior to July 1, 1981.

4. *"Franchise"* means a contract or agreement between a seller and a purchaser, express or implied, orally or in writing, where the parties agree to both of the following:

a. A franchisee is granted the right to engage in the business of offering, selling, or distributing goods or services under a marketing plan prescribed in substantial part by a franchisor.

b. The operation of the franchisee's business pursuant to such a plan is substantially associated with the franchisor's business and trademark, service mark, trade name, logotype, advertising, or other commercial symbol designating the franchisor or its affiliate.

For the purposes of this subsection, *"franchisee"* means a person to whom a franchise is granted and *"franchisor"* means a person who grants a franchise.

5. *"Initial investment"* means the total amount a purchaser is obligated to pay under the terms of the business opportunity contract either prior to or at the time of the delivery of the merchandise or services or within six months of the purchaser commencing operation of the business opportunity. However, if payment is over a period of time, *"initial investment"* means the sum of the down payment and the total monthly payments specified in the contract.

6. *"Marketing plan"* means advice or training, provided to the purchaser by the seller or a person recommended by the seller, pertaining to the sale of any products, equipment, supplies, or services. The advice or training may include, but is not limited to, preparing or providing any of the following:

a. Promotional literature, brochures, pamphlets, or advertising materials.

b. Training regarding the promotion, operation, or management of the business opportunity.

c. Operational, managerial, technical, or financial guidelines or assistance.

7. *"Offer"* or *"offer to sell"* means an attempt to dispose of a business opportunity for value, or solicitation of an offer to purchase a business opportunity.

8. *"Ongoing business"* means an existing business that for at least six months prior to the offer, has been operated from a specific location, has been open for business to the general public, and has substantially all of the equipment and supplies necessary for operating the business.

9. *"Person"* means an individual, corporation, trust, partnership, incorporated or unincorporated association, or any other legal entity, provided, however, person does not include a government or governmental subdivision or agency.

10. “Purchaser” means a person who enters into a contract or agreement for the acquisition of a business opportunity or a person to whom an offer to sell a business opportunity is directed.

11. “Sale” or “sell” includes every contract or agreement of sale, contract to sell, or disposition of a business opportunity or interest in a business opportunity for value.

12. “Seller” means a person who sells or offers to sell a business opportunity or an agent or other person who directly or indirectly acts on behalf of such a person. “Seller” does not include the media in or by which an advertisement appears or is disseminated.

99 Acts, ch 90, §1, 3

1999 amendment to subsection 3 applies retroactively to July 1, 1998; 99 Acts, ch 90, §3

Subsection 3 amended

Subsection 4, paragraphs erroneously designated as (a) and (b) editorially redesignated as paragraphs a and b

523B.2 Registration.

1. *Requirement.* It is unlawful to offer or sell a business opportunity in this state unless the business opportunity is registered under this chapter or is exempt under section 523B.3.

2. *Disclosure.*

a. To register a business opportunity, the seller shall file with the administrator one of the disclosure documents as provided in paragraph “b” with the appropriate cover sheet as required by subsection 8, paragraph “b”, a consent to service of process as specified in subsection 3, and the appropriate fee as required by subsection 7.

b. The disclosure document required in paragraph “a” shall be in one of the following forms:

(1) A uniform franchise offering circular prepared in accordance with the guidelines adopted by the North American securities administrators association, inc., as amended through September 21, 1983. The administrator may by rule adopt any amendment to the uniform franchise offering circular that has been adopted by the North American securities administrators association, inc.

(2) A disclosure document prepared pursuant to the federal trade commission rule entitled “*Disclosure requirements and prohibitions concerning franchising and business opportunity ventures*”, 16 C.F.R. § 436 (1979). The administrator may by rule adopt any amendment to the disclosure document prepared pursuant to 16 C.F.R. § 436 (1979) that has been adopted by the federal trade commission.

(3) A disclosure document prepared pursuant to subsection 8.

3. *Consent to service.* A seller shall file, on a form as the administrator may prescribe, an irrevocable consent appointing the administrator or the administrator’s successor in office to be the seller’s attorney to receive service of any lawful process in a noncriminal suit, action, or proceeding against the seller or the seller’s successor, executor, or administrator which arises under this chapter after the consent has been filed, with the same force and

validity as if served personally on the person filing the consent. Service may be made by leaving a copy of the process in the office of the administrator, but is not effective unless the plaintiff or petitioner, who may be the administrator or the attorney general, in a suit, action, or proceeding, forthwith sends notice of the service and a copy of the process by registered or certified mail to the defendant’s or respondent’s address on file with the administrator, and the plaintiff’s affidavit of compliance with this subsection is filed in the case on or before the return date of the process, if any, or within such further time as the court allows.

4. *Effective date.* A registration automatically becomes effective upon the expiration of the fifteenth full business day after the complete filing is received by the administrator, provided that no order has been issued or proceeding is pending under subsection 10. The administrator may by order waive or reduce the time period prior to effectiveness, provided that a complete filing has been made. The administrator may by order defer the effective date until the expiration of the fifteenth full business day after the filing of an amendment with the administrator.

5. *Period.* The registration is effective for one year commencing on the date the registration becomes effective and may be renewed annually upon the filing of a current disclosure document accompanied by any documents or information that the administrator may by rule or order require. Failure to renew upon the close of the one-year period of effectiveness will result in expiration of the registration. The administrator may by rule or order require the filing of a sales report.

6. *Filing rule.* The administrator may by rule require the filing of all proposed literature or advertising prior to its use.

7. *Filing fee.* The seller shall pay a five hundred dollar filing fee with the initial disclosure statement filed under subsection 2 and a two hundred fifty dollar annual renewal fee. The administrator shall by rule periodically revise these fees to ensure that they defray the costs of administration of this chapter.

8. *Disclosure requirements.*

a. It is unlawful to offer or sell a business opportunity required to be registered pursuant to this chapter unless a written disclosure document as filed under subsection 2 is delivered to each purchaser at least ten business days prior to the earlier of the execution by a purchaser of a contract or agreement imposing a binding legal obligation on the purchaser or the payment by a purchaser of any consideration in connection with the offer or sale of the business opportunity.

b. The disclosure document shall have a cover sheet which is entitled, in at least ten point bold type, “**DISCLOSURE REQUIRED BY IOWA LAW.**” Under the title shall appear the following statement in at least ten point type: “The regis-

tration of this business opportunity does not constitute approval, recommendation, or endorsement by the state of Iowa. The information contained in this disclosure document has not been verified by this state. If you have any questions or concerns about this investment, seek professional advice before you sign a contract or make any payment. You are to be provided ten (10) business days to review this document before signing a contract or agreement or making any payment to the seller or the seller's representative."

The seller's name and principal business address, along with the date of the disclosure document, shall also be provided on the cover sheet. No other information shall appear on the cover sheet.

c. Unless the seller uses a disclosure document as provided in subsection 2, paragraphs "a" and "b", the disclosure document shall contain the following information:

(1) The names and residential addresses of those salespersons who will engage in the offer or sale of the business opportunity in this state.

(2) The name of the seller; whether the seller is doing business as an individual, partnership, corporation, or other entity; the names under which the seller has done, is doing, or intends to do business; and the name of any parent or affiliated company that will engage in business transactions with purchasers or that will take responsibility for statements made by the seller.

(3) The names, addresses, and titles of the seller's officers, directors, trustees, general managers, principal executives, agents, and any other persons charged with responsibility for the seller's business activities relating to the sale of the business opportunity.

(4) Prior business experience of the seller relating to business opportunities including all of the following:

(a) The name, address, and a description of any business opportunity previously offered by the seller.

(b) The length of time the seller has offered each such business opportunity.

(c) The length of time the seller has conducted the business opportunity currently being offered to the purchaser.

(5) With respect to each person identified in subparagraph (3), all of the following:

(a) A description of the person's business experience for the ten-year period preceding the filing date of this disclosure document. The description of business experience shall list principal occupations and employers.

(b) A listing of the person's educational and professional background, including the names of schools attended and degrees received, and any other information that will demonstrate sufficient knowledge and experience to perform the services proposed.

(6) Whether any of the following apply to the seller or any person identified in subparagraph (3):

(a) The seller or other person has been convicted of a felony, pleaded nolo contendere to a felony charge, or has been the subject of a criminal, civil, or administrative proceeding alleging the violation of a business opportunity law, securities law, commodities law, or franchise law, or alleging fraud or deceit, embezzlement, fraudulent conversion, restraint of trade, an unfair or deceptive practice, misappropriation of property, or making comparable allegations.

(b) The seller or other person has filed for bankruptcy, been adjudged bankrupt, or been reorganized due to insolvency, or was an owner, principal officer, or general partner of a person, or any other person that has filed for bankruptcy or was adjudged bankrupt, or been reorganized due to insolvency during the last seven years.

(7) The name of any person identified in subparagraph (6), the nature of and the parties to the action or proceeding, the court or other forum, the date of the institution of the action, the docket references to the action, the current status of the action or proceeding, the terms and conditions of any order or decree, and the penalties or damages assessed and terms of settlement.

(8) The initial payment required, or if the exact amount cannot be determined, a detailed estimate of the amount of the initial payment to be made to the seller.

(9) A detailed description of the actual services the seller agrees to perform for the purchaser.

(10) A detailed description of any training the seller agrees to provide for the purchaser.

(11) A detailed description of services the seller agrees to perform in connection with the placement of equipment, products, or supplies at a location, as well as any agreement necessary in order to locate or operate equipment, products, or supplies on premises which are not owned or leased by the purchaser or seller.

(12) A detailed description of any license or permit that will be necessary in order for the purchaser to engage in or operate the business opportunity.

(13) The business opportunity seller that secures a bond pursuant to subsection 10 shall include in the disclosure document the following statement: "As required by the state of Iowa, the seller has secured a bond issued by [insert name and address of surety company], a surety company, authorized to do business in this state. Before signing a contract or agreement to purchase this business opportunity, you should check with the surety company to determine the bond's current status."

(14) Any representations made by the seller to the purchaser concerning sales or earnings that may be made from this business opportunity, including, but not limited to the following:

(a) The bases or assumptions for any actual, average, projected, or forecasted sales, profits, income, or earnings.

(b) The total number of purchasers who, within a period of three years of the date of the disclosure document, purchased a business opportunity involving the product, equipment, supplies, or services being offered to the purchaser.

(c) The total number of purchasers who, within three years of the date of the disclosure document, purchased a business opportunity involving the product, equipment, supplies, or services being offered to the purchaser who, to the seller's knowledge, have actually received earnings in the amount or range specified.

(15) A detailed description of the elements of a guarantee made by a seller to a purchaser. The description shall include, but is not limited to, the duration, terms, scope, conditions, and limitations of the guarantee.

(16) A statement including all of the following:

(a) The total number of business opportunities that are the same or similar in nature to those being sold or organized by the seller.

(b) The names and addresses of purchasers who have requested a refund or rescission from the seller within the last twelve months and the number of those who have received the refund or rescission.

(c) The total number of business opportunities the seller intends to sell in this state within the next twelve months.

(d) The total number of purchasers known to the seller to have failed in the business opportunity.

(17) A statement describing any contractual restrictions, prohibitions, or limitations on the purchaser's conduct. Attach a copy of all business opportunities and other contracts or agreements proposed for use or in use in this state including, without limitation, all lease agreements, option agreements, and purchase agreements.

(18) The rights and obligations of the seller and the purchaser regarding termination of the business opportunity contract or agreement.

(19) A statement accurately describing the grounds upon which the purchaser may initiate legal action to terminate the business opportunity contract or agreement.

(20) A copy of the most recent audited financial statement of the seller, prepared within thirteen months of the first offer in this state, together with a statement of any material changes in the financial condition of the seller from that date. The administrator may allow the seller to submit a limited review in order to satisfy the requirements of subparagraph (13).

(21) A list of the states in which this business opportunity is registered.

(22) A list of the states in which this disclosure document is on file.

(23) A list of the states which have denied, suspended, or revoked the registration of this business opportunity.

(24) A section entitled "*Risk Factors*" containing a series of short concise statements summarizing the principal factors which make this business opportunity a high risk or one of a speculative nature. Each statement shall include a cross-reference to the page on which further information regarding that risk factor can be found in the disclosure document.

(25) Any additional information as the administrator may require by rule or order.

9. *Contract or agreement provisions.*

a. It is unlawful to offer or sell a business opportunity required to be registered unless the business opportunity contract or agreement is in writing and a copy of the contract or agreement is given to the purchaser at the time the purchaser signs the contract or agreement.

b. The contract or agreement is subject to this chapter and section 714.16.

c. Contracts or agreements shall set forth in at least ten point type or equivalent size, if handwritten, all of the following:

(1) The terms and conditions of any and all payments due to the seller.

(2) The seller's principal business address and the name and address of the seller's agent in this state authorized to receive service of process.

(3) The business form of the seller, whether corporate, partnership, or otherwise.

(4) The delivery date, or when the contract provides for a periodic delivery of items to the purchaser, the approximate delivery date of the product, equipment, or supplies the seller is to deliver to the purchaser to enable the purchaser to start business.

(5) Whether the product, equipment, or supplies are to be delivered to the purchaser's home or business address or are to be placed or caused to be placed by the seller at locations owned or managed by persons other than the purchaser.

(6) A statement that accurately states the purchaser's right to void the contract under the circumstances and in the manner set forth in section 523B.6.

(7) The cancellation statement appearing in section 555A.3.

10. *Denial, suspension, or revocation of registration.*

a. The administrator may issue an order denying effectiveness to, or suspending or revoking the effectiveness of, any registration if the administrator finds that the order is in the public interest and any of the following:

(1) The registration as of its effective date or as of any earlier date in the case of an order denying effectiveness, any amendment as of its effective date, or any report is incomplete in any material respect or contains any statement which is, in the

light of the circumstances under which it was made, determined by the administrator to be false or misleading with respect to any material fact.

(2) Any provision of this chapter or any rule, order, or condition lawfully imposed under this chapter has been willfully violated, in connection with the business opportunity, by either of the following:

(a) The person filing the registration.

(b) The seller, any partner, officer, or director of the seller, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling or controlled by the seller, but only if the person filing the registration is directly or indirectly controlled by or acting for the seller.

(3) The business opportunity registered or sought to be registered is the subject of an administrative order denying, suspending, or revoking a registration or a permanent or temporary injunction of any court of competent jurisdiction. However, the administrator shall not do either of the following:

(a) Institute a proceeding against an effective registration under this paragraph more than one year from the date of the order or injunction relied on.

(b) Enter an order under this paragraph on the basis of an order or injunction entered under any other state act unless that order or injunction was based on facts which would currently constitute a ground for an order under this section.

(4) The seller's enterprise or method of business, or that of the business opportunity, includes or would include activities which are or would be illegal where performed.

(5) The business opportunity or the offering of a business opportunity has worked or tended to work a fraud upon purchasers or would operate to work such a fraud.

(6) There has been a failure to file any documents or information required under subsection 2.

(7) The seller has failed to pay the proper filing fee. However, the administrator shall vacate any order issued pursuant to this subparagraph when the deficiency has been corrected.

(8) The seller's literature or advertising is misleading, incorrect, incomplete, or deceptive.

(9) The seller does not have a minimum net worth of fifty thousand dollars, as determined in accordance with generally accepted accounting principles. A seller may submit a surety bond in lieu of the net worth requirement. The administrator may by rule or order increase the amount of the net worth or bond for the protection of purchasers and may require the seller to file reports of all sales in this state to determine the appropriate amount of the net worth requirement. The surety bond shall be for the period of the registration, issued by a surety company authorized to do business in this state and for the benefit of any purchaser.

b. The administrator shall not institute a proceeding under this subsection against an effective registration on the basis of a fact or transaction known to the administrator when the registration became effective unless the proceeding is instituted thirty days after the effective date of the registration.

c. (1) The administrator may by order summarily postpone or suspend the effectiveness of the registration pending final determination of a proceeding under this subsection.

(2) Upon the entry of a summary order, the administrator shall promptly notify the seller that the order has been entered and of the reasons for entering the order and that within fifteen days after the receipt of a written request the matter will be set down for hearing.

(3) If no hearing is requested the order will remain in effect until it is modified or vacated by the administrator. If a hearing is requested or ordered, the administrator may modify or vacate the order or extend the order until final determination.

d. A summary order shall not be entered under any part of this subsection, except under subparagraph (1) of paragraph "c", without appropriate notice to the seller, an opportunity for hearing, and written findings of fact and conclusions of law in accordance with chapter 17A.

e. The administrator may vacate or modify an order issued under this subsection if the administrator finds that the conditions which prompted its entry have changed or that it is otherwise in the public interest to do so.

99 Acts, ch 166, §11

Subsection 10, paragraph a, subparagraph (9) amended

523B.3 Exemptions from registration and disclosure.

1. *Exemptions.* The following business opportunities are exempt from the requirements of section 523B.2:

a. The offer or sale of a business opportunity if the purchaser is a bank, savings and loan association, trust company, insurance company, credit union, or investment company as defined by the federal Investment Company Act of 1940, a pension or profit-sharing trust, or other financial institution or institutional buyer, or a broker-dealer registered pursuant to chapter 502, whether the purchaser is acting for itself or in a fiduciary capacity.

b. The offer or sale of a business opportunity which is defined as a franchise under section 523B.1, subsection 4, provided that the seller delivers to each purchaser at the earlier of the first personal meeting between the seller and the purchaser, or ten business days prior to the earlier of the execution by a purchaser of a contract or agreement imposing a binding legal obligation on the purchaser or the payment by a purchaser of any

consideration in connection with the offer or sale of the business opportunity, one of the following disclosure documents:

(1) A uniform franchise-offering circular prepared in accordance with the guidelines adopted by the North American securities administrators association, inc., as amended through September 21, 1983.

(2) A disclosure document prepared pursuant to the federal trade commission rule entitled "Disclosure requirements and prohibitions concerning franchising and business opportunity ventures", 16 C.F.R. § 436 (1979).

For the purposes of this paragraph, a personal meeting means a face-to-face meeting between the purchaser and the seller or their representatives, which is held for the purpose of discussing the offer or sale of a business opportunity. The administrator may by rule adopt any amendment to the uniform franchise-offering circular that has been adopted by the North American securities administrators association, inc., or any amendment to the disclosure document prepared pursuant to the federal trade commission rule entitled "Disclosure requirements and prohibitions concerning franchising and business opportunity ventures", 16 C.F.R. § 436 (1979), that has been adopted by the federal trade commission.

c. The offer or sale of a business opportunity for which the cash payment made by a purchaser does not exceed five hundred dollars and the payment is made for the not-for-profit sale of sales demonstration equipment, material, or samples, or the payment is made for product inventory sold to the purchaser at a bona fide wholesale price.

d. The offer or sale of a business opportunity which the administrator exempts by order or a class of business opportunities which the administrator exempts by rule upon the finding that the exemption would not be contrary to public interest and that registration would not be necessary or ap-

propriate for the protection of purchasers.

2. *Denial or revocation of exemptions.*

a. If the public interest of the protection of purchasers so requires, the administrator may by order deny or revoke an exemption specified in this section with respect to a particular offering of one or more business opportunities. An order shall not be entered without appropriate prior notice to all interested parties, opportunity for hearing, and written findings of fact and conclusions of law.

b. If the public interest or the protection of purchasers so requires, the administrator may by order summarily deny or revoke any of the specified exemptions pending final determination of any proceedings under this section. Upon entry of the order, the administrator shall promptly notify all interested parties that it has been entered and of the reasons for entering the order and that within fifteen days of the receipt of a written request the matter will be set down for hearing. If a hearing is not requested the order shall remain in effect until it is modified or vacated by the administrator. If a hearing is requested or ordered, the administrator shall not modify or vacate the order or extend it until final determination.

c. An order under this section shall not operate retroactively.

d. A person does not violate section 523B.2 by reason of an offer or sale effected after the entry of an order under paragraph "b" if the person sustains the burden of proof that the person did not know, and in the exercise of reasonable care could not have known, of the order.

3. *Burden of proof.* In an administrative, civil, or criminal proceeding related to this chapter, the burden of proving an exemption, an exception from a definition, or an exclusion from this chapter, is upon the person claiming it.

99 Acts, ch 90, §2, 3

1999 amendments to subsection 1 apply retroactively to July 1, 1998; 99 Acts, ch 90, §3

Subsection 1, paragraphs b-d and g stricken and former paragraphs e, f, and h relettered as b, c, and d

CHAPTER 523C

RESIDENTIAL SERVICE CONTRACTS

523C.6 Net worth requirement.

A service company that has issued or renewed in the aggregate one thousand or less residential service contracts during the preceding calendar year shall maintain a minimum net worth of forty thousand dollars, and the minimum net worth to be maintained shall be increased by an additional twenty thousand dollars for each additional five hundred contracts or fraction thereof issued or renewed, up to a maximum required net worth of four hundred thousand dollars. At least twenty thou-

sand dollars of net worth shall consist of paid-in capital.

99 Acts, ch 166, §12
Section amended

523C.8 Rebates and commissions.

1. Except as provided in subsection 2, 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.

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

a. The 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.

b. Fees, payments, or reimbursements for a bona fide inspection, 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.

3. The division may adopt rules identifying types of fees, payments, or reimbursements that do not constitute an inducement or compensation for the issuance, purchase, or acquisition of a residential service contract.

99 Acts, ch 166, §13
Section amended

CHAPTER 523E

CEMETERY MERCHANDISE

523E.1 Trust fund established — insurance.

1. If an agreement is made by a person to furnish, upon the future death of a person named or implied in the agreement, cemetery merchandise, a minimum of one hundred twenty-five percent of the wholesale cost of the cemetery merchandise, based upon the current advertised prices available from a manufacturer or wholesaler who has delivered the same or substantially the same type of merchandise to the seller during the last twelve months, shall be and remain trust funds until purchase of the merchandise or the occurrence of the death of the person for whose benefit the funds were paid, unless the funds are sooner released to the person making the payment by mutual consent of the parties. Payments otherwise subject to this section are not exempt merely because they are held in certificates of deposit. The commissioner may adopt rules to prohibit the commingling of trust funds with other funds of the seller.

2. The seller shall keep copies of all price advertisements upon which the seller relies to determine the wholesale cost. The copies of price advertisements so maintained shall be made available to the commissioner upon request. The seller shall review wholesale costs no less than annually and make additional deposits as necessary to assure that the amount held in trust is always equal to or in excess of one hundred twenty-five percent of the wholesale cost of the merchandise. The seller and

the manufacturer or wholesaler upon whose price the seller relies to determine the wholesale cost shall not be commonly owned or affiliated.

3. Interest or income earned on amounts deposited in trust under this subsection shall remain in trust under the same terms and conditions as the payments made under the agreement and purchasers shall have a right to a total refund of principal and interest or income in the event of nonperformance.

4. If an agreement subject to this subsection is to be paid in installment payments, the seller shall deposit fifty percent of each payment in trust until the full amount to be trusted has been deposited. If the agreement is financed with or sold to a financial institution, the agreement shall be considered paid in full and the deposit requirements of this section shall be satisfied within fifteen days after the close of the month of receipt of the funds from the financial institution.

5. An agreement may be funded by insurance proceeds derived from a policy issued by an insurance company authorized to conduct business in this state. Such funding may be in lieu of a trust fund if the payments are made directly to the insurance company by the purchaser of the agreement.

6. This section does not apply to payments for merchandise delivered to the purchaser. Delivery includes storage in a warehouse or storage facility approved by the commissioner.

99 Acts, ch 166, §14
Subsection 6 amended

CHAPTER 523G

INVENTION DEVELOPMENT SERVICES

523G.4 Initial disclosures.

1. If an invention developer contemplates entering into a contract or if the invention developer contemplates performance of a phase covered in a

contract, the invention developer shall notify the customer by a written statement. The invention developer shall deliver to the customer the written notice together with a copy of each contract or a

written summary of the general terms of each contract, including the total cost or consideration required from the customer, before the customer first executes the contract.

2. The invention developer shall make a written disclosure to the customer of the information required in this section. The disclosure shall be made in either the first written communication from the invention developer to a specific customer or at the first meeting between the invention developer and a customer. The written disclosure shall contain all of the following:

a. The median fee based on fees charged to all customers who have executed contracts with the invention developer in the preceding six months, excluding customers who have executed a contract in the preceding thirty days.

b. A single statement setting forth both of the following:

(1) The total number of customers who have executed contracts with the invention developer, except that the number need not reflect those customers who have executed contracts within the preceding thirty days.

(2) The number of customers who have received from the invention developer's services an amount of money in excess of the amount of money paid by those customers to the invention developer pursuant to a contract. The amount received by a customer reported on the statement shall only include income earned from the successful development, promotion, licensing, publishing, exhibiting, or marketing of the customer's invention pursuant to the contract executed between the invention developer and the customer.

c. A notice appearing in substantially the following form:

WARNING

The following disclosure is required by section 523G.4 of the Iowa Code:

The person you are dealing with is an invention developer regulated under chapter 523G of the Iowa Code. Unless an invention developer is an attorney licensed to practice in this state, the invention developer is prohibited from providing you legal advice concerning patent, copyright, or trademark law or to advise you of whether your creation, idea, or invention may be patentable or may be protected under the patent, copyright, or trademark laws of the United States or any other law. A registered patent agent may give advice as to patentability and protection available under the patent laws.

A patent, copyright, or trademark protection cannot be acquired for you by the invention developer. Your potential patent rights may be adversely affected by any attempt to commercialize your idea or invention before a patent application covering it is filed. Nonconfidential disclosures of your creation, idea, or invention may also trigger a one-year statutory deadline for filing a patent application in the United States, after which you would be banned from receiving any patent protection in the United States, and would prevent you from obtaining valid patent rights in countries whose law provides that patent applications must be filed before there is a public disclosure.

Your failure to identify and investigate existing patents, trademarks, or registered copyrights may place you in jeopardy of infringing the copyright, patent, or trademark rights of other persons if you proceed to make, use, or sell your creation, idea, or invention.

If you assign even a partial interest in the invention to the invention developer, the invention developer may have the right to assign or license its interest in the invention, or make, use, and sell the creation, idea, or invention without your consent and may not have to share the profits with you.

99 Acts, ch 96, §48
Subsection 2, paragraph d stricken

CHAPTER 523I

CEMETERIES

523I.6 Powers and duties of perpetual care cemeteries.

1. Within the boundaries of the cemetery lands that the cemetery owns, a cemetery may perform the following functions:

a. The exclusive care and maintenance of the cemetery.

b. The exclusive interment, entombment, or inurnment of human remains, including the exclusive right to open, prepare for interment, and close all ground, mausoleum, and urn burials. Each pre-

need contract for burial rights or services shall disclose, pursuant to the cemetery's bylaws, rules, and regulations, whether opening and closing of the burial space is included in the contract, and, if not, the current prices for opening and closing and a statement that these prices are subject to change. Each cemetery which sells preneed contracts must offer opening and closing as part of a preneed contract.

c. The exclusive initial preneed and at-need sale of interment or burial rights in earth, mauso-

leum, crypt, niche, or columbarium interment. However, this chapter does not limit the right of a person owning interment or burial rights to sell those rights to third parties subject to transfer of title by the cemetery.

d. The adoption of bylaws regulating the activities conducted within the cemetery's boundaries, provided that a licensed funeral director shall not be denied access by any cemetery to conduct a funeral for or supervise a disinterment of human remains. The cemetery shall not approve any bylaw which unreasonably restricts competition, or which unreasonably increases the cost to the owner of interment or burial rights in utilizing these rights.

e. The nonexclusive preneed and at-need sale of the following:

- (1) Monuments.
- (2) Memorials.
- (3) Markers.
- (4) Installation of monuments, memorials, or markers.
- (5) Burial vaults.

(6) Urns.

(7) Flower vases.

(8) Floral arrangements.

(9) Other similar merchandise for use within the cemetery.

f. The entry into sales or management contracts with other persons. The cemetery shall be responsible for the deposit of all moneys required to be placed in a trust fund.

2. A full disclosure shall be made of all fees required for interment, entombment, or inurnment of human remains.

3. A cemetery may adopt bylaws establishing minimum standards for burial merchandise or the installation of such merchandise.

4. A cemetery shall provide services necessary for the installation or burial of vaults or other similar merchandise sold by the cemetery. This subsection shall not require the cemetery to provide for opening or closing interment or entombment space, unless an agreement executed by the cemetery expressly provides otherwise.

99 Acts, ch 166, §15
NEW subsection 4

CHAPTER 524

BANKS

524.221 Preservation of bank records — statute of limitations.

1. A state bank is not required to preserve its records for a period longer than eleven years after the first day of January of the year following the time of the making or filing of such records, provided, however, that account records showing unpaid balances due to depositors shall not be destroyed. A copy of an original may be kept in lieu of any such original record. For purposes of this subsection, a copy includes any duplicate, rerecording or reproduction of an original record from any photograph, photostat, microfilm, microcard, miniature or microphotograph, computer printout, electronically stored data or image, or other process which accurately reproduces or forms a durable medium for accurately and legibly reproducing an unaltered image or reproduction of the original record.

A copy is deemed to be an original and shall be treated as an original record in a judicial or administrative proceeding for purposes of admissibility in evidence. A facsimile, exemplification, or certified copy of any such copy reproduced from a film record is deemed to be a facsimile, exemplification, or certified copy of the original. A printout or other tangible output readable by sight shown to accurately reflect data contained in a promissory note, negotiable instrument, or letter of credit, which contains a signature made or created by electronic or

digital means such that it is stored by a computer or similar device, is deemed to be an original of such note, instrument, or letter for purposes of presenting such note, instrument, or letter for payment, acceptance, or honor, or for purposes of a judicial proceeding involving a claim based upon such note, instrument, or letter.

2. All causes of action, other than actions for relief on the grounds of fraud or mistake, against a state bank based upon a claim or claims inconsistent with an entry or entries in a state bank record, made in the regular course of business, shall be deemed to have accrued, and shall accrue for the purpose of the statute of limitations one year after the date of such entry or entries. No action founded upon such a cause may be brought after the expiration of ten years from the date of such accrual.

3. The provisions of this section, insofar as applicable, shall apply to the records of a national bank.

99 Acts, ch 34, §1
Subsection 1, NEW unnumbered paragraph 2

524.544 Change of control — certificate of approval — shares as security — reports.

1. Whenever any person proposes to purchase or otherwise acquire directly or indirectly any of the outstanding shares of a state bank, and the proposed purchase or acquisition would result in control or in a change in control of the bank, the person

proposing to purchase or acquire the shares shall first apply in writing to the superintendent for a certificate of approval for the proposed change of control. The superintendent shall grant the certificate if the superintendent is satisfied that the person who proposes to obtain control of the bank is qualified by character, experience and financial responsibility to control and operate the bank in a sound and legal manner, and that the interests of the depositors, creditors and shareholders of the bank, and of the public generally, will not be jeopardized by the proposed change of control. A person which will become a bank holding company upon completion of an acquisition shall make application to the superintendent for a certificate of approval as provided in this section. Any other bank holding company shall comply with section 524.1804 in lieu of seeking a certificate of approval under this section. In any situation where the president or cashier of a bank has reason to believe any of the foregoing requirements have not been complied with, it shall be the duty of the president or cashier to promptly report in writing such facts to the superintendent upon obtaining knowledge thereof. As used in this section, the term "control" means the power, directly or indirectly, to elect the board of directors. If there is any doubt as to whether a change in the ownership of the outstanding shares is sufficient to result in control thereof, or to effect a change in the control thereof, such doubt shall be resolved in favor of reporting the facts to the superintendent.

2. Whenever twenty-five percent or more of the outstanding voting shares of a state bank is used as security for any transaction, the person or persons owning such shares shall promptly report such transaction to the superintendent in writing.

3. The reports required by subsections 1 and 2 of this section shall contain information (to the extent known by the person making the report) relative to the number of shares involved, the names of the sellers and purchasers (or transferors and transferees), the purchase price, the name of the borrower, the amount, source, and terms of the loan, or other transaction, the name of the bank issuing the shares used as security, and the number of shares used as security.

4. The superintendent may require, at such times as the superintendent deems appropriate, the submission of a financial statement from a shareholder or shareholders of a state bank possessing, directly or indirectly, control of such state bank.

99 Acts, ch 6, §1
Subsection 1 amended

524.810A Safe deposit box access.

1. A bank shall permit a person named in and authorized by a court order to open, examine, and remove the contents of a safe deposit box located at the bank. If a court order has not been delivered to the bank, the following persons may access and re-

move any or all contents of a safe deposit box located at a state bank and described in an ownership or rental agreement or lease between the state bank and a deceased owner or lessee:

a. A co-owner or co-lessee of the safe deposit box.

b. A person designated in the safe deposit box agreement or lease to have access to the safe deposit box upon the death of the lessee, to the extent provided in the safe deposit box agreement or lease.

c. An executor or administrator of the estate of a deceased owner or lessee upon delivery to the state bank of a certified copy of letters of appointment.

d. A person named as an executor in a copy of a purported will produced by the person, provided such access shall be limited to the removal of a purported will, and no other contents shall be removed.

e. A trustee of a trust created by the deceased owner or lessee upon delivery to the state bank of a copy of the trust together with an affidavit by the trustee which certifies that the copy of the trust delivered to the state bank with the affidavit is an accurate and complete copy of the trust, the trustee is the duly authorized and acting trustee under the trust, the trust property includes property in the safe deposit box, and that to the knowledge of the trustee the trust has not been revoked.

2. A person removing any contents of a safe deposit box pursuant to subsection 1 shall deliver any writing purported to be a will of the decedent to the court having jurisdiction over the decedent's estate.

3. a. If a person authorized to have access under subsection 1 does not request access to the safe deposit box within the thirty-day period immediately following the date of death of the owner or lessee of a safe deposit box, and the state bank has knowledge of the death of the owner or lessee of the safe deposit box, the safe deposit box may be opened by or in the presence of two employees of the state bank. If no key is produced, the state bank may cause the safe deposit box to be opened and the state bank shall have a claim against the estate of the deceased owner or lessee and a lien upon the contents of the safe deposit box for the costs of opening and resealing the safe deposit box.

b. If a safe deposit box is opened pursuant to paragraph "a", the bank employees present at such opening shall do all of the following:

(1) Remove any purported will of the deceased owner or lessee.

(2) Unseal, copy, and retain in the records of the state bank a copy of a purported will removed from the safe deposit box. An additional copy of such purported will shall be made, dated, and signed by the bank employees present at the safe deposit box opening and placed in the safe deposit box. The safe deposit box shall then be resealed.

(3) The original of a purported will shall be sent by registered or certified mail or personally

delivered to the district court in the county of the last known residence of the deceased owner or lessee, or the court having jurisdiction over the testator's estate. If the residence is unknown or last known and not in this state, the purported will shall be sent by registered or certified mail or personally delivered to the district court in the county where the safe deposit box is located.

4. The state bank may rely upon published information or other reasonable proof of death of an owner or lessee. A state bank has no duty to inquire about or discover, and is not liable to any person for failure to inquire about or discover, the death of the owner or lessee of a safe deposit box. A state bank has no duty to open or cause to be opened, and is not liable to any person for failure to open or cause to be opened, a safe deposit box of a deceased owner or lessee. Upon compliance with the requirements of subsection 1 or 3, the state bank is not liable to any person as a result of the opening of the safe deposit box, removal and delivery of the purported will, or retention of the unopened safe deposit box and contents.

99 Acts, ch 148, §1
NEW section

524.904 Loans and extensions of credit to one borrower.

1. For purposes of this section, "*loans and extensions of credit*" means a state bank's direct or indirect advance of funds to a borrower based on an obligation of that borrower to repay the funds or repayable from specific property pledged by the borrower and shall include:

a. A contractual commitment to advance funds, as defined in section 524.103.

b. A maker or endorser's obligation arising from a state bank's discount of commercial paper.

c. A state bank's purchase of securities subject to an agreement that the seller will repurchase the securities at the end of a stated period.

d. A state bank's purchase of third-party paper subject to an agreement that the seller will repurchase the paper upon default or at the end of a stated period. The amount of the state bank's loan is the total unpaid balance of the paper owned by the state bank less any applicable dealer reserves retained by the state bank and held by the state bank as collateral security. Where the seller's obligation to repurchase is limited, the state bank's loan is measured by the total amount of the paper the seller may ultimately be obligated to repurchase. A state bank's purchase of third-party paper without direct or indirect recourse to the seller is not a loan or extension of credit to the seller.

e. An overdraft.

f. Amounts paid against uncollected funds.

g. Loans or extensions of credit that have been charged off the books of the state bank in whole or in part, unless the loan or extension of credit has become unenforceable by reason of discharge in

bankruptcy; or is no longer legally enforceable because of expiration of the statute of limitations or a judicial decision; or forgiven under an executed written agreement by the state bank and the borrower.

h. The aggregate rentals payable by the borrower under leases of personal property by the state bank as lessor.

i. Loans and extensions of credit to one borrower consisting of investments in which the state bank has invested pursuant to section 524.901.

j. Amounts invested by a state bank for its own account in the shares and obligations of a corporation which is a customer of the state bank.

k. All other loans and extensions of credit to one borrower of the state bank not otherwise excluded by subsection 7, whether directly or indirectly, primarily or secondarily.

2. A state bank may grant loans and extensions of credit to one borrower in an amount not to exceed fifteen percent of the state bank's aggregate capital as defined in section 524.103, unless the additional lending provisions described in subsection 3 or 4 apply.

3. A state bank may grant loans and extensions of credit to one borrower in an amount not to exceed twenty-five percent of the state bank's aggregate capital if any amount that exceeds the lending limitation described in subsection 2 is fully secured by one or any combination of the following:

a. Nonnegotiable bills of lading, warehouse receipts, or other documents transferring or securing title covering readily marketable nonperishable staples when such goods are covered by insurance to the extent that insuring the goods is customary, and when the market value of the goods is not at any time less than one hundred twenty percent of the amount of the loans and extensions of credit.

b. Nonnegotiable bills of lading, warehouse receipts, or other documents transferring or securing title covering readily marketable refrigerated or frozen staples when such goods are fully covered by insurance and when the market value of the goods is not at any time less than one hundred twenty percent of the amount of the loans and extensions of credit.

c. Shipping documents or instruments that secure title to or give a first lien on livestock. At inception, the current value of the livestock securing the loans must equal at least one hundred percent of the amount of the outstanding loans and extensions of credit. For purposes of this section, "*livestock*" includes dairy and beef cattle, hogs, sheep, and poultry, whether or not held for resale. For livestock held for resale, current value means the price listed for livestock in a regularly published listing or actual purchase price established by invoice. For livestock not held for resale, the value shall be determined by the local slaughter price. The bank must maintain in its files evidence of purchase or

an inspection and valuation for the livestock pledged that is reasonably current, taking into account the nature and frequency of turnover of the livestock to which the documents relate.

d. Mortgages, deeds of trust, or similar instruments granting a first lien on farmland or on single-family or two-family residences, subject to the provisions of section 524.905, provided the amount loaned shall not exceed fifty percent of the appraised value of such real property.

e. With the prior approval of the superintendent, other readily marketable collateral. The market value of the collateral securing the loans must at all times equal at least one hundred percent of the outstanding loans and extensions of credit.

4. A state bank may grant loans and extensions of credit to one borrower not to exceed thirty-five percent of the state bank's aggregate capital if any amount that exceeds the lending limitations described in subsection 2 or 3 consists of obligations as endorser of negotiable chattel paper negotiated by endorsement with recourse, or as unconditional guarantor of nonnegotiable chattel paper, or as transferor of chattel paper endorsed without recourse subject to a repurchase agreement.

5. A state bank may grant loans and extensions of credit to a corporate group in an amount not to exceed twenty-five percent of the state bank's aggregate capital if all loans and extensions of credit to any one borrower within a corporate group conform to subsection 2 or 3, and the financial strength, assets, guarantee, or endorsement of any one corporate group member is not relied upon as a basis for loans and extensions of credit to any other corporate group member. A state bank may grant loans and extensions of credit to a corporate group in an amount not to exceed thirty-five percent of aggregate capital if all loans and extensions of credit to any one borrower within a corporate group conform to subsection 2, 3, or 4, and the financial strength, assets, guarantee, or endorsement of any one corporate group member is not relied upon as a basis for loans and extensions of credit to any other corporate group member. A corporate group includes a person and all corporations in which the person owns or controls fifty percent or more of the shares entitled to vote.

6. For purposes of this section:

a. Loans and extensions of credit to one person will be attributed to another person and will be considered one borrower if either of the following apply:

(1) The proceeds, or assets purchased with the proceeds, benefit another person, other than a bona fide arm's length transaction where the proceeds are used to acquire property, goods, or services.

(2) The expected source of repayment for each loan or extension of credit is the same for each borrower and no borrower has another source of income from which the loan may be fully repaid.

b. Loans and extensions of credit to a partnership, joint venture, or association are deemed to be loans and extensions of credit to each member of the partnership, joint venture, or association. This provision does not apply to limited partners in limited partnerships or to members of joint ventures or associations if the partners or members, by the terms of the partnership or membership agreement or other written agreement, are not to be held generally liable for the debts or actions of the partnership, joint venture, or association, and those provisions are valid under applicable law.

c. Loans and extensions of credit to members of a partnership, joint venture, or association are not attributed to the partnership, joint venture, or association unless loans and extensions of credit are made to the member to purchase an interest in the partnership, joint venture, or association, or the proceeds are used for a common purpose with the proceeds of loans and extensions of credit to the partnership, joint venture, or association.

d. Loans and extensions of credit to one borrower which are endorsed or guaranteed by another borrower will not be combined with loans and extensions of credit to the endorser or guarantor unless the endorsement or guaranty is relied upon as a basis for the loans and extensions of credit. A state bank shall not be deemed to have violated this section if the endorsement or guaranty is relied upon after inception of loans and extensions of credit, but the state bank shall, if required by the superintendent, dispose of loans and extensions of credit to one borrower in the amount in excess of the limitations of this section within a reasonable time as fixed by the superintendent.

e. When the superintendent determines the interests of a group of more than one borrower, or any combination of the members of the group, are so interrelated that they should be considered a unit for the purpose of applying the limitations of this section, some or all loans and extensions of credit to that group of borrowers existing at any time shall be combined and deemed loans and extensions of credit to one borrower. A state bank shall not be deemed to have violated this section solely by reason of the fact that loans and extensions of credit to a group of borrowers exceed the limitations of this section at the time of a determination by the superintendent that the indebtedness of that group must be combined, but the state bank shall, if required by the superintendent, dispose of loans and extensions of credit to the group in the amount in excess of the limitations of this section within a reasonable time as fixed by the superintendent.

7. Total loans and extensions of credit to one borrower for the purpose of applying the limitations of this section shall not include any of the following:

a. Additional funds advanced for taxes or for insurance if the advance is for the protection of the

state bank, and provided that such amounts receive the prior approval of the superintendent.

b. Accrued and discounted interest on existing loans or extensions of credit.

c. Any portion of a loan or extension of credit sold as a participation by a state bank on a nonrecourse basis, provided that the participation results in a pro rata sharing of credit risk proportionate to the respective interests of the originating and participating lenders. Where a participation agreement provides that repayment must be applied first to the portions sold, a pro rata sharing will be deemed to exist only if the agreement also provides that in the event of a default or comparable event defined in the agreement, participants must share in all subsequent repayments and collections in proportion to their percentage participation at the time of the occurrence of the event. If an originating state bank funds the entire loan, it must receive funding from the participants on the same day or the portions funded will be treated as loans by the originating state bank to the borrower.

d. Loans and extensions of credit to one borrower to the extent secured by a segregated deposit account which the state bank may lawfully set off. An amount held in a segregated deposit account in the name of more than one customer shall be counted only once with respect to all borrowers. Where the deposit is eligible for withdrawal before the secured loan matures, the state bank must establish internal procedures to prevent release of the security without the state bank's prior consent.

e. Loans and extensions of credit to one borrower which is a bank.

f. Loans and extensions of credit to one borrower which are fully secured by bonds and securities of the kind in which a state bank is authorized to invest for its own account without limitation under section 524.901, subsection 3.

g. Loans and extensions of credit to a federal reserve bank or to the United States, or of any department, bureau, board, commission, agency, or establishment of the United States, or to any corporation owned directly or indirectly by the United States, or loans and extensions of credit to one borrower to the extent that such loans and extensions of credit are fully secured or guaranteed or covered by unconditional commitments or agreements to purchase by a federal reserve bank or by the United States, or any department, bureau, board, commission, agency, or establishment of the United States, or any corporation owned directly or indirectly by the United States. Loans and extensions of credit to one borrower secured by a lease on property under the terms of which the United States, or any department, bureau, board, commission, agency, or establishment of the United States, or any corporation owned directly or indirectly by the United States, or the state of Iowa, or any political subdivision of the state, is lessee and under the terms of which the aggregate rentals payable to the borrow-

er will be sufficient to satisfy the amount loaned is considered to be loans and extensions of credit secured or guaranteed as provided for in this paragraph.

h. Loans and extensions of credit to one borrower as the drawer of drafts drawn in good faith against actually existing values in connection with a sale of goods which have been endorsed by the borrower with recourse or which have been accepted.

i. Loans and extensions of credit arising out of the discount of commercial paper actually owned by a borrower negotiating the same and endorsed by a borrower without recourse and which is not subject to repurchase by a borrower.

j. Loans and extensions of credit drawn by a borrower in good faith against actually existing values and secured by nonnegotiable bills of lading for goods in process of shipment.

k. Loans and extensions of credit in the form of acceptances of other banks of the kind described in section 524.903, subsection 3.

l. Loans and extensions of credit of the borrower by reason of acceptances by the state bank for the account of the borrower pursuant to section 524.903, subsection 1.

99 Acts, ch 6, §2

Subsections 2, 4, and 5 amended

524.1202 Location of offices.

The location of any new bank office, or any change of location of a previously established bank office, shall be subject to the approval of the superintendent. No state bank shall establish a bank office outside the boundaries of the counties contiguous to or cornering upon the county in which the principal place of business of the state bank is located.

1. Except as otherwise provided in subsection 2 of this section, no state bank shall establish a bank office outside the corporate limits of a municipal corporation or in a municipal corporation in which there is already an established state or national bank or office; however, the subsequent chartering and establishment of any state or national bank, through the opening of its principal place of business within the municipal corporation where the bank office is located, shall not affect the right of the bank office to continue in operation in that municipal corporation. The existence and continuing operation of a bank office shall not be affected by the subsequent discontinuance of a municipal corporation pursuant to the provisions of sections 368.11 to 368.22. A bank office existing and operating on July 1, 1976, which is not located within the confines of a municipal corporation, shall be allowed to continue its existence and operation without regard to this subsection.

2. *a.* A state bank may establish any number of bank offices within the municipal corporation or urban complex in which the principal place of business of the bank is located.

b. For purposes of this subsection, “*urban complex*” means the geographic area bounded by the corporate limits of two or more municipal corporations, each of which being contiguous to or cornering upon at least one of the other municipal corporations within the complex. Nothing contained in this paragraph authorizes a state bank to establish a bank office outside of the boundaries of this state.

c. One such facility located in the proximity of a state bank’s principal place of business may be found by the superintendent to be an integral part of the principal place of business, and not a bank office within the meaning of this section.

d. One such facility located in the proximity of a state bank’s office may be found by the superintendent to be an integral part of the bank office and not a bank office within the meaning of this section.

3. Notwithstanding subsection 1, if the assets of a state or national bank in existence on January 1, 1989, are transferred to a different state or national bank in the state which is located in the same county or a county contiguous to or cornering upon the county in which the principal place of business of the acquired bank is located, the resulting or acquiring bank may convert to and operate as its bank office any one or more of the business locations occupied as the principal place of business or as a bank office of the bank whose assets are so acquired. The limitations on bank office locations contained in unnumbered paragraph 1 of this section are applicable to any bank office otherwise authorized by this subsection. A bank office established under the authority of this subsection is subject to the approval of the superintendent and shall be operated in accordance with this chapter relating to the operation of bank offices, and may be augmented by an integral facility when approved under subsection 2, paragraph “*d*”.

99 Acts, ch 114, §42
Subsection 2, paragraph b amended

524.1213 United community bank offices.

1. A bank may convert to a united community bank office as provided in this section.

2. A united community bank office formed under this section shall have a united community bank office board, at least one-half or more of the members of which shall be residents of the county in which the united community bank office is located. The liability of the united community bank office board shall be limited as provided in section 524.614. The bank establishing and operating the united community bank office may indemnify members of the united community bank office board as agents of the bank in the manner and in the instances authorized by sections 490.850 through 490.858.

3. Any two or more state banks, national banks, or state and national banks that are located in this state, that are affiliates as defined in section 524.1101, and that individually have been in existence and operated as banks continuously in this state for at least five years, may be merged or consolidated into a single state or national bank, and the resulting entity shall be a “*united community bank*”. The resulting united community bank of the merger or consolidation:

a. Shall retain and operate as its principal place of business one of the principal places of business of the banks that are the parties to the merger or consolidation.

b. May retain and continue to operate as united community bank offices of the resulting bank any of the remaining principal places of business of the banks that are the parties to the merger or consolidation.

c. May retain and continue to operate as retained bank offices of the resulting united community bank any of the bank offices that are being operated as of the date of the merger or consolidation by any of the banks that are parties to the merger or consolidation.

d. May establish any number of additional bank offices within the municipal corporation or urban complex in which a united community bank office referred to in paragraph “*b*” is located.

e. May retain and continue to operate and may establish in conjunction with the resulting bank, or with any retained united community bank office, or with any other retained bank office, any facility authorized by section 524.1202, subsection 2, paragraph “*c*” or “*d*”, and in operation at the time of the merger or consolidation or established after the merger or consolidation.

f. May relocate any principal place of business and any bank offices operated pursuant to this section by complying with other provisions of law applicable to relocation.

4. For purposes of subsection 3, the period of existence and operation of a bank shall be deemed continuous, notwithstanding any of the following:

a. Any direct or indirect change in the name, ownership, or control of the bank.

b. Any rechartering of the bank, or any merger or consolidation with one or more banks.

c. The bank acquired its initial assets and liabilities from the federal deposit insurance corporation, or other transferor, pursuant to a purchase and assumption transaction or any other type of transaction involving the transfer of ownership of a failed bank or other bank.

5. For purposes of subsection 3, a bank that has been chartered solely for the purpose of, and does not open for business prior to, acquiring control of, or acquiring all or substantially all of the assets of, one or more branches owned and operated on January 1, 1997, by a savings association, as defined in

12 U.S.C. § 1813, which association is an affiliate of the bank, is deemed to have been in continuous existence and operation as a bank for the combined periods of continuous existence and operation of the bank and the savings association from which the branch or branches were acquired.

6. For purposes of subsection 3, a bank that results from the conversion of a state savings association or federal savings association, as defined in 12 U.S.C. § 1813, is deemed to have been in continuous existence and operation as a bank for the combined periods of continuous existence and operation of the bank and the association from which it was converted.

7. For purposes of subsection 3, a bank that has been chartered solely for the purpose of, and does not open for business prior to, acquiring control of, or acquiring all or substantially all of the assets of, a bank located in this state is deemed to have been in existence and operation for the same period of time as the bank which is acquired.

8. All united community bank offices and other bank offices retained by the resulting bank of a merger or consolidation under the authority of this section shall be deemed bank offices established under the authority of section 524.1201 for all intents and purposes of this chapter, except as is otherwise expressly provided in this section.

9. This section does not alter the limitations upon bank holding companies contained in section 524.1802.

10. This section shall be strictly construed as an exception to the bank office limitations contained in section 524.1202. It is the intent of the general assembly that a court or regulatory agency shall not deem, construe, or interpret this section to permit statewide branch banking or to permit the establishment of a bank office at any location in this state unless specifically authorized by this section or section 524.312 or 524.1202.

11. This section does not authorize the establishment of a bank office or an integral facility at any time by any bank except as a direct and immediate consequence of a merger or consolidation of two or more affiliated banks and as expressly permitted by subsection 3. This section does not authorize the resulting bank of a merger or consolidation to establish or retain any united community bank office, bank office, or integral facility at any location other than those expressly permitted by subsection 3, or to preserve any business location acquired in the merger or consolidation for subsequent use.

12. As used in this section, the term "bank" does not include any entity unless it is chartered as a state or national bank and is authorized by its bylaws to, and actually does, accept deposits, pay checks, and make commercial loans.

524.1406 Rights of dissenting shareholders.

1. A shareholder of a state bank, which is a party to a proposed merger plan which will result in a state bank subject to this chapter, who objects to the plan is entitled to the rights and remedies of a dissenting shareholder as provided in chapter 490, division XIII.

2. If a shareholder of a national bank which is a party to a proposed merger plan which will result in a state bank, or a shareholder of a state bank which is a party to a plan which will result in a national bank, objects to the plan and complies with the requirements of the applicable laws of the United States, the resulting state bank or national bank, as the case may be, is liable for the value of the shareholder's shares as determined in accordance with such laws of the United States.

3. *a.* Notwithstanding any contrary provision in chapter 490, division XIII, in determining the fair value of the shareholder's shares under this section, due consideration shall be given to valuation issues acknowledged and authorized by the Internal Revenue Code, as defined in section 422.3, including discounts for minority interests and discounts for lack of marketability.

b. Prior to giving notice of a meeting at which a shareholder would be entitled to assert dissenter's rights, a bank may seek a declaratory judgment to establish the fair value for purposes of section 490.1301, subsection 4, of shares held by shareholders who would have a right to dissent. Another cause of action or a counterclaim shall not be joined with such a declaratory action. A declaratory judgment shall be filed in the county where the bank's principal place of business is located. The court shall appoint an attorney to represent minority shareholders. All shareholders of the bank shall be served with notice of the action and be advised of the name, address, and telephone number of the attorney appointed to represent minority shareholder interests. The bank may select an appraiser to give an opinion on fair value and the attorney shall select an appraiser to give an opinion on fair value. Any shareholder may participate individually and present evidence of the fair value of such shareholder's shares. All court costs, appraiser's fees, and the fees and expenses of the attorney shall be assessed against the bank. A judgment in the action shall not determine fair value for a share to be less than the stockholders' equity in the bank in its last statement of condition filed under section 524.220 divided by the number of shares outstanding. A final judgment in the action shall establish fair value for the purposes of chapter 490, division XIII and shall be disclosed to the shareholders in the notice to shareholders of the meeting to approve the transaction that gives rise to dissenters' rights. If the proposed transaction is approved by

the shareholders, upon consummation of the proposed transaction the fair value so established shall be paid to all shareholders entitled to payment for their shares upon receipt of such share-

holders' share certificates.

99 Acts, ch 162, §1; 99 Acts, ch 208, §59
NEW subsection 3

CHAPTER 533

CREDIT UNIONS

533.26 Preservation of records.

The superintendent shall prescribe by rule the period of preservation of records or files for credit unions. A copy of an original may be kept in lieu of any original records. For purposes of this section, a copy includes any duplicate, rerecording or reproduction of an original record from any photograph, photostat, microfilm, microcard, miniature or microphotograph, computer printout, electronically stored data or image, or other process which accurately reproduces or forms a durable medium for accurately and legibly reproducing an unaltered image or reproduction of the original record. A copy is deemed to be an original and shall be treated as an original record in a judicial or administrative proceeding for purposes of admissibility in evidence. A facsimile, exemplification, or certified copy of any such copy reproduced from a film record is deemed to be a facsimile, exemplification, or certified copy of the original.

99 Acts, ch 34, §2
Section amended

533.28 Photographic records.

1. Any writing or record, or a photostatic or photographic reproduction of such writing or record, of a credit union whether in the form of an entry in a book or otherwise, made as a memorandum or record of any act, transaction, occurrence, or event, shall be admissible in evidence in proof of the act, transaction, occurrence, or event, if made in the regular course of business.

2. A printout or other tangible output readable by sight shown to accurately reflect data contained in a promissory note, negotiable instrument, or letter of credit, which contains a signature made or created by electronic or digital means such that it is stored by a computer or similar device, is deemed to be an original of such note, instrument, or letter for purposes of presenting such note, instrument, or letter for payment, acceptance, or honor, or for purposes of a judicial proceeding involving a claim based upon such note, instrument, or letter.

99 Acts, ch 34, §3
Section amended

533.49E Safe deposit box access.

1. A credit union shall permit a person named in and authorized by a court order to open, examine, and remove the contents of a safe deposit

box located at the credit union. If a court order has not been delivered to the credit union, the following persons may access and remove any or all contents of a safe deposit box located at a state credit union and described in an ownership or rental agreement or lease between the state credit union and a deceased owner or lessee:

a. A co-owner or co-lessee of the safe deposit box.

b. A person designated in the safe deposit box agreement or lease to have access to the safe deposit box upon the death of the lessee, to the extent provided in the safe deposit box agreement or lease.

c. An executor or administrator of the estate of a deceased owner or lessee upon delivery to the state credit union of a certified copy of letters of appointment.

d. A person named as an executor in a copy of a purported will produced by the person, provided such access shall be limited to the removal of a purported will, and no other contents shall be removed.

e. A trustee of a trust created by the deceased owner or lessee upon delivery to the state credit union of a copy of the trust together with an affidavit by the trustee which certifies that the copy of the trust delivered to the state credit union with the affidavit is an accurate and complete copy of the trust, the trustee is the duly authorized and acting trustee under the trust, the trust property includes property in the safe deposit box, and that to the knowledge of the trustee the trust has not been revoked.

2. A person removing any contents of a safe deposit box pursuant to subsection 1 shall deliver any writing purported to be a will of the decedent to the court having jurisdiction over the decedent's estate.

3. a. If a person authorized to have access under subsection 1 does not request access to the safe deposit box within the thirty-day period immediately following the date of death of the owner or lessee of a safe deposit box, and the state credit union has knowledge of the death of the owner or lessee of the safe deposit box, the safe deposit box may be opened by or in the presence of two employees of the state credit union. If no key is produced, the state credit union may cause the safe deposit box to be opened and the state credit union shall have a claim against the estate of the deceased owner or

lessee and a lien upon the contents of the safe deposit box for the costs of opening and resealing the safe deposit box.

b. If a safe deposit box is opened pursuant to paragraph "a", the credit union employees present at such opening shall do all of the following:

(1) Remove any purported will of the deceased owner or lessee.

(2) Unseal, copy, and retain in the records of the state credit union a copy of a purported will removed from the safe deposit box. An additional copy of such purported will shall be made, dated, and signed by the credit union employees present at the safe deposit box opening and placed in the safe deposit box. The safe deposit box shall then be resealed.

(3) The original of a purported will shall be sent by registered or certified mail or personally delivered to the district court in the county of the last known residence of the deceased owner or lessee or the court having jurisdiction over the testator's estate. If the residence is unknown or last

known and not in this state, the purported will shall be sent by registered or certified mail or personally delivered to the district court in the county where the safe deposit box is located.

4. The state credit union may rely upon published information or other reasonable proof of death of an owner or lessee. A state credit union has no duty to inquire about or discover, and is not liable to any person for failure to inquire about or discover, the death of the owner or lessee of a safe deposit box. A state credit union has no duty to open or cause to be opened, and is not liable to any person for failure to open or cause to be opened, a safe deposit box of a deceased owner or lessee. Upon compliance with the requirements of subsection 1 or 2, the state credit union is not liable to any person as a result of the opening of the safe deposit box, removal and delivery of the purported will, or retention of the unopened safe deposit box and contents.

99 Acts, ch 148, §2
NEW section

CHAPTER 534

SAVINGS AND LOAN ASSOCIATIONS

534.106 Records.

1. Complete and adequate records of all accounts and of all minutes of proceedings of the members, directors and executive committee shall be maintained at all times at the office of the association.

2. Every association shall maintain membership records, which shall show the name and address of the member, whether the member is a share account holder, or a borrower, or a share account holder and borrower, and the date of membership thereof. In the case of account holding members, the association shall obtain a card containing the signature of the owner of such account or the owner's duly authorized representative and shall preserve such signature card in the records of the association.

3. Associations shall not be required to preserve or keep their records or files for a longer period than eleven years next after the first day of January of the year following the time of the making or filing of such records or files; provided, however, that ledger sheets showing unpaid accounts in favor of members of such savings and loan association shall not be destroyed.

4. No liability shall accrue against any association, destroying any such records after the expiration of the time provided in subsection 3, and in any cause or proceedings in which any such records or files may be called in question or be demanded of the association or any officer or employee thereof, a showing that such records and files have been de-

stroyed in accordance with the terms of this chapter shall be a sufficient excuse for the failure to produce them.

5. All causes of action against an association based upon a claim or claims inconsistent with an entry or entries in any savings and loan association record or ledger, made in the regular course of business, shall be deemed to have accrued, and shall accrue, one year after the date of such entry or entries; and no action founded upon such a cause may be brought after the expiration of ten years from the date of such accrual.

6. The provisions of this chapter, so far as applicable, shall apply to the records of federal savings and loan associations.

7. A copy of an original may be kept by an association in lieu of any original records. For purposes of this section, a copy includes any duplicate, re-recording or reproduction of an original record from any photograph, photostat, microfilm, microcard, miniature or microphotograph, computer printout, electronically stored data or image, or other process which accurately reproduces or forms a durable medium for accurately and legibly reproducing an unaltered image or reproduction of the original record. Any such copy or reproduction is deemed to be an original record for all purposes and shall be treated as an original record in all courts or administrative agencies for the purpose of its admissibility in evidence. A facsimile, exemplification or certified copy of any such copy or reproduction reproduced from a film record shall, for all

purposes, be deemed a facsimile, exemplification or certified copy of the original.

A printout or other tangible output readable by sight shown to accurately reflect data contained in a promissory note, negotiable instrument, or letter of credit, which contains a signature made or created by electronic or digital means such that it is stored by a computer or similar device, is deemed to

be an original of such note, instrument, or letter for purposes of presenting such note, instrument, or letter for payment, acceptance, or honor, or for purposes of a judicial proceeding involving a claim based upon such note, instrument, or letter.

99 Acts, ch 34, §4
Subsection 7, NEW unnumbered paragraph 2

CHAPTER 535

MONEY AND INTEREST

535.10 Home equity line of credit.

1. As used in this chapter, the term "*home equity line of credit*" means an arrangement pursuant to which all of the following are applicable:

a. The amounts borrowed and the interest and other charges are debited to an account.

b. The interest is computed on the account periodically.

c. The borrower has the right to pay in full at any time without penalty or to pay in the installments which are established by the loan agreement.

d. The lender agrees to permit the borrower to borrow money from time to time with the maximum amount of each borrowing established by the loan agreement.

e. The account is secured by an interest in real estate. The priority of the secured interest in the real estate shall be determined by section 654.12A.

2. Except as provided in this section, a home equity line of credit is subject to chapter 537. However, sections 537.2307, 537.2402, and 537.2510 do not apply.

3. a. A lender may collect in connection with establishing or renewing a home equity line of credit the costs listed in section 535.8, subsection 2, paragraph "b", charges for insurance as described in section 537.2501, subsection 2, and a loan processing fee as agreed between the borrower and the lender, and annually may collect an account maintenance fee of not more than fifteen dollars.

Fees collected under this subsection shall be disregarded for purposes of determining the maximum charge permitted by subsection 4.

b. The parties to a home equity line of credit which is not a consumer credit transaction, as defined in section 537.1301, may contract for a delinquency charge under terms no more favorable than those permitted for open-end credit under section 537.2502.

4. The interest rate on a home equity line of credit shall not exceed one and three-quarters percent per month.

5. Real estate which is the consumer's principal dwelling shall not be subject to foreclosure when the balance secured is two thousand dollars or less.

99 Acts, ch 15, §1
Subsection 3 amended

535.14 Prompt crediting of payment on loans secured by residential real property.

A lender is subject to the requirements set forth in section 537.3206, regarding the prompt crediting of payments, with respect to a loan secured by a lien or security interest on owner-occupied residential real property. For purposes of this section, "*residential real property*" means residential real property as defined in section 535B.1.

99 Acts, ch 15, §2
NEW section

535.15 Open-end credit and credit card disclosure.

Repealed by 99 Acts, ch 73, § 1.

CHAPTER 535B

MORTGAGE BANKERS AND BROKERS

535B.7 Suspension or revocation of license.

1. The administrator may, pursuant to chapter 17A, suspend or revoke any license issued pursuant to this chapter if the administrator finds any of the following:

a. The licensee has violated a provision of this chapter or a rule adopted under this chapter or any other state or federal law applicable to the conduct of its business including but not limited to chapters 535 and 535A.

b. A fact or condition exists which, if it had existed at the time of the original application for the license, would have warranted the administrator to refuse originally to issue the license.

c. The licensee is found upon investigation to be insolvent, in which case the license shall be revoked immediately.

2. The administrator may order an emergency suspension of a licensee's license pursuant to section 17A.18A. A written order containing the facts or conduct which warrants the emergency action shall be timely sent to the licensee by restricted certified mail. Upon issuance of the suspension order, the licensee must also be notified of the right to an evidentiary hearing. A suspension proceeding shall be promptly instituted and determined.

Except as provided in this section, a license shall

not be revoked or suspended except after notice and a hearing thereon in accordance with chapter 17A.

3. A licensee may surrender a license by delivering to the administrator written notice of surrender, but a surrender does not affect the licensee's civil or criminal liability for acts committed before the surrender.

4. A revocation, suspension, or surrender of a license does not impair or affect the obligation of a preexisting lawful contract between the licensee and any person, including a mortgagor.

98 Acts, ch 1202, §42, 46

1998 amendment to subsection 2, unnumbered paragraph 1 is effective July 1, 1999, and applies to agency proceedings commenced, or conducted on remand from a court or other agency, on or after that date; 98 Acts, ch 1202, §42, 46

Subsection 2, unnumbered paragraph 1 amended

CHAPTER 537

CONSUMER CREDIT CODE

537.2501 Additional charges.

1. In addition to the finance charge permitted by parts 2 and 4, a creditor may contract for and receive the following additional charges:

a. Official fees and taxes.

b. Charges for insurance as described in subsection 2.

c. Amounts actually paid or to be paid by the creditor for registration, certificate of title or license fees.

d. Annual charges, payable in advance, for the privilege of using a credit card which entitles the cardholder to purchase or lease goods or services from at least one hundred persons not related to the card issuer, under an arrangement pursuant to which the debts resulting from the purchases or leases are payable to the card issuer.

e. With respect to a debt secured by an interest in land, the following "closing costs," provided they are bona fide, reasonable in amount, and not for the purpose of circumvention or evasion of this chapter:

(1) Fees or premiums for title examination, abstract of title, title insurance, or similar purposes including surveys.

(2) Fees for preparation of a deed, settlement statement, or other documents, if not paid to the creditor or a person related to the creditor.

(3) Escrows for future payments of taxes, including assessments for improvements, insurance and water, sewer and land rents.

(4) Fees for notarizing deeds and other documents, if not paid to the creditor or a person related to the creditor.

f. With respect to open-end credit 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 an over-limit charge up to fifteen dollars if the balance of the account exceeds the credit limit established pursuant to the agreement. The over-limit charge under this paragraph shall not be assessed again in a subsequent billing cycle unless in a subsequent billing cycle the account balance has been reduced below the credit limit.

If the differential treatment of this subsection based on the number of persons honoring a credit card is found to be unconstitutional, the parties may contract for the over-limit charge as described in this paragraph in any consumer credit transaction pursuant to open-end credit, and the other conditions relating to the over-limit charge shall remain in effect.

g. A surcharge of not more than five percent of the amount of the face value of the payment instrument or twenty dollars, whichever is greater, for each dishonored payment instrument provided that the fee is clearly and conspicuously disclosed in the cardholder agreement. However, the amount of the surcharge shall not exceed twenty dollars unless the check, draft, or order was presented twice or the maker does not have an account with the drawee. If the check, draft, or order was presented twice or the maker does not have an account with the drawee, the amount of the surcharge shall not exceed fifty dollars. The surcharge shall not be assessed against the maker if the reason for the dishonor of the instrument is that the maker has stopped payment pursuant to section 554.4403.

h. Charges for other benefits, including insurance, conferred on the consumer, if the benefits are of value to the consumer and if the charges are reasonable in relation to the benefits, are of a type

which is not for credit, and are authorized as permissible additional charges by rule adopted by the administrator.

i. A reasonable annual account maintenance fee, payable in advance, for the privilege of maintaining a demand deposit account with a line of credit that may be accessed by the account holder writing a check.

2. An additional charge may be made for insurance written in connection with the transaction, as follows:

a. With respect to insurance against loss of or damage to property, or against liability arising out of the ownership or use of property, if the creditor furnishes a clear, conspicuous and specific statement in writing to the consumer setting forth the cost of the insurance if obtained from or through the creditor and stating that the consumer may choose the person through whom the insurance is to be obtained.

b. With respect to consumer credit insurance providing life, accident, health, or unemployment coverage, if the insurance coverage is not required by the creditor, and this fact is clearly and conspicuously disclosed in writing to the consumer, and if, in order to obtain the insurance in connection with the extension of credit, the consumer gives specific dated and separately signed affirmative written indication of the consumer's desire to do so after written disclosure to the consumer of the cost. However, credit unemployment insurance shall be permitted under this paragraph if all of the following conditions have been met:

(1) The insurance provides coverage beginning with the first day of unemployment. However, the policy may include a waiting period before the consumer may file a claim.

(2) The insurance shall be sold separately and shall be separately priced from any other insurance offered or sold at the same time. The credit unemployment insurance need not be sold separately or separately priced from other insurance offered if it is included as part of an insurance offering by a credit card issuer to its credit cardholders.

(3) The premium rates have been affirmatively approved by the insurance division of the department of commerce. In approving or establishing the rates, the division shall review the insurance company's actuarial data to assure that the rates are fair and reasonable. The insurance commissioner shall either hire or contract with a qualified actuary to review the data. The insurance division shall obtain reimbursement from the insurance company for the cost of the actuarial review prior to approving the rates. In addition, the rates shall be made in accordance with the following provisions:

(a) Rates shall not be excessive, inadequate or unfairly discriminatory.

(b) Due consideration shall be given to all relevant factors within and outside this state but rates shall be deemed to be reasonable under this section

if they reasonably may be expected to produce a ratio of fifty percent by dividing claims incurred by premiums earned.

3. 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 creditor may contract for and receive any charge lawfully contained in a prior agreement between the consumer and a prior creditor from whom the creditor currently issuing the credit card acquired the credit card account, if the account was acquired in an arm's-length for-value sale from a nonrelated or nonaffiliated creditor. The creditor may charge any charge on new open-end credit accounts lawfully permitted in a prior agreement between a consumer and a prior creditor from whom the creditor currently issuing the credit card acquired the credit card accounts.

99 Acts, ch 116, §1
Subsection 1, NEW paragraph i

537.2502 Delinquency charges.

1. With respect to a consumer credit transaction not pursuant to an open-end credit arrangement and other than a consumer lease or consumer rental purchase agreement, 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 as follows:

a. For a precomputed transaction, an amount not exceeding the greater of either of the following:

(1) Five percent of the unpaid amount of the installment, or a maximum of twenty dollars.

(2) The deferral charge that would be permitted to defer the unpaid amount of the installment for the period that it is delinquent.

b. For an interest-bearing transaction, an amount not exceeding five percent of the unpaid amount of the installment, or a maximum of fifteen dollars.

2. A delinquency charge under subsection 1 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. A delinquency charge shall not be collected under subsection 1 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, the parties may contract for a delinquency charge on any payment not paid in full when due, as originally scheduled or as deferred, in an amount up to fifteen dollars.

5. A delinquency charge under subsection 4 may be collected only once on a payment however long it remains in default. A delinquency charge shall not be collected with respect to a deferred payment unless the payment is not paid in full on or before its deferred due date. A delinquency charge may be collected at the time it accrues or at any time afterward.

6. A delinquency charge shall not be collected under subsection 4 on a payment which is paid in full on or before 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.

99 Acts, ch 15, §3
Subsections 1-3 amended

537.3206 Receipt — statements of account — evidence of payment — credits.

1. The creditor shall deliver or mail to the consumer, without request, a written receipt for each payment by coin or currency on an obligation pursuant to a consumer credit transaction. A periodic statement for a computational period showing a payment received by mail complies with this subsection.

2. Upon written request of a consumer, the person to whom an obligation is owed pursuant to a consumer credit agreement shall provide a written statement of the dates and amounts of payments made within the twelve months preceding the

month in which the request is received and the total amount unpaid as of the end of the period covered by the statement. The statement shall be provided without charge once during each year of the term of the obligation. If additional statements are requested the creditor may charge not in excess of three dollars for each additional statement.

3. After a consumer has fulfilled all obligations with respect to a consumer credit transaction, other than one pursuant to open end credit, the person to whom the obligation was owed shall, upon request of the consumer, deliver or mail to the consumer written evidence acknowledging payment in full of all obligations with respect to the transaction.

4. *a.* A creditor shall credit a payment to the consumer's account as of the date of receipt, except when a delay in crediting does not result in a finance or other charge, including a late charge, or except as provided in paragraph "b". For purposes of this subsection, a delay in posting does not violate this subsection so long as the payment is credited as of the date of receipt.

b. If a creditor specifies requirements for the consumer to follow in making payments on the contract, payment coupon book, payment coupon or statement, or periodic statement, but accepts a payment that does not conform to the requirements, the creditor shall credit the payment within two days of receipt of such payment.

c. If a creditor fails to credit a payment as required by this subsection in time to avoid the imposition of a finance or other charge, including a delinquency charge, the creditor shall adjust the consumer's account so that the charges imposed are credited to the consumer's account during the next payment period.

99 Acts, ch 15, §4
NEW subsection 4

CHAPTER 541A

INDIVIDUAL DEVELOPMENT ACCOUNTS

541A.6 Compliance with federal requirements.

The administrator shall adopt rules for compliance with federal individual development account requirements under the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, § 103, as codified in 42 U.S.C. § 604(h), under the federal Assets for Independence Act, Pub. L. No. 105-285, Title IV, or with any other federal individual development account program requirements, as necessary for the state to qualify to use federal temporary assistance for needy fami-

lies block grant funding or other available federal funding for allocation to operating organizations. Any rules adopted under this section shall not apply the federal individual development account program requirements to an operating organization which does not utilize federal funding for the accounts with which it is connected or to an account holder who does not receive temporary assistance for needy families block grant or other federal funding.

99 Acts, ch 100, §4
NEW section

CHAPTER 543B

REAL ESTATE BROKERS AND SALESPERSONS

543B.7 Acts excluded from provisions.

The provisions of this chapter shall not apply to the sale, exchange, purchase, rental, lease, or advertising of any real estate in any of the following cases:

1. A person who, as owner, spouse of an owner, general partner of a limited partnership, lessor, or prospective purchaser, or through another engaged by such person on a regular full-time basis, buys, sells, manages, or otherwise performs any act with reference to property owned, rented, leased, or to be acquired by such person.

2. By any person acting as attorney in fact under a duly executed and acknowledged power of attorney from the owner, to act on behalf of the owner or lessor to authorize the final consummation and execution of any contract for the sale, leasing, or exchange of real estate.

3. A licensed attorney admitted to practice in Iowa acting solely as an incident to the practice of law.

4. A person acting as a receiver, trustee in bankruptcy, administrator, executor, guardian, or while acting under court order or under authority of a deed of trust, trust agreement, or will.

5. The acts of an auctioneer in conducting a public sale or auction. The auctioneer's role must be limited to establishing the time, place, and method of an auction; advertising the auction including a brief description of the property for auction, the time and place for the auction, and the name and address of the real estate broker or attorney who is providing brokerage services for the transaction and who is also responsible for closing the sale of the property; and crying the property at the auction. If the auctioneer closes or attempts to close the sale of the property or otherwise engages in acts defined in sections 543B.3 and 543B.6, then the requirements of this chapter do apply to the auctioneer.

6. An isolated real estate rental transaction by an owner's representative on behalf of the owner; such transaction not being made in the course of repeated and successive transactions of a like character.

7. The sale of time-share uses as defined in section 557A.2.

8. A person acting as a resident manager when such resident manager resides in the dwelling and is engaged in the leasing of real property in connection with their employment.

9. An officer or employee of the federal government, state government, or a political subdivision of the state, in the conduct of the officer's or employee's official duties.

10. A person employed by a public or private utility who performs an act with reference to property owned, leased, or to be acquired by the utility employing that person, where such an act is performed in the regular course of, or incident to, the management of the property and the investment in the property.

11. A nonlicensed employee of a licensee who provides information to another licensee concerning the sale, exchange, purchase, rental, lease, or advertising of real estate which has been provided to the employee by the employer licensee either verbally or in writing.

99 Acts, ch 82, §1
Subsection 5 amended

543B.34 Investigations by commission.

The real estate commission may upon its own motion and shall upon the verified complaint in writing of any person, if the complaint together with evidence, documentary or otherwise, presented in connection with the complaint makes out a prima facie case, request commission staff or any other duly authorized representative or designee to investigate the actions of any real estate broker, real estate salesperson, or other person who assumes to act in either capacity within this state, and may suspend or revoke a license issued under this chapter at any time if the licensee has by false or fraudulent representation obtained a license, or if the licensee is found to be guilty of any of the following:

1. Making any substantial misrepresentation.

2. Making any false promise of a character likely to influence, persuade or induce.

3. Pursuing a continued and flagrant course of misrepresentation, or making of false promises through agents or salespersons or advertising or otherwise.

4. Acting for more than one party in a transaction without the knowledge of all parties for whom the licensee acts.

5. Accepting a commission or valuable consideration as a real estate broker associate or salesperson for the performance of any of the acts specified in this chapter, from any person, except the broker associate's or salesperson's employer, who must be a licensed real estate broker. However, a broker associate or salesperson may, without violating this subsection, accept a commission or valuable consideration from a corporation which is wholly owned, or owned with a spouse, by the broker associate or salesperson if the conditions described in subsection 9 are met.

6. Representing or attempting to represent a real estate broker other than the licensee's employer, without the express knowledge and consent of the employer.

7. Failing, within a reasonable time, to account for or to remit any moneys coming into the licensee's possession which belong to others.

8. Being unworthy or incompetent to act as a real estate broker or salesperson in such manner as to safeguard the interests of the public.

9. *a.* Paying a commission or other valuable consideration or any part of such commission or consideration for performing any of the acts specified in this chapter to a person who is not a licensed broker or salesperson under this chapter or who is not engaged in the real estate business in another state or foreign country, or paying a commission or other valuable consideration for performing any of the acts specified in this chapter to a licensee knowing that the licensee will pay a portion of or all of such commission or consideration to a person or party who is not licensed pursuant to this chapter, provided that the provisions of this section shall not be construed to prohibit the payment of earned commissions or consideration to any of the following:

(1) The estate or heirs of a deceased real estate licensee when such licensee had a valid real estate license in effect at the time the commission or consideration was earned.

(2) A citizen of another country acting as a referral agent if that country does not license real estate brokers and if the Iowa licensee paying the commission or consideration obtains and maintains reasonable written evidence that the payee is a citizen of the other country, is not a resident of this country, and is in the business of brokering real estate in that other country.

(3) A corporation pursuant to paragraph "b".

b. A broker may pay a commission to a corporation which is wholly owned, or owned with a spouse, by a salesperson or broker associate employed by or otherwise associated with the broker, if all of the following conditions are met:

(1) The corporation does not engage in real estate transactions as a third-party agent or in any other activity requiring a license under this chapter.

(2) The employing broker is not relieved of any obligation to supervise the employed licensee or

any other requirement of this chapter or the rules adopted pursuant to this chapter.

(3) The employed broker associate or salesperson is not relieved from any personal civil liability for any licensed activities by interposing the corporate form.

10. Failing, within a reasonable time, to provide information requested by the commission as the result of a formal or informal complaint to the commission which would indicate a violation of this chapter.

11. Any other conduct, whether of the same or different character from that specified in this section, which demonstrates bad faith, or improper, fraudulent, or dishonest dealings which would have disqualified the licensee from securing a license under this chapter.

Any unlawful act or violation of any of the provisions of this chapter by any real estate broker associate or salesperson, employee, or partner or associate of a licensed real estate broker, is not cause for the revocation of the license of any real estate broker, unless the commission finds that the real estate broker had guilty knowledge of the unlawful act or violation.

99 Acts, ch 22, §1
Subsection 9 amended

543B.60A Restrictions on payment of commission to others.

1. A licensee shall not require that a person, party, client, or customer negotiate a listing or purchase agreement or contract of real estate through a particular broker or group of brokers, salesperson or group of salespersons, or agent or group of agents.

2. A licensee shall not pay a commission, or portion of a commission, or other valuable consideration to a person or other licensee as described in subsection 1.

3. A licensee shall not request a referral fee after a bona fide offer to purchase is accepted.

4. A licensee shall not request a referral fee after a bona fide listing agreement has been signed.

5. A violation of this section shall be considered a violation under section 543B.34, subsection 4. In addition to any other penalty applicable, a license to practice the profession of real estate broker or salesperson may be revoked or suspended for a violation of this section.

99 Acts, ch 22, §2
NEW section

CHAPTER 543D

REAL ESTATE APPRAISALS AND APPRAISERS

543D.3 Purposes — voluntary certification.

The purpose of this chapter is to establish standards for real estate appraisals and a procedure for

the voluntary certification of real estate appraisers.

A person who is not a certified real estate appraiser under this chapter may appraise real es-

tate for compensation if certification is not required by this chapter or by federal or state law, rule, or policy. However, an employee of the state department of transportation whose duties include appraisals of property pursuant to chapter 6B must be a certified real estate appraiser under this chapter.

99 Acts, ch 171, §39, 42

1999 amendment to unnumbered paragraph 2 applies to state highway construction projects approved for commencement by the transportation commission on or after July 1, 1999, and to all other condemnation proceedings in which the application for condemnation is filed on or after July 1, 1999; see 99 Acts, ch 171, §42

Unnumbered paragraph 2 amended

543D.5 Powers of the board.

1. The board shall adopt rules establishing uniform appraisal standards and appraiser certification requirements and other rules necessary to administer and enforce this chapter and its responsibilities under chapter 272C. The board shall consider and may incorporate any standards recommended by the appraisal foundation, or by a professional appraisal organization, or by a public authority or organization responsible to review appraisals or for the oversight of appraisers.

2. The uniform appraisal standards shall meet all of the following requirements:

a. Require compliance with federal law and appraisal standards adopted by federal authorities as they apply to federally covered transactions. This paragraph does not require that an appraiser in-

voke a jurisdictional exception to the uniform standards of professional appraisal practice in order to comply with federal law and appraisal standards adopted by federal authorities as they apply to federally covered transactions, unless federal law requires that the exception be invoked.

b. Develop standards for the scope of practice for certified real estate appraisers.

3. Appraiser certification requirements shall require a demonstration that the applicant has a working knowledge of current appraisal theories, practices, and techniques which will provide a high degree of service and protection to members of the public dealt with in a professional relationship under authority of the certification. The board shall establish the examination specifications for each category of certified real estate appraiser, provide or procure appropriate examinations, establish procedures for grading examinations, receive and approve or disapprove applications for certification, and issue certificates.

4. The board shall maintain a registry of the names and addresses of appraisers certified under this chapter and retain records and application materials submitted to the board.

99 Acts, ch 171, §40, 42

1999 amendment to subsection 2, paragraph a, applies to state highway construction projects approved for commencement by the transportation commission on or after July 1, 1999, and to all other condemnation proceedings in which the application for condemnation is filed on or after July 1, 1999; see 99 Acts, ch 171, §42

Subsection 2, paragraph a amended

CHAPTER 554C

ELECTRONIC COMMERCE SECURITY ACT

Chapter repealed effective July 1, 2004; see §554C.501
Commissioner of insurance to adopt rules by July 1, 2000;
99 Acts, ch 146, §44

SUBCHAPTER 1

GENERAL PROVISIONS

554C.101 Short title.

This chapter shall be known and may be cited as the "*Iowa Electronic Commerce Security Act*".

99 Acts, ch 146, §1
NEW section

554C.102 Purposes and construction.

This chapter shall be construed consistently with what is commercially reasonable under the circumstances and to effectuate all of the following purposes:

1. Facilitate electronic communications by means of reliable electronic records.

2. Facilitate and promote electronic commerce, by eliminating barriers resulting from uncertainties over writing and signature requirements, and promoting the development of the legal and business infrastructure necessary to implement secure electronic commerce.

3. Facilitate electronic filing of documents with state and local government agencies and promote efficient delivery of government services by means of reliable electronic records.

4. Minimize the incidence of forged electronic records, intentional and unintentional alteration of records, and fraud in electronic commerce.

5. Establish uniformity of rules, regulations, and standards regarding the authentication and integrity of electronic records.

6. Promote public confidence in the integrity, reliability, and legality of electronic records and electronic commerce.

99 Acts, ch 146, §2
NEW section

554C.103 Variation by agreement — use of electronic means optional.

1. As between parties involved in generating, sending, receiving, storing, or otherwise processing electronic records, the provisions of this chapter may be varied by agreement of the parties. Howev-

er, an agreement shall not vary requirements provided in section 554C.203, subsection 2; section 554C.204, subsection 4; section 554C.305, subsection 2; sections 554C.422, 554C.423, 554C.424, and 554C.442; and section 554C.444, subsection 2.

2. This chapter shall not be construed to require a person to create, store, transmit, accept, or otherwise use or communicate information, records, or signatures by electronic means or in electronic form. A government agency shall not require electronic filing of an electronic record or an electronic signature as the only means of filing such record or signature, except as otherwise provided by a rule of law.

99 Acts, ch 146, §3
NEW section

554C.104 through 554C.200 Reserved.

SUBCHAPTER 2

ELECTRONIC RECORDS AND SIGNATURES — GENERAL PROVISIONS

554C.201 Definitions.

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

1. “*Commissioner*” means the commissioner of insurance appointed pursuant to section 505.2.

2. “*Consumer*” means an individual engaged in a transaction for personal, family, or household purposes.

3. “*Consumer transaction*” means a transaction by an individual for personal, household, or family use.

4. “*Electronic*” includes electrical, digital, magnetic, optical, electromagnetic, or any other form of technology that entails capabilities similar to these technologies.

5. “*Electronic record*” means a record generated, communicated, received, or stored by electronic means for use in an information system or for transmission from one information system to another.

6. “*Electronic signature*” means a signature in electronic form attached to or logically associated with an electronic record.

7. “*Government agency*” means the executive, legislative, or judicial branch, or an agency, department, board, commission, authority, institution, or instrumentality of this state or of any county, city, or other political subdivision of this state.

8. “*Information*” includes but is not limited to data, text, images, sound, codes, computer programs, software, and databases.

9. “*Party*” means a person involved in an electronic transaction governed by the provisions of this chapter.

10. “*Record*” means information that is inscribed, stored, or otherwise fixed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

11. “*Rule of law*” means any statute, rule of or order by a government agency, regulation, ordinance, common law rule, or court decision enacted, adopted, established, or rendered by the general assembly, government agency, court, political subdivision of, or other authority of, this state or the federal government.

12. “*Security procedure*” means a methodology or procedure for the purpose of doing any of the following:

a. Verifying that an electronic record is the record of a specific person.

b. Detecting an error or alteration in the communication, content, or storage of an electronic record since a specific point in time. A security procedure may require the use of algorithms or codes, identifying words or numbers, encryption, answer back, acknowledgment procedures, or similar security devices.

13. “*Signed*” or “*signature*” includes any symbol executed or adopted, or any security procedure employed or adopted, including by use of electronic means, by or on behalf of a person with a present intention to authenticate a record.

Definitions used in any part of this chapter shall apply in all other parts of this chapter.

99 Acts, ch 146, §4
NEW section

554C.202 Legal recognition.

Information shall not be denied legal effect, validity, or enforceability solely on the grounds that it is in the form of an electronic record or an electronic signature.

A transaction subject to this chapter is also subject to other applicable substantive rules of law. Other substantive rules of law, whenever reasonable, shall be construed to be consistent with this chapter. If such construction is unreasonable, such other substantive rule of law governs.

99 Acts, ch 146, §5
NEW section

554C.203 Electronic records.

1. Where a rule of law requires information to be written or in writing or provides for certain consequences if it is not, an electronic record satisfies that rule of law requirement.

2. The provisions of this section shall not apply to any of the following:

a. When its application involves a construction of a rule of law that is clearly inconsistent with the manifest intent of the body imposing the requirement or repugnant to the context of the same rule of law. However, the mere requirement that information be in writing, written, or printed shall not by itself be sufficient to establish an intent which is inconsistent with the requirement of this section.

b. A rule of law governing the creation or execution of a will or trust, living will, a general, durable, or health care power of attorney, or a voluntary, involuntary, or standby guardianship or conservatorship.

c. A record that serves as a unique and transferable physical expression of rights and obligations including, without limitation, negotiable instruments and other instruments of title wherein possession of the instrument is deemed to confer title in a consumer transaction.

d. A record that grants a legal or equitable interest in real property, including a deed, mortgage, deed of trust, pledge, security interest, or other lien or encumbrance.

e. A disclosure required in a consumer transaction, including but not limited to, disclosures required in chapter 13C, sections 321.69 and 321.71, chapters 516D, 523B, 523E, 523G, 533D, 537, 537B, 538A, 552, 552A, 555A, 557A, 557B, 558A, and 562A, section 714.16, and chapter 714B, or an administrative rule adopted pursuant to such sections and chapters.

99 Acts, ch 146, §6
NEW section

554C.204 Electronic signatures.

1. Where a rule of law requires a signature, or provides for certain consequences if a document is not signed, an electronic signature satisfies that requirement.

2. An electronic signature may be proved in any manner, including by showing that a procedure exists by which a person must of necessity have executed a symbol or security procedure for the purpose of verifying that an electronic record is the record of that person in order to proceed further with a transaction.

3. Absent an agreement to the contrary, the recipient of a signed electronic record is entitled to establish reasonable requirements to ensure that the symbol or security procedure adopted as an electronic signature by the person signing is authentic.

4. The provisions of this section shall not apply to any of the following:

a. When its application would involve a construction of a rule of law that is clearly inconsistent with the manifest intent of the body imposing the requirement or repugnant to the context of the same rule of law. However, the mere requirement that information be in writing, written, or printed shall not by itself be sufficient to establish an intent which is inconsistent with the requirement of this section.

b. To any rule of law governing the creation or execution of a will or trust, living will, a general, durable, or health care power of attorney, or a voluntary, involuntary, or standby guardianship or conservatorship.

c. To any record that serves as a unique and transferable physical expression of rights and obligations including, but is not limited to, negotiable instruments and other instruments of title wherein possession of the instrument is deemed to confer title in a consumer transaction.

d. To any record that grants a legal or equitable interest in real property, including a deed, mort-

gage, deed of trust, pledge, security interest, or other lien or encumbrance.

99 Acts, ch 146, §7
NEW section

554C.205 Requirement for original information.

1. Where a rule of law requires information to be presented or retained in its original form, or provides consequences for information not being presented or retained in its original form, that rule of law is satisfied by an electronic record if there exists reliable assurance as to the integrity of the information from the time when it was first generated in its final form, as an electronic record or otherwise.

2. The criteria for assessing the integrity of information shall be whether the information has remained complete and unaltered, apart from the addition of any endorsement and any change that arises in the normal course of communication, storage, and display. The standard of reliability required shall be assessed in the light of all relevant circumstances, including but not limited to the purpose for which the information was generated.

3. The provisions of this section do not apply to any record that serves as a unique and transferable physical expression of rights and obligations including, but not limited to, negotiable instruments and other instruments of title wherein possession of the instrument is deemed to confer title.

99 Acts, ch 146, §8
NEW section

554C.206 Admissibility into evidence.

1. In any legal proceeding, nothing in the application of the rules of evidence shall apply so as to deny the admissibility of an electronic record or electronic signature into evidence based on any of the following:

a. On the sole ground that it is an electronic record or electronic signature.

b. On the grounds that it is not in its original form or is not an original.

2. Information in the form of an electronic record shall be given due evidential weight by the trier of fact. In assessing the evidential weight of an electronic record or electronic signature where its authenticity is in issue, the trier of fact may consider all relevant information or circumstances, including but not limited to the manner in which it was generated, stored, or communicated, the reliability of the manner in which its integrity was maintained, the manner in which its originator was identified, and the manner in which the electronic record was signed.

99 Acts, ch 146, §9
See §622.28–622.30 for rules of evidence
NEW section

554C.207 Retention of electronic records.

1. a. Where a rule of law requires that certain documents, records, or information be retained, that requirement is met by retaining electronic rec-

ords of the information, provided that all of the following conditions are satisfied:

(1) The electronic record and the information contained in the electronic record must be accessible so as to be usable for subsequent reference at all times when such information must be retained.

(2) The information must be retained in the format in which it was originally generated, sent, or received; or in a format that can be demonstrated to represent accurately the information originally generated, sent, or received.

(3) Data is retained which enables the identification of the origin and destination of the information, the authenticity and integrity of the information, and the date and time when it was generated, sent, or received.

b. An obligation to retain documents, records, or information in accordance with this subsection does not extend to any data the sole purpose of which is to enable the record to be sent or received.

2. Nothing in this section shall preclude any federal or government agency from specifying additional requirements for the retention of records that are subject to the jurisdiction of such agency.

99 Acts, ch 146, §10
NEW section

554C.208 through 554C.300 Reserved.

SUBCHAPTER 3

SECURE ELECTRONIC RECORDS AND SIGNATURES

554C.301 Secure electronic record.

1. Subject to the provisions of section 554C.303, if, by the application of a qualified security procedure, it can be verified that an electronic record has not been altered since a specified point in time, such electronic record shall be considered to be a secure electronic record from such specified point in time to the time of verification.

2. For purposes of this subchapter, a qualified security procedure is a security procedure to detect changes in content that is any of the following:

a. Authorized by, and implemented in accordance with the requirements of, this chapter.

b. Previously agreed to by the parties and implemented in accordance with the terms of such agreement.

c. Certified by the commissioner as providing reliable evidence that an electronic record has not been altered, and implemented in a manner specified by the certification.

99 Acts, ch 146, §11
NEW section

554C.302 Secure electronic signature.

1. Subject to the provisions of section 554C.303, if, by the application of a qualified security procedure, it can be authenticated that an electronic signature is the signature of a specific person, the electronic signature shall be considered to

be a secure electronic signature at the time of verification.

2. A qualified security procedure for purposes of this section is a security procedure for identifying a party that is any of the following:

a. Authorized by, and implemented in accordance with the requirements of, this chapter.

b. Previously agreed to by the parties to an agreement and implemented in accordance with the terms of the agreement.

c. Certified by the commissioner as being capable of creating an electronic signature that meets all of the following conditions:

(1) Is unique to the signer within the context in which it is used.

(2) Can be used to promptly, objectively, and automatically identify the person signing the electronic record.

(3) Was reliably created by such identified person.

(4) Is linked to the electronic record to which it relates in a manner which ensures that if the record or signature is changed the electronic signature is invalidated, provided that the security procedure is implemented in a manner required by the certification.

99 Acts, ch 146, §12
NEW section

554C.303 Commercially reasonable — reliance.

1. An electronic record or electronic signature that qualifies for secure status pursuant to section 554C.301, 554C.302, 554C.411, or 554C.412 shall not be considered secure unless the proponent establishes all of the following:

a. Use of the applicable security procedure was commercially reasonable.

b. The security procedure was implemented in a trustworthy manner or, where applicable, in a manner specified by this chapter or the commissioner, to the extent such information is within the knowledge of the proponent.

c. Reliance on the security procedure was reasonable and in good faith in light of all the circumstances known to the proponent at the time of the reliance, having due regard for all of the following:

(1) Information that the proponent knew or had notice of at the time of reliance, including all facts, statements, and limitations contained in any statement by any third party involved in the authentication process.

(2) The value or importance of the electronic record signed with the secure electronic signature, if known.

(3) Any course of dealing between the proponent and the purported sender and the available indicia of reliability or unreliability apart from the secure electronic signature.

(4) Any usage of trade, particularly trade conducted by trustworthy systems or other computer-based means.

(5) Whether the authentication was performed with the assistance of an independent third party.

(6) Any other evidence relating to facts of which the proponent was aware that would suggest that reliance was or was not reasonable.

2. The commercial reasonableness of a security procedure is to be determined by the trier of fact in light of the purposes of the procedure and the commercial circumstances at the time the procedure was used, including but not limited to the nature of the transaction, sophistication of the parties, volume of similar transactions engaged in by either or both of the parties, availability of alternatives offered to but rejected by either of the parties, cost of alternative procedures, and procedures in general use for similar types of transactions.

99 Acts, ch 146, §13
NEW section

554C.304 Presumptions.

1. In resolving a civil dispute involving a secure electronic record, it shall be rebuttably presumed that the electronic record has not been altered since the specific point in time to which the secure status relates.

2. In resolving a civil dispute involving a secure electronic signature, all of the following shall be rebuttably presumed:

a. The secure electronic signature is the signature of the person to whom it correlates.

b. The secure electronic signature was affixed by that person with the intention of signing the electronic record.

3. The effect of the presumptions provided in this section is to place on the party challenging the integrity of a secure electronic record or challenging the genuineness of a secure electronic signature both the burden of going forward with evidence to rebut the presumption and the burden of persuading the trier of fact that the falsity of the presumed fact is more probable than the truth of its existence.

4. In the absence of a secure electronic record or a secure electronic signature, nothing in this chapter shall change existing rules regarding legal or evidentiary rules regarding the burden of proving the authenticity and integrity of an electronic record or an electronic signature.

99 Acts, ch 146, §14
NEW section

554C.305 Attribution of signature to a party.

1. Except as provided by another applicable rule of law, and subject to the provisions of section 554C.304, a secure electronic signature is attributable to the person to whom it correlates, whether or not authorized, if all of the following apply to the electronic signature:

a. The signature resulted from acts of a person who obtained the access numbers, codes, computer programs, or other information necessary to create

the signature from a source under the control of the alleged signer, creating the appearance that it came from the person to whom it correlates.

b. The access occurred under circumstances constituting a failure to exercise reasonable care by the person to whom it correlates.

c. The recipient reasonably relied to the recipient's detriment on the apparent source of the electronic record, taking into account the factors provided in section 554C.303.

2. The provisions of this section shall not apply to consumer transactions, including but not limited to credit card and automatic teller machines, except to the extent allowed by applicable consumer law.

99 Acts, ch 146, §15
NEW section

554C.306 Certification by the commissioner.

1. This chapter shall not limit the technology which may qualify as a security procedure under section 554C.301 or 554C.302, if the technology meets all of the criteria in subsections 2 and 3.

2. A security procedure may be certified by the commissioner as meeting the requirements of section 554C.301 or 554C.302, following an appropriate investigation or review, if all of the following apply:

a. The technology utilized by the security procedure is completely open and fully disclosed to the public in order to facilitate a comprehensive evaluation of its suitability for its intended purpose.

b. The certification is in accordance with the rules adopted by the commissioner pursuant to chapter 17A.

c. The certification specifies at least all of the following:

(1) A full and complete identification of the security procedure.

(2) A specification of one or more acceptable trustworthy methods by which the security procedure may be implemented consistent with the certification.

(3) A term for the certification which shall not exceed five years.

3. At the end of the term for each certified security procedure, or earlier as determined by the commissioner, the security procedure may be reevaluated in light of then-current technology and recertified or decertified as appropriate.

4. A person, upon submitting a written request that includes a complete explanation of a proposed technology which meets the requirements of this section together with a proposed draft of administrative rules applicable to such technology, may request the commissioner to review the proposed technology and practices. The commissioner shall review the proposal and may adopt rules in accordance with section 554C.413 with respect to the proposed technology and practices. The commissioner

may adopt rules establishing procedures and requirements for the filing of proposals to review proposed technology and practices.

99 Acts, ch 146, §16
NEW section

554C.307 through 554C.400 Reserved.

SUBCHAPTER 4

DIGITAL SIGNATURES

PART 1

DEFINITIONS

554C.401 Definitions.

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

1. *“Asymmetric cryptosystem”* means a computer-based system capable of generating and using a key pair, consisting of a private key for creating a digital signature, and a public key to verify the digital signature.

2. *“Certificate”* means a record that at a minimum provides all of the following:

- a. Identifies the certification authority issuing the certificate.
- b. Names or otherwise identifies its subscriber.
- c. Contains a public key that corresponds to a private key under the control of the subscriber.
- d. Identifies its operational period.
- e. Is digitally signed by the certification authority issuing the certification.

3. *“Certification authority”* means a person who authorizes and causes the issuance of a certificate.

4. *“Certification practice statement”* means a statement published by a certification authority or person operating a repository that specifies the policies or practices that the certification authority employs in issuing, suspending, and revoking certificates, and providing access to a certificate.

5. *“Correspond”* means to belong to the same key pair.

6. *“Digital signature”* means a type of an electronic signature consisting of a transformation of an electronic record using a message digest function that is encrypted with an asymmetric cryptosystem using the signer’s private key in a manner providing that any person having the initial untransformed electronic record, the encrypted transformation, and the signer’s public key may accurately determine all of the following:

a. Whether the transformation was created using the private key that corresponds to the signer’s public key.

b. Whether the initial electronic record has been altered since the transformation was made.

A digital signature is a security procedure.

7. *“Key pair”* means, in an asymmetric cryptosystem, two mathematically related keys, having the properties that provide all of the following:

a. One key can encrypt a message which only the other key can decrypt.

b. Even knowing one key, it is computationally infeasible to discover the other key.

8. *“Message digest function”* means an algorithm that maps or translates the sequence of bits comprising an electronic record into another, generally smaller, set of bits, referred to as the message digest, without requiring the use of any secret information such as a key, in a manner which provides all of the following:

a. A record yields the same message digest every time the algorithm is executed using such record as input.

b. It is computationally infeasible that any two electronic records can be found or deliberately generated that would produce the same message digest using the algorithm unless the two records are identical.

9. *“Operational period of a certificate”* means a period beginning and ending as follows:

a. The period begins on the date and at the time the certificate is issued by a certification authority or on a later date and at a time certain if stated in the certificate.

b. The period ends on the date and at the time the certificate expires as noted in the certificate or on an earlier date if the certificate is revoked or suspended in accordance with this chapter.

10. *“Private key”* means the key of a key pair used to create a digital signature.

11. *“Public key”* means the key of a key pair used to verify a digital signature.

12. *“Repository”* means a system for storing and retrieving certificates or other information relevant to certificates.

13. *“Revoke a certificate”* means to permanently end the operational period of a certificate from a specified time forward.

14. *“Subscriber”* means a person to whom all of the following applies:

a. The person is the subject named or otherwise identified in a certificate issued to the person.

b. The person controls a private key that corresponds to the public key listed in that certificate.

c. The digitally signed messages verified by reference to the certificate are to be attributed to the person.

15. *“Suspend a certificate”* means to temporarily suspend the operational period of a certificate for a specified time period or from a specified time forward.

16. *“Trustworthy system”* means a system of computer hardware, software, and procedures that satisfies all of the following:

a. Is reasonably secure from intrusion and misuse.

b. Provides a reasonable level of availability, reliability, and correct operation.

c. Is reasonably suited to performing the system's intended functions.

d. Adheres to generally accepted security procedures.

e. Meets or exceeds the requirements of rules adopted by the commissioner.

17. "Valid certificate" means a certificate that meets the following conditions:

a. The certificate has been issued by a certification authority.

b. The subscriber listed in the certificate has accepted the certificate in accordance with this chapter.

18. "Verify a digital signature" means to use the public key listed in a certificate, together with an appropriate message digest function and public key algorithm, to evaluate a digitally signed electronic record in order to determine all of the following:

a. That the digital signature was created using the private key corresponding to the public key listed in the certificate.

b. The electronic record has not been altered since its digital signature was created.

99 Acts, ch 146, §17
NEW section

554C.402 through 554C.410 Reserved.

PART 2

EFFECT OF DIGITAL SIGNATURE

554C.411 Secure electronic record.

Subject to the provisions of section 554C.303, an electronic record or any portion thereof that is signed with a digital signature shall be considered to be a secure electronic record if the digital signature was created during the operational period of a valid certificate and is verified by reference to the public key listed in such certificate.

99 Acts, ch 146, §18
NEW section

554C.412 Secure electronic signature.

Subject to the provisions of section 554C.303, when all or any portion of an electronic record is signed with a digital signature, the digital signature shall be considered a secure electronic signature with respect to all or that portion of the record, if all of the following apply:

1. The digital signature was created during the operational period of a valid certificate, was used within any limits specified or incorporated by reference in the certificate, and can be verified by reference to the public key listed in the certificate.

2. The certificate shall be considered trustworthy, if one of the following is determined by the trier of fact:

a. The certificate was issued by a certification authority in accordance with standards, procedures, and other requirements specified by rule of the commissioner.

b. A trier of fact independently finds one of the following:

(1) That the certificate was issued in a trustworthy manner by a certification authority that properly authenticated the subscriber and the subscriber's public key.

(2) The material information set forth in the certificate is true.

3. The process and systems utilized to create and verify a digital signature are considered trustworthy because one of the following applies:

a. They comply with standards, procedures, and other requirements specified by the commissioner.

b. A trier of fact independently finds that they are trustworthy.

99 Acts, ch 146, §19
NEW section

554C.413 Commissioner authority to adopt rules.

1. The commissioner may adopt rules applicable to the public or private sector which define when a certificate and a digital signature are considered sufficiently trustworthy in order to ensure that a digital signature verified by reference to the certificate will qualify as a secure electronic signature. The rules may include but are not limited to any of the following:

a. Establishing or adopting standards applicable to certification authorities or certificates. Compliance with the standards may be measured by obtaining a voluntary certification from the commissioner or becoming accredited by one or more independent accrediting entities recognized by the commissioner.

b. Establishing or adopting standards applicable to the digital signature creation or verification process.

2. In adopting rules as provided in this section, the commissioner shall consult with the office of the attorney general and representatives of the division of information technology services of the department of general services. The commissioner shall adopt rules that will provide maximum flexibility in the implementation of digital signature technology and the business models necessary to support it, establish a clear basis for the recognition of certificates issued by foreign certification authorities, and, to the extent reasonably possible, maximize the opportunities for uniformity with the laws of other jurisdictions, both within the United States and internationally.

99 Acts, ch 146, §20
NEW section

554C.414 through 554C.420 Reserved.

PART 3

RELIANCE, RESTRICTIONS, AND
REMEDIES**554C.421 Reliance on certificates.**

A person relying on a digital signature may also rely on a valid certificate containing the public key by which the digital signature can be verified.

99 Acts, ch 146, §21
NEW section

554C.422 Restrictions on publication of certificate.

A person shall not publish a certificate, or otherwise make it available to anyone known by that person to be in a position to rely on the certificate or on a digital signature that is verifiable with reference to the public key listed in the certificate, if that person knows that any of the following apply:

1. The certification authority listed in the certificate has not issued the certificate.
2. The subscriber listed in the certificate has not accepted the certificate.
3. The certificate has been revoked or suspended, unless the publication is for the purpose of verifying a digital signature created prior to such suspension or revocation.

99 Acts, ch 146, §22
NEW section

554C.423 Fraudulent purpose.

A person shall not knowingly create, publish, alter, or otherwise use a certificate for a fraudulent or other unlawful purpose. A person convicted of violating this section is guilty of a serious misdemeanor. A person convicted of a second or subsequent violation is guilty of a class "D" felony.

99 Acts, ch 146, §23
NEW section

554C.424 False or unauthorized request.

A person shall not knowingly misrepresent the person's identity or authorization in requesting or accepting a certificate or in requesting suspension or revocation of a certificate. A person convicted of violating this section is guilty of a serious misdemeanor. A person convicted of a second or subsequent violation is guilty of a class "D" felony.

99 Acts, ch 146, §24
NEW section

554C.425 Civil remedy.

A person who suffers a loss by reason of a violation of section 554C.423 or 554C.424, in a civil action against the violator, may obtain appropriate legal and equitable relief. In a civil action under this section, the court may award the prevailing party its reasonable attorney fees and other litigation expenses. However, if the plaintiff is a consumer, the court may award reasonable attorney fees and other litigation expenses only to a prevailing plaintiff.

99 Acts, ch 146, §25
NEW section

554C.426 through 554C.430 Reserved.

PART 4

DUTIES OF CERTIFICATION AUTHORITIES
AND REPOSITORIES**554C.431 Trustworthy system.**

A certification authority and a person maintaining a repository shall utilize a trustworthy system in performing their services.

99 Acts, ch 146, §26
See also §554C.441
NEW section

554C.432 Disclosure.

1. For each certificate it issues, a certification authority must publish to relying parties all of the following:

- a. Its certification practice statement, if the authority has one.
- b. Its certification authority certificate that identifies the certification authority as a self-certifying subscriber and that contains the public key corresponding to the private key used by that certification authority to digitally sign the certificate.
- c. Notice of a revocation or suspension of its certification authority certificate, and any other fact material relating to either the reliability of a certificate that it has issued or its ability to perform its services.

2. In the event of an occurrence that materially and adversely affects a certification authority's trustworthy system or its certification authority certificate, the certification authority must do all of the following:

- a. Use reasonable efforts to notify persons who are known to be or foreseeably will be affected by that occurrence.
- b. Act in accordance with procedures governing this type of occurrence specified in its certification practice statement.

3. If a certification authority certifies itself as a certification authority, it shall disclose to all relying parties that it is self-certified. The certification authority shall publish a copy of its own certification authority certificate that is verifiable by reference to a public key listed in a certificate issued by the certification authority.

99 Acts, ch 146, §27
NEW section

554C.433 Issuance of a certificate.

A certification authority may issue a certificate to a prospective subscriber for the purpose of verifying digital signatures only after the certification authority does all of the following:

1. Receives a request for the issuance from the prospective subscriber.
2. Does either of the following:
 - a. Complies with all of the practices and procedures set forth in its applicable certification practice statement, including procedures regarding identification of the prospective subscriber.

b. In the absence of a certification practice statement, confirms one of the following:

(1) The prospective subscriber is the person to be listed in the certificate to be issued.

(2) The information in the certificate to be issued is accurate.

(3) The prospective subscriber rightfully holds a private key capable of creating a digital signature, and the public key to be listed in the certificate can be used to verify a digital signature affixed by such private key.

99 Acts, ch 146, §28
NEW section

554C.434 Representations upon issuance of certificate.

By issuing a certificate, a certification authority represents to any person who reasonably relies on the certificate or a digital signature verifiable by the public key listed in the certificate, that the certification authority has issued the certificate in accordance with any applicable certification practice statement stated or incorporated by reference in the certificate, or of which the relying person has notice, and the requirements and representations imposed by the law under which it was issued. In the absence of a certification practice statement or law, the certification authority represents that as of the time the certificate is issued it has confirmed all of the following:

1. The certification authority has complied with all applicable requirements of this chapter in issuing the certificate, and if the certification authority has published the certificate or otherwise made it available to a relying person, that the subscriber identified in the certificate has accepted it.

2. The subscriber identified in the certificate rightfully holds the private key corresponding to the public key listed in the certificate.

3. The subscriber's public key and private key constitute a functioning key pair.

4. All information in the certificate is accurate as of the date it was issued, unless the certification authority has stated in the certificate or incorporated by reference in the certificate a statement that the accuracy of specified information is not confirmed.

5. To the knowledge of the certification authority, there are no known material facts omitted from the certificate which would, if known, adversely affect the reliability of the representations required to be provided by the certification authority under this section.

99 Acts, ch 146, §29
NEW section

554C.435 Suspension of a certificate.

The certification authority that issues a certificate, and any person maintaining a repository where the certificate is published, shall suspend the certificate pursuant to any of the following:

1. The receipt of an order issued by a court of competent jurisdiction.

2. In accordance with the policies and procedures governing suspension specified in its certification practice statement. In the absence of policies and procedures governing suspension, the certificate shall be suspended as soon as possible after receiving a request by a person whom the certification authority or person maintaining a repository reasonably believes to be any of the following:

a. The subscriber listed in the certificate.

b. A person duly authorized to act for that subscriber.

c. A person acting on behalf of that subscriber, who is unavailable.

99 Acts, ch 146, §30
NEW section

554C.436 Revocation of a certificate.

The certification authority that issues a certificate, and any person maintaining a repository where the certificate is published, shall revoke the certificate pursuant to any of the following:

1. Upon receipt of an order issued by a court of competent jurisdiction.

2. In accordance with the policies and procedures governing revocation specified in its certification practice statement. In the absence of policies and procedures governing revocation, the certificate shall be revoked as soon as possible after one of the following occurs:

a. Receipt of a request for revocation by the subscriber named in the certificate, if the certification authority or repository confirms that the person requesting the revocation is the subscriber or is an agent of the subscriber with authority to request the revocation.

b. Receipt of a certified copy of an individual subscriber's death certificate, or upon confirmation by other reliable evidence that the subscriber is dead.

c. Presentation of documents effecting a dissolution of a corporate subscriber or other legal entity, or upon confirmation by other evidence that the subscriber or other legal entity has been dissolved or has ceased to exist.

d. Confirmation by the certification authority that one of the following applies:

(1) A material fact represented in the certificate is false.

(2) A material prerequisite to issuance of the certificate was not satisfied.

(3) The certification authority's private key or trustworthy system was compromised in a manner materially affecting the certificate's reliability.

(4) The subscriber's private key or trustworthy system was compromised.

Upon effecting a revocation, the certification authority shall promptly notify the subscriber listed in the revoked certificate of the revocation.

99 Acts, ch 146, §31
NEW section

554C.437 Notice of suspension or revocation.

Upon suspending or revoking a certificate, a person maintaining a repository where the certificate is published shall do all of the following:

1. Promptly publish notice of the suspension or revocation if the certificate was published.
2. Disclose the fact of suspension or revocation on inquiry by a relying party.

99 Acts, ch 146, §32
NEW section

554C.438 through 554C.440 Reserved.

PART 5

DUTIES OF SUBSCRIBERS

554C.441 Generating the key pair.

If the subscriber generates the key pair whose public key is to be listed in a certificate issued by a certification authority and accepted by the subscriber, the subscriber must generate that key pair and maintain and store the private key using a trustworthy system.

99 Acts, ch 146, §33
NEW section

554C.442 Obtaining a certificate.

All material representations made by the subscriber to a certification authority for purposes of obtaining a certificate must be accurate and complete.

99 Acts, ch 146, §34
NEW section

554C.443 Acceptance of a certificate.

1. A person accepts a certificate that names a person as a subscriber by publishing it to one or more persons, depositing the certificate in a repository, or demonstrating approval of the certificate, while knowing or having notice of its contents.

2. By accepting a certificate, the subscriber listed in the certificate represents to all who reasonably rely on the information contained in the certificate that all of the following apply:

a. The subscriber rightfully holds the private key corresponding to the public key listed in the certificate.

b. All representations made by the subscriber to the certification authority and material to the information listed in the certificate are true.

c. All information in the certificate that is within the knowledge of the subscriber is true.

99 Acts, ch 146, §35
NEW section

554C.444 Control of the private key.

1. Except as otherwise provided by another applicable rule of law, by accepting a certificate issued by a certification authority the subscriber identified in the certificate assumes a duty to persons who reasonably rely on the certificate to exercise reasonable care to retain control of the private key corresponding to the public key listed in the certificate and to prevent its disclosure to a person not authorized to create the subscriber's digital signature. The requirements of this subsection shall continue during the operational period of the certificate.

2. The provisions of this section do not apply to consumer transactions.

99 Acts, ch 146, §36
NEW section

554C.445 Initiating suspension or revocation.

Except as otherwise provided by another applicable rule of law, if the private key corresponding to the public key listed in a certificate is compromised during the operational period of the certificate, a subscriber who has accepted the certificate shall do one of the following:

1. Request the issuing certification authority, and all independent repositories in which the subscriber has authorized the certificate to be published, to suspend or revoke the certificate.

2. Provide reasonable notice to all relying parties that the public key listed in the certificate was compromised during the operational period of the certificate.

99 Acts, ch 146, §37
NEW section

554C.446 through 554C.450 Reserved.

PART 6

GOVERNMENT AGENCY USE OF
ELECTRONIC RECORDS AND
SIGNATURES

554C.451 Government agency use of electronic records.

1. Each government agency shall determine if, and the extent to which, it will send and receive electronic records and electronic signatures to and from other persons. This section shall not be interpreted as varying the requirements of chapter 22.

2. In any case where a government agency decides to send or receive electronic records, or to accept document filings by electronic records, the government agency may, by rule, giving due consideration to security, specify any of the following:

a. The manner and format in which electronic records must be sent, received, and stored, including interoperability requirements.

b. If electronic records must be signed, the type of electronic signature required including, if applicable, a requirement that the sender use a digital

signature or other secure electronic signature, the manner and format in which the electronic signature must be affixed to the electronic record, and the identity of or criteria that must be met by a certification authority used by the person filing the document.

c. Control processes and procedures which are appropriate to ensure adequate integrity, security, confidentiality, and auditability of electronic records.

d. Any other required attributes for electronic records that are currently specified for corresponding paper documents, or reasonably necessary under the circumstances.

3. All rules adopted by a government agency shall be consistent with the rules adopted by the commissioner.

99 Acts, ch 146, §38
NEW section

554C.452 Commissioner to adopt state standards.

1. The commissioner, in consultation with the office of the attorney general and the division of information technology services of the department of general services, shall adopt rules setting forth standards, procedures, and policies for the use of electronic records and electronic signatures by government agencies. Where appropriate, the rules shall specify different levels of standards from which implementing government agencies can select the standard most appropriate for a particular application.

2. The commissioner shall specify appropriate procedural and technical security requirements to be implemented and followed by government agencies for all of the following:

a. The generation, use, and storage of key pairs.

b. The issuance, acceptance, use, suspension, and revocation of certificates.

c. The use of digital signatures.

3. Each government agency shall have the authority to issue, or contract for the issuance of, certificates to all of the following:

a. Its employees and agents.

b. Persons conducting business or other transactions with the government agency. The govern-

ment agency may take other actions consistent with this authority, including the establishment of repositories and the suspension or revocation of issued certificates, provided that actions by the government agency are conducted in accordance with all rules, procedures, and policies specified by the commissioner. The commissioner may adopt rules, procedures, and policies under which government agencies may issue or contract for the issuance of certificates, or restrict or prohibit their issuance.

4. The commissioner may specify appropriate standards and requirements that must be satisfied by a certification authority before any of the following occur:

a. The services of a certification authority are used by a government agency for the issuance, publication, suspension, or revocation of certificates to the government agency, including its employees or agents, for official use only.

b. The certificates that the certification authority issues are accepted for purposes of verifying digitally signed electronic records sent to any government agency by any person.

99 Acts, ch 146, §39
NEW section

554C.453 Interoperability.

To the extent reasonable under the circumstances, rules adopted by the commissioner or a government agency relating to the use of electronic records or electronic signatures shall be drafted in a manner designed to encourage and promote consistency and interoperability with similar requirements adopted by government agencies of other states and the federal government.

99 Acts, ch 146, §40
NEW section

554C.454 through 554C.500 Reserved.

SUBCHAPTER 5

REPEAL

554C.501 Repeal.

This chapter is repealed effective July 1, 2004.

99 Acts, ch 146, §41
NEW section

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. "Claimant" also includes a holder of a lien as defined in section 555B.2.

3. “Demolisher” means demolisher as defined in section 321.89.

4. “Junkyard” means junkyard as defined in section 306C.1.

5. “Mobile home” includes “manufactured homes” and “modular homes” as those terms are defined in section 435.1, if the manufactured homes or modular homes are located in a mobile home park.

6. “Personal property” includes personal prop-

erty 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.

7. “Real property owner” means the owner or other lawful possessor of real property upon which a mobile home is located.

99 Acts, ch 155, §1, 14
Subsection 2 amended

CHAPTER 555C

VALUELESS MOBILE, MODULAR, AND MANUFACTURED HOMES

555C.2 Removal or transfer of title of valueless home — presumption of value.

1. An owner of a mobile home park may remove, or cause to be removed, from the mobile home park a valueless home and personal property associated with the home at any time following a determination of abandonment by the mobile home park owner in accordance with section 562B.27, subsection 1, and an order of removal pursuant to chapter 648 without further notice to the owner or occupant of the valueless home. Within ten days of the removal or transfer of title, the mobile home park owner shall give written notice to the county treasurer for the county in which the mobile home park is located by affidavit which shall include a description of the valueless home, its owner or occupant, if known, the date of removal or transfer of title, and if applicable, the name and address of any third party to whom a new title shall be issued.

2. A valueless home and any personal property associated with the valueless home shall be conclusively deemed in value to be equal to or less than the reasonable cost of disposal plus all sums owing to the mobile home park owner pertaining to the valueless home, if the mobile home park owner or an agent of the owner removes the home and personal property to a demolisher, sanitary landfill, or other lawful disposal site or if the mobile home park owner allows a disinterested third party to remove the valueless home and personal property or to leave the home in the mobile home park in a

transaction in which the mobile home park owner receives no consideration.

99 Acts, ch 155, §2, 14
Section amended

555C.3 New title — third party.

If a new title to a valueless home is to be issued to a third party, the county treasurer shall issue, upon receipt of the affidavit required in section 555C.2, a new title upon payment of a fee equal to the fee specified in section 321.42 for replacement certificates of title for vehicles. Any tax lien levied pursuant to chapter 435 is canceled and the ownership interest of the previous owner or occupant of the valueless home is terminated as of the date of issuance of the new title. The new title owner shall take the title free of all rights and interests even though the mobile home park owner fails to comply with the requirements of this chapter or any judicial proceedings, if the new title owner acts in good faith.

99 Acts, ch 155, §3, 14
Section amended

555C.5 Liability limited.

A person who removes or allows the removal of a valueless home or transfers title or allows the transfer of title of a valueless home as provided in this chapter is not liable to the previous owner of the valueless home due to the removal or transfer of title of the valueless home.

99 Acts, ch 155, §4, 14
Section amended

CHAPTER 558

CONVEYANCES

558.69 Reporting of private burial sites, wells, disposal sites, underground storage tanks, and hazardous waste — liability.

With each declaration of value submitted to the county recorder under chapter 428A, there shall

also be submitted a statement regarding whether any known private burial site is situated on the property, and if a known private burial site is situated on the property, the statement shall state the approximate location of the site. The statement

shall also state that no known wells are situated on the property, or if known wells are situated on the property, the statement must state the approximate location of each known well and its status with respect to section 159.29 or 455B.190. The statement shall also state that no known disposal site for solid waste, as defined in section 455B.301, which has been deemed to be potentially hazardous by the department of natural resources, exists on the property, or if such a known disposal site does exist, the location of the site on the property. The statement shall additionally state that no known underground storage tank, as defined in section 455B.471, subsection 11, exists on the property, or if a known underground storage tank does exist, the type and size of the tank, and any known substance in the tank. The statement shall also state that no known hazardous waste as defined in section 455B.411, subsection 3, or listed by the department pursuant to section 455B.412, subsection 2, or section 455B.464, exists on the property, or if known hazardous waste does exist, that the waste is being managed in accordance with rules adopted by the department of natural resources. The statement shall be signed by at least one of the sellers or their agents. The county recorder shall refuse to record any deed, instrument, or writing for which a declaration of value is required under chapter 428A unless the statement required by this section has been submitted to the county recorder. A buyer

of property shall be provided with a copy of the statement submitted, and, following the fulfillment of this provision, if the statement submitted reveals no private burial site, well, disposal site, underground storage tank, or hazardous waste on the property, the county recorder may destroy the statement. The land application of sludges or soils resulting from the remediation of underground storage tank releases accomplished in compliance with department of natural resources rules without a permit is not required to be reported as the disposal of solid waste or hazardous waste.

If a declaration of value is not required, the above information shall be submitted on a separate form. The director of the department of natural resources shall prescribe the form of the statement and the separate form to be supplied by each county recorder in the state. The county recorder shall transmit the statements to the department of natural resources at times directed by the director of the department.

The owner of the property is responsible for the accuracy of the information submitted on the form. The owner's agent shall not be liable for the accuracy of information provided by the owner of the property. The provisions of this paragraph do not limit liability which may be imposed under a contract or under any other law.

99 Acts, ch 140, §1
Section amended

CHAPTER 562A

UNIFORM RESIDENTIAL LANDLORD AND TENANT LAW

562A.8 Notice.

A person "notifies" or "gives" a notice or notification to another by taking steps reasonably calculated to inform the other in ordinary course whether or not the other actually comes to know of it. In the case of the landlord, notice is received when it comes to the landlord's attention or when it is delivered in hand or mailed by certified mail or restricted certified mail, as defined in section 618.15, whether or not the landlord signs a receipt for the notice, to the place of business of the landlord through which the rental agreement was made or at a place held out by the landlord as the place for receipt of the communication or delivered to any individual who is designated as an agent of the landlord. In the case of the tenant, notice is received when it comes to the tenant's attention or when it is delivered in hand to the tenant or mailed by certified mail or restricted certified mail, as defined in section 618.15, whether or not the tenant signs a receipt for the notice, to such person at the place held out by such person as the place for receipt of

the communication, or in the absence of such designation, to such person's last known place of residence.

Any notice required under this chapter, except a written notice of termination required by section 562A.27, subsection 1 or 2, a notice of termination and notice to quit under section 562A.27A, a notice to quit as required by section 648.3, or a petition for forcible entry and detainer pursuant to chapter 648, shall be deemed legally sufficient notice if made by posting at or delivering to the dwelling unit. The date of posting of the notice shall be written on the notice.

99 Acts, ch 155, §5, 14
Section amended

562A.8A Computation of time.

The calculation of all time periods required under this chapter shall be made in accordance with section 4.1, subsection 34.

99 Acts, ch 155, §6, 14
NEW section

562A.29A Method of notice and service of process.

Notwithstanding sections 631.4 and 648.5, the written notice of termination required by section 562A.27, subsection 1 or 2, a notice of termination and notice to quit under section 562A.27A, a notice to quit as required by section 648.3, or a petition for forcible entry and detainer pursuant to chapter

648, may be served upon the tenant in any of the following ways:

1. By personal service.
2. By sending notice by certified or restricted certified mail, as defined in section 618.15, whether or not the tenant signs a receipt for the notice.

99 Acts, ch 155, §7, 14
Subsection 2 amended

CHAPTER 562B

MOBILE HOME PARKS RESIDENTIAL LANDLORD AND TENANT LAW

562B.9 Notice.

A person "notifies" or "gives" a notice or notification to another by taking steps reasonably calculated to inform the other in ordinary course whether or not the other actually comes to know of it. In the case of the landlord, notice is received when it comes to the landlord's attention or when it is delivered in hand or mailed by certified mail or restricted certified mail, as defined in section 618.15, whether or not the landlord signs a receipt for the notice, to the place of business of the landlord through which the rental agreement was made or at any place held out by the landlord as the place for receipt of the communication or delivered to any individual who is designated as an agent by section 562B.14. In the case of the tenant, notice is received when it comes to the tenant's attention or when it is delivered in hand to the tenant or mailed by certified mail or restricted certified mail, as defined in section 618.15, whether or not the tenant signs a receipt for the notice, to the tenant at the place held out by the tenant as the place for receipt of the communication or, in the absence of such designation, to the tenant's last known place of residence other than the landlord's mobile home or space.

Any notice required under this chapter given to all tenants of a mobile home park, except a written notice of termination required by section 562B.25, subsection 1 or 2, a notice of termination and notice to quit under section 562B.25A, a notice to quit as required by section 648.3, or a petition for forcible entry and detainer pursuant to chapter 648, shall be deemed legally sufficient notice if made by posting at or delivering to each mobile home space. The date of posting of the notice shall be written on the notice.

99 Acts, ch 155, §8, 14
Section amended

562B.9A Computation of time.

The calculation of all time periods required under this chapter shall be made in accordance with section 4.1, subsection 34.

99 Acts, ch 155, §9, 14
NEW section

562B.18 Tenant to maintain mobile home space — notice of vacating.

A tenant shall maintain the mobile home space in as good a condition as when the tenant took possession and shall:

1. Comply with all obligations primarily imposed upon tenants by applicable provisions of city, county and state codes materially affecting health and safety.
2. Keep that part of the mobile home park that the tenant occupies and uses reasonably clean and safe.
3. Dispose from the tenant's mobile home space all rubbish, garbage and other waste in a clean and safe manner.
4. Not deliberately or negligently destroy, deface, damage, impair or remove any part of the mobile home park or knowingly permit any person to do so.
5. Act and require other persons in the mobile home park with the tenant's consent to act in a manner that will not disturb the tenant's neighbors' peaceful enjoyment of the mobile home park.
6. Maintain in good and safe working order all utility lines, pipes, and cables extending from the mobile home to outlets provided by the landlord for electric, water, sewer, and other services. This subsection shall not apply to a tenant who does not own the mobile home.

99 Acts, ch 155, §10, 14
NEW subsection 6

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. A claimant includes a holder of a lien as defined in section 555B.2. 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.

99 Acts, ch 155, §11, 14
Subsection 2, paragraph a amended

562B.27A Method of notice and service of process.

Notwithstanding sections 631.4 and 648.5, the written notice of termination required by section 562B.25, subsection 1 or 2, a notice of termination and notice to quit under section 562B.25A, a notice to quit as required by section 648.3, or a petition for forcible entry and detainer pursuant to chapter 648, may be served upon the tenant in any of the following ways:

1. By personal service.
2. By sending notice by certified or restricted certified mail, as defined in section 618.15, whether or not the tenant signs a receipt for the notice.

99 Acts, ch 155, §12, 14
Subsection 2 amended

CHAPTER 566

CEMETERY MANAGEMENT

566.35 Burial sites located on private property.

1. If a person notifies a governmental subdivision or agency of the existence within the jurisdiction of the governmental subdivision or agency of a burial site of the person's ancestor on property owned by another person, the owner of the property shall permit the person reasonable ingress and

egress for the purposes of visiting the burial site, and the governmental subdivision or agency shall notify the owner of this obligation.

2. Pursuant to section 558.69, the declaration of value submitted to the county recorder under chapter 428A shall also include the existence of any known private burial site situated on the property.

99 Acts, ch 140, §2
NEW section

CHAPTER 572

MECHANIC'S LIEN

572.23 Acknowledgment of satisfaction of claim.

1. When a mechanic's lien is satisfied by payment of the claim, the claimant shall acknowledge satisfaction thereof upon the mechanic's lien book, or otherwise in writing, and, if the claimant neglects to do so for thirty days after demand in writ-

ing is personally served upon the claimant, the claimant shall forfeit and pay twenty-five dollars to the owner or contractor, and be liable to any person injured to the extent of the injury.

2. If acknowledgment of satisfaction is not filed within thirty days after service of the demand in writing, the party serving the demand or causing

the demand to be served may file for record with the clerk of the district court a copy of the demand with proofs of service attached and endorsed and, in case of service by publication, a personal affidavit that personal service could not be made within this state. Upon completion of the requirements of this subsection, the record shall be constructive notice to all parties of the due forfeiture and cancellation of the lien. Upon the filing of the forfeiture of the lien, the clerk of the district court shall mail a file-stamped copy of the cancellation to both parties.

99 Acts, ch 79, §1
Section amended

572.24 Time of bringing action — court.

1. An action to enforce a mechanic's lien, or an action brought upon any bond given in lieu thereof, may be commenced in the district court after said lien is perfected.

2. An action to challenge a mechanic's lien may be commenced in the district court or small claims court if the amount of the lien is within jurisdictional limits. Any permissible claim or counterclaim meeting subject matter and jurisdictional requirements may be joined with the action. The court shall make written findings regarding the lawful amount and the validity of the mechanic's lien. In addition to any other appropriate order, the court may enter judgment on a permissibly joined claim or counterclaim. If the court determines that the mechanic's lien is invalid, valid for a lesser amount, frivolous, fraudulent, forfeited, expired, or for any other reason unenforceable, the clerk of the district court shall make an entry of record to the mechanic's lien book regarding the proper amount of the lien or, if warranted, canceling the lien.

99 Acts, ch 79, §2
Section amended

572.28 Demand for bringing suit.

1. Upon the written demand of the owner, the owner's agent, or contractor, served on the lienholder requiring the lienholder to commence action to enforce the lien, such action shall be commenced within thirty days thereafter, or the lien and all benefits derived therefrom shall be forfeited.

2. If an action is not filed within thirty days after demand to commence action is served, the party serving the demand or causing the demand to be served may file for record with the clerk of the district court a copy of the demand with proofs of service attached and endorsed and, in case of service by publication, a personal affidavit that personal service could not be made within this state. Upon completion of the requirements of this subsection, the record shall be constructive notice to all parties of the due forfeiture and cancellation of the lien. Upon the filing of the demand with the required at-

tachments, the clerk of the district court shall mail a file-stamped copy of the demand to both parties.

99 Acts, ch 79, §3
Section amended

572.32 Attorney fees — remedies.

1. In a court action to enforce a mechanic's lien, if the plaintiff furnished labor or materials directly to the defendant, a prevailing plaintiff may be awarded reasonable attorney fees.

2. In a court action to challenge a mechanic's lien filed on an owner-occupied dwelling, if the person challenging the lien prevails, the court may award reasonable attorney fees and actual damages. If the court determines that the mechanic's lien was filed in bad faith or the supporting affidavit was materially false, the court shall award the owner reasonable attorney fees plus an amount not less than five hundred dollars or the amount of the lien, whichever is less.

99 Acts, ch 79, §4
Section amended

572.33 Requirement of notification.

1. Notwithstanding other provisions of this chapter, and in addition to all other requirements of this chapter, a person furnishing labor or materials to a subcontractor shall not be entitled to a lien under this chapter unless the person furnishing labor or materials does all of the following:

a. Notifies the principal contractor in writing with a one-time notice containing the name, mailing address, and telephone number of the person furnishing the labor or materials, and the name of the subcontractor to whom the labor or materials were furnished, within thirty days of first furnishing labor or materials for which a lien claim may be made. Additional labor or materials furnished by the same person to the same subcontractor for use in the same construction project shall be covered by this notice.

b. Supports the lien claim with a certified statement that the principal contractor was notified in writing with a one-time notice containing the name, mailing address, and telephone number of the person furnishing the labor or materials, and the name of the subcontractor to whom the labor or materials were furnished, within thirty days after the labor or materials were first furnished, pursuant to paragraph "a".

2. This section shall not apply to a mechanic's lien on single-family or two-family dwellings occupied or used or intended to be occupied or used for residential purposes.

3. Notwithstanding other provisions of this chapter, a principal contractor shall not be prohibited from requesting information from a subcontractor or a person furnishing labor or materials to a subcontractor regarding payments made or payments to be made to a person furnishing labor or materials to a subcontractor.

99 Acts, ch 104, §1
Section amended

CHAPTER 575

NONSTATUTORY LIENS

575.1 Nonstatutory liens.

1. A person claiming a common law lien, an equitable servitude lien, or a lien of similar nature which is other than a statutory lien, shall first give notice to any legal and equitable owners and persons in possession of the real or personal property against which the lien is sought.

a. If the lien is filed by an owner of the real or personal property, notice shall first be given to any person with a lien or other interest in the property.

b. The notice shall be given pursuant to the Iowa rules of civil procedure.

2. Prior to the filing of the lien in any office of record in the county where the real or personal property is located, the following shall occur:

a. The clerk of the district court shall confirm that all notices required pursuant to subsection 1 have been given.

b. The district court in such county shall hold a hearing to determine the validity of the lien.

(1) Pendency of such a proceeding shall not be indexed under section 617.10 and shall not constitute *lis pendens* or constructive notice to third persons under sections 617.11 through 617.15.

(2) A bona fide purchaser takes title to the real or personal property free of any claims arising from

such proceeding unless proper filing is made in the office of the county recorder as provided in this section.

(3) The person claiming the lien is required to prove the validity of the lien by a preponderance of the evidence.

(4) If the court determines the person claiming the lien has willfully and maliciously proceeded, a judgment may be entered against the person claiming the lien in favor of any resisting party for reasonable damages, including actual damages, costs, and reasonable attorneys' fees incurred by the resisting party.

3. A lien, as described in this section, shall not be filed in any office of record other than as provided in this section and if such lien is filed other than as provided in this section, the lien shall be null and void and of no force or effect.

4. If, after hearing, the district court enters an order determining the lien to be valid, the person claiming the lien shall file a certified copy of the order in the office of the county recorder where the real or personal property is located.

5. An appeal from the district court arising from such proceeding is by certiorari.

99 Acts, ch 35, §1
Section amended

CHAPTER 579A

CUSTOM CATTLE FEEDLOT LIEN

579A.1 Definitions.

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

1. "*Cattle*" means an animal classified as bovine, regardless of the age or sex of the animal.

2. "*Custom cattle feedlot*" means a feedlot where cattle owned by a person are provided feed and care by another person.

3. "*Custom cattle feedlot operator*" means the owner of a custom cattle feedlot or the owner's personal representative.

4. "*Feedlot*" means a lot, yard, corral, building, or other area in which cattle are confined and fed and maintained for forty-five days or more in any twelve-month period.

5. "*Personal representative*" means a person who is authorized by the owner of a custom cattle feedlot to act on behalf of the owner, including by executing an agreement, managing a custom cattle feedlot, or filing and enforcing liens under this chapter.

6. "*Processor*" means the same as defined in section 9H.1.

99 Acts, ch 169, §7, 8, 22, 24
Subsections 2-4 amended
NEW subsection 5 and former subsection 5 renumbered as 6

579A.2 Establishment of lien — priority.

1. A custom cattle feedlot operator shall have a lien upon the cattle and the identifiable cash proceeds from the sale of the cattle for the amount of the contract price for the feed and care of the cattle at the custom cattle feedlot pursuant to a written or oral agreement by the custom cattle feedlot operator and the person who owns the cattle, which may be enforced as provided in section 579A.3.

2. The lien is created at the time the cattle arrive at the custom cattle feedlot and continues for one year after the cattle have left the custom cattle feedlot. In order to preserve the lien, the custom cattle feedlot operator must, within twenty days after the cattle arrive at the custom cattle feedlot, file in the office of the secretary of state, a lien state-

ment on a form prescribed by the secretary of state. The secretary of state shall charge a fee of not more than ten dollars for filing the statement. The secretary of state may adopt rules pursuant to chapter 17A for the electronic filing of the statements. The statement must include all of the following:

- a. An estimate of the amount of feed and care provided to the cattle pursuant to the contract.
 - b. The estimated duration of the period when the cattle are subject to feed and care at the custom cattle feedlot.
 - c. The name of the party to the contract whose cattle are subject to feed and care at the custom cattle feedlot.
 - d. The description of the location of the custom cattle feedlot, by county and township.
 - e. The printed name and signature of the person filing the form.
3. Except as provided in chapter 581, a lien created under this section until preserved and a lien preserved under this section is superior to and shall have priority over a conflicting lien or securi-

ty interest in the cattle, including a lien or security interest that was perfected prior to the creation of the lien provided under this section.

99 Acts, ch 169, §9–11, 22, 24
 Subsection 1 amended
 Subsection 2, paragraph e amended
 Subsection 3 amended

579A.4 Waivers unenforceable.

A waiver of a right created by this chapter, including but not limited to, a waiver of the right to file a lien pursuant to this chapter is void and unenforceable. This section does not affect other provisions of a contract, including a production contract or a related document, policy, or agreement which can be given effect without the voided provision.

99 Acts, ch 169, §12, 22, 24
 NEW section

579A.5 Alternate lien procedure.

A person who is a custom cattle feedlot operator may file and enforce a lien as a contract producer under this chapter or chapter 579B, but not both.

99 Acts, ch 169, §13, 22, 24
 NEW section

CHAPTER 579B

COMMODITY PRODUCTION CONTRACT LIEN

Alternative lien procedure for cattle; see chapter 579A

579B.1 Definitions.

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

1. “Commodity” means livestock, raw milk, or a crop.
2. “Contract crop field” means farmland where a crop is produced according to a production contract executed pursuant to section 579B.2 by a contract producer who owns or leases the farmland.
3. “Contract livestock facility” means an animal feeding operation as defined in section 455B.161, in which livestock or raw milk is produced according to a production contract executed pursuant to section 579B.2 by a contract producer who owns or leases the animal feeding operation. “Contract livestock facility” includes a confinement feeding operation as defined in section 455B.161, an open feedlot, or an area which is used for the raising of crops or other vegetation and upon which livestock is fed for slaughter or is allowed to graze or feed.
4. “Contract operation” means a contract livestock facility or contract crop field.
5. “Contract producer” means a person who owns or leases a contract operation and who produces a commodity under a production contract executed pursuant to section 579B.2.
6. “Contractor” means a person who owns a commodity at the time that the commodity is under the authority of the contract producer as provided

in section 579B.3 pursuant to a production contract executed pursuant to section 579B.2.

7. a. “Crop” means a plant used for food, animal feed, fiber, or oil, if the plant is classified as a forage or cereal plant, including but not limited to alfalfa, barley, buckwheat, corn, flax, forage, millet, oats, popcorn, rye, sorghum, soybeans, sunflowers, wheat, and grasses used for forage or silage.

b. A “crop” does not include trees or nuts or fruit grown on trees; sod; shrubs; greenhouse plants; or plants or plant parts produced for pre-commercial, experimental, or research purposes.

8. “Farmland” means agricultural land suitable for use in farming as defined in section 9H.1.

9. “Livestock” means beef cattle, dairy cattle, sheep, or swine.

10. “Open feedlot” means the same as defined in section 202.1.

11. “Personal representative” means a person who is authorized by a contract producer to act on behalf of the contract producer, including by executing an agreement, managing a contract operation, or filing and enforcing a lien as provided in this chapter.

12. “Processor” means a person engaged in the business of manufacturing goods from commodities, including by slaughtering or processing livestock, processing raw milk, or processing crops.

13. “Produce” means to do any of the following:

a. Provide feed or services relating to the care and feeding of livestock. If the livestock is dairy cattle, "produce" includes milking the dairy cattle and storing raw milk at the contract producer's contract livestock facility.

b. Provide for planting, raising, harvesting, and storing a crop. "Produce" includes preparing the soil for planting and nurturing the crop by the application of fertilizers or soil conditioners as defined in section 200.3 or pesticides as defined in section 206.2.

14. "Production contract" means an oral or written agreement executed pursuant to section 579B.2 that provides for the production of a commodity by a contract producer.

99 Acts, ch 169, §14, 22, 24
NEW section

579B.2 Lien depends upon production contracts.

1. A lien established under section 579B.3 depends upon the execution of a production contract that provides for producing a commodity owned by a contractor by a contract producer at the contract producer's contract operation.

2. A production contract is executed when it is signed or orally agreed to by each party to the contract or by a person authorized by a party to act on the party's behalf, including the contract producer's personal representative.

3. This chapter applies to any production contract that is in force on or after May 24, 1999, regardless of the date that the production contract is executed.

99 Acts, ch 169, §15, 22, 24
NEW section

579B.3 Establishment of lien — priority.

A contract producer who is a party to a production contract executed pursuant to section 579B.2 shall have a lien as provided in this section. The amount of the lien shall be the amount owed to the contract producer pursuant to the terms of the production contract, which may be enforced as provided in section 579B.5.

1. a. If the production contract is for the production of livestock or raw milk, all of the following shall apply:

(1) For livestock, the lien shall apply to all of the following:

(a) If the livestock is not sold or slaughtered by the contractor, the lien shall be on the livestock.

(b) If the livestock is sold by the contractor, the lien shall be on cash proceeds from the sale. For purposes of this subparagraph, cash held by the contractor shall be deemed to be cash proceeds from the sale regardless of whether it is identifiable cash proceeds.

(c) If the livestock is slaughtered by the contractor, the lien shall be on any property of the contractor that may be subject to a security interest as provided in section 554.9102.

(2) For raw milk, the lien shall apply to all of the following:

(a) If the raw milk is not sold or processed by the contractor, the lien shall be on the raw milk.

(b) If the raw milk is sold by the contractor, the lien shall be on cash proceeds from the sale. For purposes of this subparagraph, cash held by the contractor shall be deemed to be cash proceeds from the sale regardless of whether it is identifiable cash proceeds.

(c) If the raw milk is processed by the contractor, the lien shall be on any property of the contractor that may be subject to a security interest as provided in section 554.9102.

b. The lien on livestock or raw milk is created at the time the livestock arrives at the contract livestock facility and continues for one year after the livestock is no longer under the authority of the contract producer. For purposes of this section, livestock is no longer under the authority of the contract producer when the livestock leaves the contract livestock facility.

2. a. If the production contract is for the production of crops, all of the following shall apply:

(1) If the crop is not sold or processed by the contractor, the lien shall be on the crop.

(2) If the crop is sold by the contractor, the lien shall be on cash proceeds from the sale. For purposes of this subparagraph, cash held by the contractor shall be deemed to be cash proceeds from the sale regardless of whether it is identifiable cash proceeds.

(3) If the crop is processed by the contractor, the lien shall be on any property of the contractor that may be subject to a security interest as provided in section 554.9102.

b. The lien on a crop is created at the time the crop is planted and continues for one year after the crop is no longer under the authority of the contract producer. For purposes of this section, a crop is no longer under the authority of the contract producer when the crop or a warehouse receipt issued by a warehouse operator licensed under chapter 203C for grain from the crop is no longer under the custody or control of the contract producer.

99 Acts, ch 169, §16, 22, 24
NEW section

579B.4 Preserving the lien — filing requirements.

1. In order to preserve a lien created pursuant to section 579B.3, a contract producer must file in the office of the secretary of state a lien statement on a form prescribed by the secretary of state. If the lien arises out of producing livestock or raw milk, the contract producer must file the lien within forty-five days after the day that the livestock first arrives at the contract livestock facility. If the lien arises out of producing a crop, the contract producer must file the lien within forty-five days after the day that the crop is first planted. The secretary of state shall charge a fee of not more than ten dollars

for filing the statement. The secretary of state may adopt rules pursuant to chapter 17A for the electronic filing of the statements.

2. The statement must include all of the following:

a. An estimate of the amount owed pursuant to the production contract.

b. The date when the livestock arrives at the contract livestock facility or the date when the crop was planted.

c. The estimated duration of the period when the commodity will be under the authority of the contract producer.

d. The name of the party to the production contract whose commodity is produced pursuant to the production contract.

e. The description of the location of the contract operation, by county and township.

f. The printed name and signature of the person filing the form.

3. Except as provided in chapter 581, a lien created under this section until preserved and a lien preserved under this section are superior to and shall have priority over a conflicting lien or security interest in the commodity, including a lien or security interest that was perfected prior to the creation of the lien under this chapter.

99 Acts, ch 169, §17, 22, 24
NEW section

579B.5 Enforcement.

Before a commodity leaves the authority of the

contract producer as provided in section 579B.3, the contract producer may foreclose a lien created in that section in the manner provided for the foreclosure of secured transactions as provided in sections 554.9504, 554.9506, and 554.9507. After the commodity is no longer under the authority of the contract producer, the contract producer may enforce the lien in the manner provided in chapter 554, article 9, part 5.

99 Acts, ch 169, §18, 22, 24
NEW section

579B.6 Waivers unenforceable.

A waiver of a right created by this chapter, including but not limited to a waiver of the right to file a lien pursuant to this chapter, is void and unenforceable. This section does not affect other provisions of a contract, including a production contract or a related document, policy, or agreement which can be given effect without the voided provision.

99 Acts, ch 169, §19, 22, 24
NEW section

579B.7 Alternate lien procedure.

A person who is a custom cattle feedlot operator as defined in section 579A.1 may file and enforce a lien as a contract producer under this chapter or chapter 579A, but not both.

99 Acts, ch 169, §20, 22, 24
NEW section

CHAPTER 595

MARRIAGE

595.2 Gender — age.

1. Only a marriage between a male and a female is valid.

2. Additionally, a marriage between a male and a female is valid only if each is eighteen years of age or older. However, if either or both of the parties have not attained that age, the marriage may be valid under the circumstances prescribed in this section.

3. If either party to a marriage falsely represents the party's self to be eighteen years of age or older at or before the time the marriage is solemnized, the marriage is valid unless the person who falsely represented their age chooses to void the marriage by making their true age known and verified by a birth certificate or other legal evidence of age in an annulment proceeding initiated at any time before the person reaches their eighteenth birthday. A child born of a marriage voided under this subsection is legitimate.

4. A marriage license may be issued to a male and a female either or both of whom are sixteen or

seventeen years of age if both of the following apply:

a. The parents of the underaged party or parties certify in writing that they consent to the marriage. If one of the parents of any underaged party to a proposed marriage is dead or incompetent the certificate may be executed by the other parent, if both parents are dead or incompetent the guardian of the underaged party may execute the certificate, and if the parents are divorced the parent having legal custody may execute the certificate; and

b. The certificate of consent of the parents, parent, or guardian is approved by a judge of the district court or, if both parents of any underaged party to a proposed marriage are dead, incompetent, or cannot be located and the party has no guardian, the proposed marriage is approved by a judge of the district court. A judge shall grant approval under this subsection only if the judge finds the underaged party or parties capable of assuming the responsibilities of marriage and that the marriage will serve the best interest of the underaged

party or parties. Pregnancy alone does not establish that the proposed marriage is in the best interest of the underaged party or parties, however, if pregnancy is involved the court records which pertain to the fact that the female is pregnant shall be sealed and available only to the parties to the marriage or proposed marriage or to any interested party securing an order of the court.

5. If a parent or guardian withholds consent, the judge upon application of a party to a proposed marriage shall determine if the consent has been unreasonably withheld. If the judge so finds, the judge shall proceed to review the application under subsection 4, paragraph "b".

99 Acts, ch 114, §44

Subsection 4 amended and divided into subsections 4 and 5

595.5 Name change adopted.

1. A party may indicate on the application for a

marriage license the adoption of a name change. The names used on the marriage license shall become the legal names of the parties to the marriage. The marriage license shall contain a statement that when a name change is requested and affixed to the marriage license, the new name is the legal name of the requesting party.

2. The county registrar shall send a certified copy of the return of marriage to the recorder's office in every county in this state where real property is owned by either of the parties, upon request of the parties. The new names and the immediate former names shall appear on the return of marriage, and the return of marriage shall be recorded in the miscellaneous records in the recorder's office.

3. An individual shall have only one legal name at any one time.

99 Acts, ch 150, §1
Section amended

CHAPTER 597

HUSBAND AND WIFE

597.15 Custody of children.

If one spouse abandons the other spouse, the abandoned spouse is entitled to the custody of the minor children, unless the district court, upon application for that purpose, otherwise directs, or unless a custody decree is entered in accordance with chapter 598B. In this section "abandon" does not

include:

1. The departure of a spouse due to physical or emotional abuse.
2. The departure of a spouse accompanied by the minor children.

99 Acts, ch 103, §43
Unnumbered paragraph 1 amended

CHAPTER 598

DISSOLUTION OF MARRIAGE AND DOMESTIC RELATIONS

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. Unless prohibited pursuant to 28 U.S.C. § 1738B, 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.

e. Unless the special circumstances of the case justify a deviation, the court or the child support recovery unit shall establish a monthly child support payment of twenty-five dollars for a parent who is nineteen years of age or younger, who has not received a high school or high school equivalency diploma, and to whom each of the following apply:

(1) The parent is attending a school or program described as follows or has been identified as one of the following:

(a) The parent is in full-time attendance at an accredited school and is pursuing a course of study leading to a high school diploma.

(b) The parent is attending an instructional program leading to a high school equivalency diploma.

(c) The parent is attending a vocational education program approved pursuant to chapter 258.

(d) The parent 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.

(2) The parent provides proof of compliance with the requirements of subparagraph (1) to the child support recovery unit, if the unit is providing services under chapter 252B, or if the unit is not providing services pursuant to chapter 252B, to the court as the court may direct.

Failure to provide proof of compliance under this subparagraph or proof of compliance under section 598.21A is grounds for modification of the support order using the uniform child support guidelines and imputing an income to the parent equal to a forty-hour work week at the state minimum wage, unless the parent's education, experience, or actual earnings justify a higher income.

4A. If, during an action initiated under this chapter or any other chapter in which a child or medical support obligation may be established based upon a prior determination of paternity, a party wishes to contest the paternity of the child or children involved, all of the following apply:

a. (1) If the prior determination of paternity is based on an affidavit of paternity filed pursuant to section 252A.3A, or a court or administrative order entered in this state, or by operation of law when the mother and established father are or were married to each other, the provisions of section 600B.41A apply.

(2) If following the proceedings under section 600B.41A the court determines that the prior determination of paternity should not be overcome, and that the established father has a duty to provide support, the court shall enter an order establishing the monthly child support payment and the

amount of the support debt accrued and accruing pursuant to subsection 4, or the medical support obligation pursuant to chapter 252E, or both.

b. If a determination of paternity is based on an administrative or court order or other means pursuant to the laws of a foreign jurisdiction, any action to overcome the prior determination of paternity shall be filed in that jurisdiction. Unless a stay of the action initiated in this state to establish child or medical support is requested and granted by the court, pending a resolution of the contested paternity issue by the foreign jurisdiction, the action shall proceed.

c. Notwithstanding paragraph "a", in a pending dissolution action under this chapter, a prior determination of paternity by operation of law through the marriage of the established father and mother of the child may be overcome under this chapter if the established father and mother of the child file a written statement with the court that both parties agree that the established father is not the biological father of the child.

If the court overcomes a prior determination of paternity, the previously established father shall be relieved of support obligations as specified in section 600B.41A, subsection 4. In any action to overcome paternity other than through a pending dissolution action, the provisions of section 600B.41A apply. Overcoming paternity under this paragraph does not bar subsequent actions to establish paternity. A subsequent action to establish paternity against the previously established father is not barred if it is subsequently determined that the written statement attesting that the established father is not the biological father of the child may have been submitted erroneously, and that the person previously determined not to be the child's father during the dissolution action may actually be the child's biological father.

4B. If an action to overcome paternity is brought pursuant to subsection 4A, paragraph "c", the court shall appoint a guardian ad litem for the child for the pendency of the proceedings.

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.

5A. The court may order a postsecondary education subsidy if good cause is shown.

a. In determining whether good cause exists for ordering a postsecondary education subsidy, the court shall consider the age of the child, the ability of the child relative to postsecondary education, the child's financial resources, whether the child is self-sustaining, and the financial condition of each parent. If the court determines that good cause is shown for ordering a postsecondary education subsidy, the court shall determine the amount of subsidy as follows:

(1) The court shall determine the cost of postsecondary education based upon the cost of attending an in-state public institution for a course of instruction leading to an undergraduate degree and shall include the reasonable costs for only necessary postsecondary education expenses.

(2) The court shall then determine the amount, if any, which the child may reasonably be expected to contribute, considering the child's financial resources, including but not limited to the availability of financial aid whether in the form of scholarships, grants, or student loans, and the ability of the child to earn income while attending school.

(3) The child's expected contribution shall be deducted from the cost of postsecondary education and the court shall apportion responsibility for the remaining cost of postsecondary education to each parent. The amount paid by each parent shall not exceed thirty-three and one-third percent of the total cost of postsecondary education.

b. A postsecondary education subsidy shall be payable to the child, to the educational institution, or to both, but shall not be payable to the custodial parent.

c. A postsecondary education subsidy shall not be awarded if the child has repudiated the parent by publicly disowning the parent, refusing to acknowledge the parent, or by acting in a similar manner.

d. The child shall forward, to each parent, reports of grades awarded at the completion of each academic session, within ten days of receipt of the reports. Unless otherwise specified by the parties, a postsecondary education subsidy awarded by the court shall be terminated upon the child's completion of the first calendar year of course instruction if the child fails to maintain a cumulative grade point average in the median range or above during that first calendar year.

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 598B.

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. Subject to 28 U.S.C. § 1738B, 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. Other factors the court determines to be relevant in an individual case.

Unless otherwise provided pursuant to 28 U.S.C. § 1738B, 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 opportunity to be heard is given to all parties to the order, and entered as an order of the court. If support payments have been assigned to the department of human services pursuant to section 234.39, 239B.6, or 252E.11, or if services are being provided pursuant to chapter 252B, the department is a party to the support order. Modifications of orders pertaining to child custody shall be made pursuant to chapter 598B. 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 three months after the date the notice of the pending petition for modification is served on the opposing party. The three-month limitation applies to a modification action pending on or after July 1, 1997. The prohibition of retroactive modification does not bar the child support recovery unit from obtaining orders for accrued support for previous time periods. Any retroactive modification which increases the amount of child support or any order for accrued support under this paragraph shall include a periodic payment plan. A retroactive modification shall not be regarded as a delinquency unless there are subsequent failures to make payments in accordance with the periodic payment plan.

The periodic due date established under a prior order for payment of child support shall not be changed in any modified order under this section, unless the court determines that good cause exists to change the periodic due date. If the court deter-

mines that good cause exists, the court shall include the rationale for the change in the modified order and shall address the issue of reconciliation of any payments due or made under a prior order which would result in payment of the child support obligation under both the prior and the modified orders.

8A. If a parent awarded joint legal custody and physical care or sole legal custody is relocating the residence of the minor child to a location which is one hundred fifty miles or more from the residence of the minor child at the time that custody was awarded, the court may consider the relocation a substantial change in circumstances. If the court determines that the relocation is a substantial change in circumstances, the court shall modify the custody order to, at a minimum, preserve, as nearly as possible, the existing relationship between the minor child and the nonrelocating parent. If modified, the order may include a provision for extended visitation during summer vacations and school breaks and scheduled telephone contact between the nonrelocating parent and the minor child. The modification may include a provision assigning the responsibility for transportation of the minor child for visitation purposes to either or both parents. If the court makes a finding of past interference by the parent awarded joint legal custody and physical care or sole legal custody with the minor child's access to the other parent, the court may order the posting of a cash bond to assure future compliance with the visitation provisions of the decree. The supreme court shall prescribe guidelines for the forfeiting of the bond and restoration of the bond following forfeiting of the bond.

9. Subject to 28 U.S.C. § 1738B, but 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, adjustment, or alter-

ation 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 subsection 4, and provision for medical support under chapter 252E. When an application for a cost-of-living alteration of support is submitted by the child support recovery unit pursuant to section 252H.24, the sole issue which may be considered by the court in the action is the application of the cost-of-living alteration in establishing the amount of child support. 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.

99 Acts, ch 103, §44, 45
Subsection 6 amended
Subsection 8, unnumbered paragraph 2 amended

598.41 Custody of children.

1. *a.* The court, insofar as is reasonable and in the best interest of the child, shall order the custody award, including liberal visitation rights where appropriate, which will assure the child the opportunity for the maximum continuing physical and emotional contact with both parents after the parents have separated or dissolved the marriage, and which will encourage parents to share the rights and responsibilities of raising the child unless direct physical harm or significant emotional harm to the child, other children, or a parent is likely to result from such contact with one parent.

b. Notwithstanding paragraph "a", if the court finds that a history of domestic abuse exists, a rebuttable presumption against the awarding of joint custody exists.

c. The court shall consider the denial by one parent of the child's opportunity for maximum continuing contact with the other parent, without just cause, a significant factor in determining the proper custody arrangement. Just cause may include a determination by the court pursuant to subsection 3, paragraph "j", that a history of domestic abuse exists between the parents.

d. If a history of domestic abuse exists as determined by a court pursuant to subsection 3, paragraph “j”, and if a parent who is a victim of such domestic abuse relocates or is absent from the home based upon the fear of or actual acts or threats of domestic abuse perpetrated by the other parent, the court shall not consider the relocation or absence of that parent as a factor against that parent in the awarding of custody or visitation.

e. Unless otherwise ordered by the court in the custody decree, both parents shall have legal access to information concerning the child, including but not limited to medical, educational and law enforcement records.

2. *a.* On the application of either parent, the court shall consider granting joint custody in cases where the parents do not agree to joint custody.

b. If the court does not grant joint custody under this subsection, the court shall cite clear and convincing evidence, pursuant to the factors in subsection 3, that joint custody is unreasonable and not in the best interest of the child to the extent that the legal custodial relationship between the child and a parent should be severed.

c. A finding by the court that a history of domestic abuse exists, as specified in subsection 3, paragraph “j”, which is not rebutted, shall outweigh consideration of any other factor specified in subsection 3 in the determination of the awarding of custody under this subsection.

d. Before ruling upon the joint custody petition in these cases, unless the court determines that a history of domestic abuse exists as specified in subsection 3, paragraph “j”, or unless the court determines that direct physical harm or significant emotional harm to the child, other children, or a parent is likely to result, the court may require the parties to participate in custody mediation to determine whether joint custody is in the best interest of the child. The court may require the child’s participation in the mediation insofar as the court determines the child’s participation is advisable.

e. The costs of custody mediation shall be paid in full or in part by the parties and taxed as court costs.

3. In considering what custody arrangement under subsection 2 is in the best interest of the minor child, the court shall consider the following factors:

a. Whether each parent would be a suitable custodian for the child.

b. Whether the psychological and emotional needs and development of the child will suffer due to lack of active contact with and attention from both parents.

c. Whether the parents can communicate with each other regarding the child’s needs.

d. Whether both parents have actively cared for the child before and since the separation.

e. Whether each parent can support the other parent’s relationship with the child.

f. Whether the custody arrangement is in accord with the child’s wishes or whether the child has strong opposition, taking into consideration the child’s age and maturity.

g. Whether one or both the parents agree or are opposed to joint custody.

h. The geographic proximity of the parents.

i. Whether the safety of the child, other children, or the other parent will be jeopardized by the awarding of joint custody or by unsupervised or unrestricted visitation.

j. Whether a history of domestic abuse, as defined in section 236.2, exists. In determining whether a history of domestic abuse exists, the court’s consideration shall include, but is not limited to, commencement of an action pursuant to section 236.3, the issuance of a protective order against the parent or the issuance of a court order or consent agreement pursuant to section 236.5, the issuance of an emergency order pursuant to section 236.6, the holding of a parent in contempt pursuant to section 236.8, the response of a peace officer to the scene of alleged domestic abuse or the arrest of a parent following response to a report of alleged domestic abuse, or a conviction for domestic abuse assault pursuant to section 708.2A.

4. Subsection 3 shall not apply when parents agree to joint custody.

5. Joint physical care may be in the best interest of the child, but joint legal custody does not require joint physical care. When the court determines such action would be in the best interest of the child and would preserve the relationship between each parent and the child, joint physical care may be awarded to both joint custodial parents or physical care may be awarded to one joint custodial parent. If one joint custodial parent is awarded physical care, the parent responsible for providing physical care shall support the other parent’s relationship with the child. Physical care awarded to one parent does not affect the other parent’s rights and responsibilities as a joint legal custodian of the child. Rights and responsibilities as joint legal custodian of the child include, but are not limited to, equal participation in decisions affecting the child’s legal status, medical care, education, extracurricular activities, and religious instruction.

6. If the parties have more than one minor child, and the court awards each party the physical custody of one or more of the children, upon application by either party, and if it is reasonable and in the best interest of the children, the court shall include a provision in the custody order directing the parties to allow visitation between the children in each party’s custody.

7. When a parent awarded legal custody or physical care of a child cannot act as custodian or caretaker because the parent has died or has been judicially adjudged incompetent, the court shall award legal custody including physical care of the child to the surviving parent unless the court finds

that such an award is not in the child's best interest.

8. If an application for modification of a decree or a petition for modification of an order is filed, based upon differences between the parents regarding the custody arrangement established under the decree or order, unless the court determines that a history of domestic abuse exists as specified in subsection 3, paragraph "j", or unless the court determines that direct physical harm or significant emotional harm to the child, other children, or a parent is likely to result, the court may require the parents to participate in mediation to attempt to resolve the differences between the parents.

99 Acts, ch 115, §1

NEW subsection 6 and former subsections 6 and 7 renumbered as 7 and 8

598.41B Visitation — restrictions — murder of parent.

1. Notwithstanding section 598.41, the court shall not do either of the following:

a. Enforce an existing order awarding visitation rights to a child's parent, which was obtained prior to that parent's conviction for first degree murder in the murder of the child's other parent, unless such enforcement is in the best interest of the child.

b. Award visitation rights to a child's parent who has been convicted of murder in the first de-

gree of the child's other parent, unless the court finds that such visitation is in the best interest of the child.

2. In determining whether visitation would be in the best interest of the child pursuant to subsection 1, the court shall consider all of the following:

a. The age and level of maturity of the child.

b. If the child is developmentally mature enough to provide assent and whether the child does assent.

c. The recommendation of the child's custodian or legal guardian.

d. The recommendation of a child counselor or mental health professional following evaluation of the child.

e. The recommendation of a guardian ad litem for the child if one has been appointed to represent the child in the proceeding.

f. Any other information which the court deems to be relevant.

3. Until such time as an order regarding visitation rights under subsection 1 is entered, the child of a parent who has been convicted of murder in the first degree of the child's other parent shall not visit the parent who has been convicted.

99 Acts, ch 38, §1
NEW section

CHAPTER 598A

UNIFORM CHILD-CUSTODY JURISDICTION

Repealed by 99 Acts, ch 103, §47;
see chapter 598B

CHAPTER 598B

UNIFORM CHILD-CUSTODY JURISDICTION AND ENFORCEMENT

ARTICLE I

GENERAL PROVISIONS

598B.101 Short title.

This chapter shall be known and may be cited as the "*Uniform Child-custody Jurisdiction and Enforcement Act*".

99 Acts, ch 103, §1
NEW section

598B.102 Definitions.

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

1. "*Abandoned*" means left without provision for reasonable and necessary care or supervision.

2. "*Child*" means an individual who has not attained eighteen years of age.

3. "*Child-custody determination*" means a judgment, decree, or other order of a court providing for the legal custody, physical custody, or visitation with respect to a child. The term includes a permanent, temporary, initial, and modification order. The term does not include an order relating to child support or other monetary obligation of an individual.

4. "*Child-custody proceeding*" means a proceeding in which legal custody, physical custody, or visitation with respect to a child is an issue. The term includes a proceeding for dissolution of marriage, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence, in which the issue may appear. The term does not include a proceeding involving juvenile delinquency,

contractual emancipation, or enforcement under article III.

5. “*Commencement*” means the filing of the first pleading in a proceeding.

6. “*Court*” means an entity authorized under the law of a state to establish, enforce, or modify a child-custody determination.

7. “*Home state*” means the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child-custody proceeding. In the case of a child less than six months of age, the term means the state in which the child lived from birth with any of the persons mentioned. A period of temporary absence of any of the mentioned persons is part of the period.

8. “*Initial determination*” means the first child-custody determination concerning a particular child.

9. “*Issuing court*” means the court that makes a child-custody determination for which enforcement is sought under this chapter.

10. “*Issuing state*” means the state in which a child-custody determination is made.

11. “*Modification*” means a child-custody determination that changes, replaces, supersedes, or is otherwise made after a previous determination concerning the same child, whether or not it is made by the court that made the previous determination.

12. “*Person*” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, or government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.

13. “*Person acting as a parent*” means a person, other than a parent, to whom both of the following apply:

a. The person has physical custody of the child or has had physical custody for a period of six consecutive months, including any temporary absence, within one year immediately before the commencement of a child-custody proceeding.

b. The person has been awarded legal custody by a court or claims a right to legal custody under the law of this state.

14. “*Physical custody*” means the physical care and supervision of a child.

15. “*State*” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

16. “*Tribes*” means an Indian tribe or band, or Alaskan native village, which is recognized by federal law or formally acknowledged by a state.

17. “*Warrant*” means an order issued by a court authorizing law enforcement officers to take physical custody of a child.

99 Acts, ch 103, §2
NEW section

598B.103 Proceedings governed by other law.

This chapter does not govern an adoption proceeding or a proceeding pertaining to the authorization of emergency medical care for a child.

99 Acts, ch 103, §3
NEW section

598B.104 Application to Indian tribes.

1. A child-custody proceeding that pertains to an Indian child as defined in the federal Indian Child Welfare Act, 25 U.S.C. § 1901 et seq., is not subject to this chapter to the extent that it is governed by the federal Indian Child Welfare Act.

2. A court of this state shall treat a tribe as if it were a state of the United States for the purpose of applying this article and article II.

3. A child-custody determination made by a tribe under factual circumstances in substantial conformity with the jurisdictional standards of this chapter must be recognized and enforced under article III.

99 Acts, ch 103, §4
NEW section

598B.105 International application.

1. A court of this state shall treat a foreign country as if it were a state of the United States for the purpose of applying this article and article II.

2. Except as otherwise provided in subsection 3, a child-custody determination made in a foreign country under factual circumstances in substantial conformity with the jurisdictional standards of this chapter must be recognized and enforced under article III.

3. A court of this state need not apply this chapter if the child-custody law of a foreign country violates fundamental principles of human rights.

99 Acts, ch 103, §5
NEW section

598B.106 Effect of child-custody determination.

A child-custody determination made by a court of this state that had jurisdiction under this chapter binds all persons who have been served in accordance with the laws of this state, or notified in accordance with section 598B.108, or who have submitted to the jurisdiction of the court, and who have been given an opportunity to be heard. As to those persons, the determination is conclusive as to all decided issues of law and fact except to the extent the determination is modified.

99 Acts, ch 103, §6
NEW section

598B.107 Priority.

If a question of existence or exercise of jurisdiction under this chapter is raised in a child-custody proceeding, the question, upon request of a party, must be given priority on the calendar and handled expeditiously.

99 Acts, ch 103, §7
NEW section

598B.108 Notice to persons outside state.

1. Notice required for the exercise of jurisdiction when a person is outside this state may be given in a manner prescribed by the law of this state for service of process or by the law of the state in which the service is made. Notice shall be given in a manner reasonably calculated to give actual notice but may be by publication if other means are not effective.

2. Proof of service may be made in the manner prescribed by the law of this state or by the law of the state in which the service is made.

3. Notice is not required for the exercise of jurisdiction with respect to a person who submits to the jurisdiction of the court.

99 Acts, ch 103, §8
NEW section

598B.109 Appearance and limited immunity.

1. A party to a child-custody proceeding, including a modification proceeding, or a petitioner or respondent in a proceeding to enforce or register a child-custody determination, is not subject to personal jurisdiction in this state for another proceeding or purpose solely by reason of having participated, or of having been physically present for the purpose of participating, in the proceeding.

2. A person who is subject to personal jurisdiction in this state on a basis other than physical presence is not immune from service of process in this state. A party present in this state who is subject to the jurisdiction of another state is not immune from service of process allowable under the laws of that state.

3. The immunity granted by subsection 1 does not extend to civil litigation based on acts unrelated to the participation in a proceeding under this chapter committed by an individual while present in this state.

99 Acts, ch 103, §9
NEW section

598B.110 Communication between courts.

1. A court of this state may communicate with a court in another state concerning a proceeding arising under this chapter.

2. The court may allow the parties to participate in the communication. If the parties are not able to participate in the communication, they must be given the opportunity to present facts and legal arguments before a decision on jurisdiction is made.

3. Communication between courts on schedules, calendars, court records, and similar matters may occur without informing the parties. A record need not be made of the communication.

4. Except as otherwise provided in subsection 3, a record must be made of a communication under this section. The parties must be informed prompt-

ly of the communication and granted access to the record.

5. For the purposes of this section, "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

99 Acts, ch 103, §10
NEW section

598B.111 Taking testimony in another state.

1. In addition to other procedures available to a party, a party to a child-custody proceeding may offer testimony of witnesses who are located in another state, including testimony of the parties and the child, by deposition or other means allowable in this state for testimony taken in another state. The court on its own motion may order that the testimony of a person be taken in another state and may prescribe the manner in which and the terms upon which the testimony is taken.

2. A court of this state may permit an individual residing in another state to be deposed or to testify by telephone, audiovisual means, or other electronic means before a designated court or at another location in that state. A court of this state shall cooperate with courts of other states in designating an appropriate location for the deposition or testimony.

3. Documentary evidence transmitted from another state to a court of this state by technological means that do not produce an original writing shall not be excluded from evidence on an objection based on the means of transmission.

99 Acts, ch 103, §11
NEW section

598B.112 Cooperation between courts — preservation of records.

1. A court of this state may request the appropriate court of another state to do any or all of the following:

- a. Hold an evidentiary hearing.
- b. Order a person to produce or give evidence pursuant to procedures of that state.
- c. Order that an evaluation be made with respect to the custody of a child involved in a pending proceeding.

d. Forward to the court of this state a certified copy of the transcript of the record of the hearing, the evidence otherwise presented, and any evaluation prepared in compliance with the request.

e. Order a party to a child-custody proceeding or any person having physical custody of the child to appear in the proceeding with or without the child.

2. Upon request of a court of another state, a court of this state may hold a hearing or enter an order described in subsection 1.

3. Travel and other necessary and reasonable expenses incurred under subsections 1 and 2 may

be assessed against the parties according to the law of this state.

4. A court of this state shall preserve the pleadings, orders, decrees, records of hearings, evaluations, and other pertinent records with respect to a child-custody proceeding until the child attains eighteen years of age. Upon appropriate request by a court or law enforcement official of another state, the court shall forward a certified copy of those records.

99 Acts, ch 103, §12
NEW section

ARTICLE II

JURISDICTION

598B.201 Initial child-custody jurisdiction.

1. Except as otherwise provided in section 598B.204, a court of this state has jurisdiction to make an initial child-custody determination only if any of the following applies:

a. This state is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within six months before the commencement of the proceeding and the child is absent from this state but a parent or person acting as a parent continues to live in this state.

b. A court of another state does not have jurisdiction under paragraph “*a*”, or a court of the home state of the child has declined to exercise jurisdiction on the ground that this state is the more appropriate forum under section 598B.207 or 598B.208 and both of the following apply:

(1) The child and the child’s parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this state other than mere physical presence.

(2) Substantial evidence is available in this state concerning the child’s care, protection, training, and personal relationships.

c. All courts having jurisdiction under paragraph “*a*” or “*b*” have declined to exercise jurisdiction on the ground that a court of this state is the more appropriate forum to determine the custody of the child under section 598B.207 or 598B.208.

d. No court of any other state would have jurisdiction under the criteria specified in paragraph “*a*”, “*b*”, or “*c*”.

2. Subsection 1 is the exclusive jurisdictional basis for making a child-custody determination by a court of this state.

3. Physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child-custody determination.

99 Acts, ch 103, §13
NEW section

598B.202 Exclusive, continuing jurisdiction.

1. Except as otherwise provided in section 598B.204, a court of this state which has made a child-custody determination consistent with section 598B.201 or 598B.203 has exclusive, continuing jurisdiction over the determination until any of the following occurs:

a. A court of this state determines that the child does not have, the child and one parent do not have, or the child and a person acting as a parent do not have a significant connection with this state and that substantial evidence is no longer available in this state concerning the child’s care, protection, training, and personal relationships.

b. A court of this state or a court of another state determines that the child, the child’s parents, and any person acting as a parent do not presently reside in this state.

2. A court of this state which has made a child-custody determination and does not have exclusive, continuing jurisdiction under this section may modify that determination only if it has jurisdiction to make an initial determination under section 598B.201.

99 Acts, ch 103, §14
NEW section

598B.203 Jurisdiction to modify determination.

Except as otherwise provided in section 598B.204, a court of this state shall not modify a child-custody determination made by a court of another state unless a court of this state has jurisdiction to make an initial determination under section 598B.201, subsection 1, paragraph “*a*” or “*b*”, and either of the following applies:

1. The court of the other state determines it no longer has exclusive, continuing jurisdiction under section 598B.202 or that a court of this state would be a more convenient forum under section 598B.207.

2. A court of this state or a court of the other state determines that the child, the child’s parents, and any person acting as a parent do not presently reside in the other state.

99 Acts, ch 103, §15
NEW section

598B.204 Temporary emergency jurisdiction.

1. A court of this state has temporary emergency jurisdiction if the child is present in this state and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse.

2. If there is no previous child-custody determination that is entitled to be enforced under this chapter and a child-custody proceeding has not

been commenced in a court of a state having jurisdiction under sections 598B.201 through 598B.203, a child-custody determination made under this section remains in effect until an order is obtained from a court of a state having jurisdiction under sections 598B.201 through 598B.203. If a child-custody proceeding has not been or is not commenced in a court of a state having jurisdiction under sections 598B.201 through 598B.203, a child-custody determination made under this section becomes a final determination, if it so provides and this state becomes the home state of the child.

3. If there is a previous child-custody determination that is entitled to be enforced under this chapter, or a child-custody proceeding has been commenced in a court of a state having jurisdiction under sections 598B.201 through 598B.203, any order issued by a court of this state under this section must specify in the order a period that the court considers adequate to allow the person seeking an order to obtain an order from the state having jurisdiction under sections 598B.201 through 598B.203. The order issued in this state remains in effect until an order is obtained from the other state within the period specified or the period expires.

4. A court of this state which has been asked to make a child-custody determination under this section, upon being informed that a child-custody proceeding has been commenced in, or a child-custody determination has been made by, a court of a state having jurisdiction under sections 598B.201 through 598B.203, shall immediately communicate with the other court. A court of this state which is exercising jurisdiction pursuant to sections 598B.201 through 598B.203, upon being informed that a child-custody proceeding has been commenced in, or a child-custody determination has been made by, a court or another state under a statute similar to this section shall immediately communicate with the court of that state to resolve the emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order.

99 Acts, ch 103, §16
NEW section

598B.205 Notice — opportunity to be heard — joinder.

1. Before a child-custody determination is made under this chapter, notice and an opportunity to be heard in accordance with the standards of section 598B.108 must be given to all persons entitled to notice under the law of this state as in child-custody proceedings between residents of this state, any parent whose parental rights have not been previously terminated, and any person having physical custody of the child.

2. This chapter does not govern the enforceability of a child-custody determination made without notice or an opportunity to be heard.

3. The obligation to join a party and the right to intervene as a party in a child-custody proceeding

under this chapter are governed by the law of this state as in child-custody proceedings between residents of this state.

99 Acts, ch 103, §17
NEW section

598B.206 Simultaneous proceedings.

1. Except as otherwise provided in section 598B.204, a court of this state shall not exercise its jurisdiction under this article if, at the time of the commencement of the proceeding, a proceeding concerning the custody of the child has been commenced in a court of another state having jurisdiction substantially in conformity with this chapter, unless the proceeding has been terminated or is stayed by the court of the other state because a court of this state is a more convenient forum under section 598B.207.

2. Except as otherwise provided in section 598B.204, a court of this state, before hearing a child-custody proceeding, shall examine the court documents and other information supplied by the parties pursuant to section 598B.209. If the court determines that a child-custody proceeding has been commenced in a court in another state having jurisdiction substantially in accordance with this chapter, the court of this state shall stay its proceeding and communicate with the court of the other state. If the court of the state having jurisdiction substantially in accordance with this chapter does not determine that the court of this state is a more appropriate forum, the court of this state shall dismiss the proceeding.

3. In a proceeding to modify a child-custody determination, a court of this state shall determine whether a proceeding to enforce the determination has been commenced in another state. If a proceeding to enforce a child-custody determination has been commenced in another state, the court may do any of the following:

a. Stay the proceeding for modification pending the entry of an order of a court of the other state enforcing, staying, denying, or dismissing the proceeding for enforcement.

b. Enjoin the parties from continuing with the proceeding for enforcement.

c. Proceed with the modification under conditions it considers appropriate.

99 Acts, ch 103, §18
NEW section

598B.207 Inconvenient forum.

1. A court of this state which has jurisdiction under this chapter to make a child-custody determination may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances and that a court of another state is a more appropriate forum. The issue of inconvenient forum may be raised upon motion of a party, the court's own motion, or request of another court.

2. Before determining whether it is an inconvenient forum, a court of this state shall consider

whether it is appropriate for a court of another state to exercise jurisdiction. For this purpose, the court shall allow the parties to submit information and shall consider all relevant factors, including all of the following:

a. Whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child.

b. The length of time the child has resided outside this state.

c. The distance between the court in this state and the court in the state that would assume jurisdiction.

d. The relative financial circumstances of the parties.

e. Any agreement of the parties as to which state should assume jurisdiction.

f. The nature and location of the evidence required to resolve the pending litigation, including testimony of the child.

g. The ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence.

h. The familiarity of the court of each state with the facts and issues in the pending litigation.

3. If a court of this state determines that it is an inconvenient forum and that a court of another state is a more appropriate forum, it shall stay the proceedings upon condition that a child-custody proceeding be promptly commenced in another designated state and may impose any other condition the court considers just and proper.

4. A court of this state may decline to exercise its jurisdiction under this chapter if a child-custody determination is incidental to an action for dissolution of marriage or another proceeding while still retaining jurisdiction over the dissolution of marriage or other proceeding.

99 Acts, ch 103, §19
NEW section

598B.208 Jurisdiction declined by reason of conduct.

1. Except as otherwise provided in section 598B.204 or by any other law of this state, if a court of this state has jurisdiction under this chapter because a person seeking to invoke its jurisdiction has engaged in unjustifiable conduct, the court shall decline to exercise its jurisdiction unless any of the following applies:

a. The parents and all persons acting as parents have acquiesced in the exercise of jurisdiction.

b. A court of the state otherwise having jurisdiction under sections 598B.201 through 598B.203 determines that this state is a more appropriate forum under section 598B.207.

c. No court of any other state would have jurisdiction under the criteria specified in sections 598B.201 through 598B.203.

2. If a court of this state declines to exercise its jurisdiction pursuant to subsection 1, it may fashion an appropriate remedy to ensure the safety of

the child and prevent a repetition of the unjustifiable conduct, including staying the proceeding until a child-custody proceeding is commenced in a court having jurisdiction under sections 598B.201 through 598B.203.

3. If a court dismisses a petition or stays a proceeding because it declines to exercise its jurisdiction pursuant to subsection 1, it shall assess against the party seeking to invoke its jurisdiction necessary and reasonable expenses including costs, communication expenses, attorney fees, investigative fees, expenses for witnesses, travel expenses, and child care during the course of the proceedings, unless the party from whom fees are sought establishes that the assessment would be clearly inappropriate. The court shall not assess fees, costs, or expenses against this state unless authorized by law other than this chapter.

99 Acts, ch 103, §20
NEW section

598B.209 Information to be submitted to court.

1. In a child-custody proceeding, each party, in its first pleading or in an attached affidavit, shall give information, if reasonably ascertainable, under oath as to the child's present address or whereabouts, the places where the child has lived during the last five years, and the names and present addresses of the persons with whom the child has lived during that period. The pleading or affidavit must state whether the party has or knows all of the following:

a. Has participated, as a party or a witness or in any other capacity, in any other proceeding concerning the custody of or visitation with the child and, if so, identify the court, the case number, and the date of the child-custody determination, if any.

b. Knows of any proceeding that could affect the current proceeding, including proceedings for enforcement and proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions and, if so, identify the court, the case number, and the nature of the proceeding.

c. Knows the names and addresses of any person not a party to the proceeding who has physical custody of the child or claims rights of legal custody or physical custody of, or visitation with, the child and, if so, the names and addresses of those persons.

2. If the information required by subsection 1 is not furnished, the court, upon motion of a party or its own motion, may stay the proceeding until the information is furnished.

3. If the declaration as to any of the items described in subsection 1, paragraphs "a" through "c", is in the affirmative, the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and other matters pertinent to the court's jurisdiction and the disposition of the case.

4. Each party has a continuing duty to inform the court of any proceeding in this or any other state that could affect the current proceeding.

5. Upon a finding, which may be made ex parte, that the health, safety, or liberty of a party or child would be unreasonably put at risk by the disclosure of identifying information, or if an existing order so provides, the court shall order that the address of the party or child or other identifying information not be disclosed in a pleading or other document filed in a proceeding under this chapter.

99 Acts, ch 103, §21
NEW section

598B.210 Appearance of parties and child.

1. In a child-custody proceeding in this state, the court may order a party to the proceeding who is in this state to appear before the court in person with or without the child. The court may order any person who is in this state and who has physical custody or control of the child to appear in person with the child.

2. If a party to a child-custody proceeding whose presence is desired by the court is outside this state, the court may order that a notice given pursuant to section 598B.108 include a statement directing the party to appear in person with or without the child and informing the party that failure to appear may result in a decision adverse to the party.

3. The court may enter any orders necessary to ensure the safety of the child and of any person ordered to appear under this section.

4. If a party to a child-custody proceeding who is outside this state is directed to appear under subsection 2 or desires to appear personally before the court with or without the child, the court may require another party to pay reasonable and necessary travel and other expenses of the party so appearing and of the child.

99 Acts, ch 103, §22
NEW section

ARTICLE III

ENFORCEMENT

598B.301 Definitions.

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

1. *"Petitioner"* means a person who seeks enforcement of an order for return of a child under the Hague convention on the civil aspects of international child abduction or enforcement of a child-custody determination.

2. *"Respondent"* means a person against whom a proceeding has been commenced for enforcement of an order for return of a child under the Hague convention on the civil aspects of international

child abduction or enforcement of a child-custody determination.

99 Acts, ch 103, §23
NEW section

598B.302 Enforcement under Hague convention.

Under this article, a court of this state may enforce an order for the return of the child made under the Hague convention on the civil aspects of international child abduction as if it were a child-custody determination.

99 Acts, ch 103, §24
NEW section

598B.303 Duty to enforce.

1. A court of this state shall recognize and enforce a child-custody determination of a court of another state if the latter court exercised jurisdiction in substantial conformity with this chapter or the determination was made under factual circumstances meeting the jurisdictional standards of this chapter and the determination has not been modified in accordance with this chapter.

2. A court of this state may utilize any remedy available under other law of this state to enforce a child-custody determination made by a court of another state. The remedies provided in this article are cumulative and do not affect the availability of other remedies to enforce a child-custody determination.

99 Acts, ch 103, §25
NEW section

598B.304 Temporary visitation.

1. A court of this state which does not have jurisdiction to modify a child-custody determination may issue a temporary order enforcing any of the following:

a. A visitation schedule made by a court of another state.

b. The visitation provisions of a child-custody determination of another state that does not provide for a specific visitation schedule.

2. If a court of this state makes an order under subsection 1, paragraph "b", it shall specify in the order a period that it considers adequate to allow the petitioner to obtain an order from a court having jurisdiction under the criteria specified in article II. The order remains in effect until an order is obtained from the other court or the period expires.

99 Acts, ch 103, §26
NEW section

598B.305 Registration of child-custody determination.

1. A child-custody determination issued by a court of another state may be registered in this state, with or without a simultaneous request for enforcement, by sending to the district court in this state all of the following:

a. A letter or other document requesting registration.

b. Two copies, including one certified copy, of the determination sought to be registered, and a statement under penalty of perjury that to the best of the knowledge and belief of the person seeking registration the order has not been modified.

c. Except as otherwise provided in section 598B.209, the name and address of the person seeking registration and any parent or person acting as a parent who has been awarded custody or visitation in the child-custody determination sought to be registered.

2. On receipt of the documents required by subsection 1, the registering court shall do all of the following:

a. Cause the determination to be filed as a foreign judgment, together with one copy of any accompanying documents and information, regardless of their form.

b. Serve notice upon the persons named pursuant to subsection 1, paragraph "c", and provide them with an opportunity to contest the registration in accordance with this section.

3. The notice required by subsection 2, paragraph "b", must state all of the following:

a. That a registered determination is enforceable as of the date of the registration in the same manner as a determination issued by a court of this state.

b. That a hearing to contest the validity of the registered determination must be requested within twenty days after service of notice.

c. That failure to contest the registration will result in confirmation of the child-custody determination and preclude further contest of that determination with respect to any matter that could have been asserted.

4. A person seeking to contest the validity of a registered order must request a hearing within twenty days after service of the notice. At that hearing, the court shall confirm the registered order unless the person contesting registration establishes any of the following:

a. That the issuing court did not have jurisdiction under article II.

b. That the child-custody determination sought to be registered has been vacated, stayed, or modified by a court having jurisdiction to do so under article II.

c. That the person contesting registration was entitled to notice, but notice was not given in accordance with the standards of section 598B.108, in the proceedings before the court that issued the order for which registration is sought.

5. If a timely request for a hearing to contest the validity of the registration is not made, the registration is confirmed as a matter of law and the person requesting registration and all persons served must be notified of the confirmation.

6. Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to

any matter that could have been asserted at the time of registration.

99 Acts, ch 103, §27
NEW section

598B.306 Enforcement of registered determination.

1. A court of this state may grant any relief normally available under the law of this state to enforce a registered child-custody determination made by a court of another state.

2. A court of this state shall recognize and enforce, but shall not modify, except in accordance with article II, a registered child-custody determination of a court of another state.

99 Acts, ch 103, §28
NEW section

598B.307 Simultaneous proceedings.

If a proceeding for enforcement under this article is commenced in a court of this state and the court determines that a proceeding to modify the determination is pending in a court of another state having jurisdiction to modify the determination under article II, the enforcing court shall immediately communicate with the modifying court. The proceeding for enforcement continues unless the enforcing court, after consultation with the modifying court, stays or dismisses the proceeding.

99 Acts, ch 103, §29
NEW section

598B.308 Expedited enforcement of child-custody determination.

1. A petition under this article must be verified. Certified copies of all orders sought to be enforced and of any order confirming registration must be attached to the petition. A copy of a certified copy of an order may be attached instead of the original.

2. A petition for enforcement of a child-custody determination must state all of the following:

a. Whether the court that issued the determination identified the jurisdictional basis it relied upon in exercising jurisdiction and, if so, what the basis was.

b. Whether the determination for which enforcement is sought has been vacated, stayed, or modified by a court whose decision must be enforced under this chapter and, if so, identify the court, the case number, and the nature of the proceeding.

c. Whether any proceeding has been commenced that could affect the current proceeding, including proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions and, if so, identify the court, the case number, and the nature of the proceeding.

d. The present physical address of the child and the respondent, if known.

e. Whether relief in addition to the immediate physical custody of the child and attorney fees is

sought, including a request for assistance from law enforcement officials and, if so, the relief sought.

f. If the child-custody determination has been registered and confirmed under section 598B.305, the date and place of registration.

3. Upon the filing of a petition, the court shall issue an order directing the respondent to appear in person with or without the child at a hearing and may enter any order necessary to ensure the safety of the parties and the child. The hearing must be held on the next judicial day after service of the order unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible. The court may extend the date of hearing at the request of the petitioner.

4. An order issued under subsection 3 must state the time and place of the hearing and advise the respondent that at the hearing the court will order that the petitioner may take immediate physical custody of the child and the payment of fees, costs, and expenses under section 598B.312, and may schedule a hearing to determine whether further relief is appropriate, unless the respondent appears and establishes either of the following:

a. The child-custody determination has not been registered and confirmed under section 598B.305 and that all of the following* apply:

(1) The issuing court did not have jurisdiction under article II.

(2) The child-custody determination for which enforcement is sought has been vacated, stayed, or modified by a court having jurisdiction to do so under article II.

(3) The respondent was entitled to notice, but notice was not given in accordance with the standards of section 598B.108, in the proceedings before the court that issued the order for which enforcement is sought.

b. The child-custody determination for which enforcement is sought was registered and confirmed under section 598B.305, but has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under article II.

99 Acts, ch 103, §30

*The phrase "any of the following" probably intended; corrective legislation is pending
NEW section

598B.309 Service of petition and order.

Except as otherwise provided in section 598B.311, the petition and order must be served, by any method authorized by the law of this state, upon the respondent and any person who has physical custody of the child.

99 Acts, ch 103, §31
NEW section

598B.310 Hearing and order.

1. Unless the court issues a temporary emergency order pursuant to section 598B.204, upon a finding that a petitioner is entitled to immediate physical custody of the child, the court shall order

that the petitioner may take immediate physical custody of the child unless the respondent establishes that any of the following applies:

a. The child-custody determination has not been registered and confirmed under section 598B.305, and that any of the following applies:

(1) The issuing court did not have jurisdiction under article II.

(2) The child-custody determination for which enforcement is sought has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under article II.

(3) The respondent was entitled to notice, but notice was not given in accordance with the standards of section 598B.108, in the proceedings before the court that issued the order for which enforcement is sought.

b. The child-custody determination for which enforcement is sought was registered and confirmed under section 598B.305, but has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under article II.

2. The court shall award the fees, costs, and expenses authorized under section 598B.312, and may grant additional relief, including a request for the assistance of law enforcement officials, and set a further hearing to determine whether additional relief is appropriate.

3. If a party called to testify refuses to answer on the ground that the testimony may be self-incriminating, the court may draw an adverse inference from the refusal.

4. A privilege against disclosure of communications between spouses and a defense of immunity based on the relationship of husband and wife or parent and child shall not be invoked in a proceeding under this article.

99 Acts, ch 103, §32
NEW section

598B.311 Warrant to take physical custody of child.

1. Upon the filing of a petition seeking enforcement of a child-custody determination, the petitioner may file a verified application for the issuance of a warrant to take physical custody of the child if the child is imminently likely to suffer serious physical harm or be removed from this state.

2. If the court, upon the testimony of the petitioner or other witness, finds that the child is imminently likely to suffer serious physical harm or be removed from this state, it may issue a warrant to take physical custody of the child. The petition must be heard on the next judicial day after the warrant is executed unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible. The application for the warrant must include the statements required by section 598B.308, subsection 2.

3. A warrant to take physical custody of a child must provide all of the following:

a. Recite the facts upon which a conclusion of imminent serious physical harm or removal from the jurisdiction is based.

b. Direct law enforcement officers to take physical custody of the child immediately.

c. Provide for the placement of the child pending final relief.

4. The respondent must be served with the petition, warrant, and order immediately after the child is taken into physical custody.

5. A warrant to take physical custody of a child is enforceable throughout this state. If the court finds on the basis of the testimony of the petitioner or other witness that a less intrusive remedy is not effective, it may authorize law enforcement officers to enter private property to take physical custody of the child. If required by exigent circumstances of the case, the court may authorize law enforcement officers to make a forcible entry at any hour.

6. The court may impose conditions upon placement of a child to ensure the appearance of the child and the child's custodian.

99 Acts, ch 103, §33
NEW section

598B.312 Costs, fees, and expenses.

1. The court shall award the prevailing party, including a state, necessary and reasonable expenses incurred by or on behalf of the party, including costs, communication expenses, attorney fees, investigative fees, expenses for witnesses, travel expenses, and child care during the course of the proceedings, unless the party from whom fees or expenses are sought establishes that the award would be clearly inappropriate.

2. The court shall not assess fees, costs, or expenses against a state unless authorized by law other than this chapter.

99 Acts, ch 103, §34
NEW section

598B.313 Recognition and enforcement.

A court of this state shall accord full faith and credit to an order issued by another state and consistent with this chapter which enforces a child-custody determination by a court of another state unless the order has been vacated, stayed, or modified by a court having jurisdiction to do so under article II.

99 Acts, ch 103, §35
NEW section

598B.314 Appeals.

An appeal may be taken from a final order in a proceeding under this article in accordance with expedited appellate procedures in other civil cases. Unless the court enters a temporary emergency order under section 598B.204, the enforcing court shall not stay an order enforcing a child-custody determination pending appeal.

99 Acts, ch 103, §36
NEW section

598B.315 Role of prosecutor.

1. In a case arising under this chapter or involving the Hague convention on the civil aspects of international child abduction, the prosecutor may take any lawful action, including resort to a proceeding under this article or any other available civil proceeding to locate a child, obtain the return of a child, or enforce a child-custody determination if there is any of the following:

a. An existing child-custody determination.

b. A request to do so from a court in a pending child-custody proceeding.

c. A reasonable belief that a criminal statute has been violated.

d. A reasonable belief that the child has been wrongfully removed or retained in violation of the Hague convention on the civil aspects of international child abduction.

2. A prosecutor acting under this section acts on behalf of the court and shall not represent any party.

99 Acts, ch 103, §37
NEW section

598B.316 Role of law enforcement.

At the request of a prosecutor acting under section 598B.315, a law enforcement officer may take any lawful action reasonably necessary to locate a child or a party and assist a prosecutor with responsibilities under section 598B.315.

99 Acts, ch 103, §38
NEW section

598B.317 Costs and expenses.

If the respondent is not the prevailing party, the court may assess against the respondent all direct expenses and costs incurred by the prosecutor and law enforcement officers under section 598B.315 or 598B.316.

99 Acts, ch 103, §39
NEW section

ARTICLE IV

MISCELLANEOUS PROVISIONS

598B.401 Application and construction.

In applying and construing this uniform Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

99 Acts, ch 103, §40
NEW section

598B.402 Transitional provision.

A motion or other request for relief made in a child-custody proceeding or to enforce a child-custody determination which was commenced before July 1, 1999, is governed by the law in effect at the time the motion or other request was made.

99 Acts, ch 103, §41
NEW section

CHAPTER 600

ADOPTION

600.6 Attachments to an adoption petition.

An adoption petition shall have attached to it the following:

1. A certified copy of the birth certificate showing parentage of the person to be adopted or, if such certificate is not available, a verified birth record.

2. A copy of any order terminating parental rights with respect to the person to be adopted.

3. Any written consent and verified statement required under section 600.7, except the consent required under subsection 1, paragraph "d", of that section.

4. Any preplacement investigation report that has been prepared at the time of filing pursuant to section 600.8.

99 Acts, ch 43, §1
Subsection 5 stricken

600.8 Placement investigations and reports.

1. *a.* A preplacement investigation shall be directed to and a report of this investigation shall answer the following:

(1) Whether the home of the prospective adoption petitioner is a suitable one for the placement of a minor person to be adopted.

(2) How the prospective adoption petitioner's emotional maturity, finances, health, relationships, and any other relevant factor may affect the petitioner's ability to accept, care, and provide a minor person to be adopted with an adequate environment as that person matures.

(3) Whether the prospective adoption petitioner has been convicted of a crime under a law of any state or has a record of founded child abuse.

b. A postplacement investigation and a report of this investigation shall:

(1) Verify the allegations of the adoption petition and its attachments and of the report of expenditures required under section 600.9.

(2) Evaluate the progress of the placement of the minor person to be adopted.

(3) Determine whether adoption by the adoption petitioner may be in the best interests of the minor person to be adopted.

c. A background information investigation and a report of the investigation shall be made by the agency, the person making an independent placement, or an investigator. The background information investigation and report shall not disclose the identity of the biological parents of the minor person to be adopted. The report shall be completed and filed with the court prior to the holding of the adoption hearing prescribed in section 600.12. The report shall be in substantial conformance with the

prescribed medical and social history forms designed by the department pursuant to section 600A.4, subsection 2, paragraph "f". A copy of the background information investigation report shall be furnished to the adoption petitioners within thirty days after the filing of the adoption petition. Any person, including a juvenile court, who has gained relevant background information concerning a minor person subject to an adoption petition shall, upon request, fully cooperate with the conducting of a background information investigation by disclosing any relevant background information, whether contained in sealed records or not.

2. *a.* A preplacement investigation and report of the investigation shall be completed and the prospective adoption petitioner approved for a placement by the person making the investigation prior to any agency or independent placement of a minor person in the petitioner's home in anticipation of an ensuing adoption. A report of a preplacement investigation that has approved a prospective adoption petitioner for a placement shall not authorize placement of a minor person with that petitioner after one year from the date of the report's issuance. However, if the prospective adoption petitioner is a relative within the fourth degree of consanguinity who has assumed custody of a minor person to be adopted, a preplacement investigation of this petitioner and a report of the investigation may be completed at a time established by the court or may be waived as provided in subsection 12.

b. (1) The person making the investigation shall not approve a prospective adoption petitioner pursuant to subsection 1, paragraph "a", subparagraph (3), and an evaluation shall not be performed under subparagraph (2), if the petitioner has been convicted of any of the following felony offenses:

(a) Within the five-year period preceding the petition date, a drug-related offense.

(b) Child endangerment or neglect or abandonment of a dependent person.

(c) Domestic abuse.

(d) A crime against a child, including but not limited to sexual exploitation of a minor.

(e) A forcible felony.

(2) The person making the investigation shall not approve a prospective adoption petitioner pursuant to subsection 1, paragraph "a", subparagraph (3), unless an evaluation has been made which considers the nature and seriousness of the crime or founded abuse in relation to the adoption, the time elapsed since the commission of the crime or founded abuse, the circumstances under which the crime or founded abuse was committed, the de-

gree of rehabilitation, and the number of crimes or founded abuse committed by the person involved.

c. If the person making the investigation does not approve a prospective adoption petitioner under paragraph "a" of this subsection, the person investigated may appeal the disapproval as a contested case to the director of human services. Judicial review of any adverse decision by the director may be sought pursuant to chapter 17A.

3. The department, an agency or an investigator shall conduct all investigations and reports required under subsection 2 of this section.

4. A postplacement investigation and the report of the investigation shall be completed and filed with the court prior to the holding of the adoption hearing prescribed in section 600.12. Upon the filing of an adoption petition pursuant to section 600.5, the court shall immediately appoint the department, an agency, or an investigator to conduct and complete the postplacement report. Any person, including a juvenile court, who has gained relevant background information concerning a minor person subject to an adoption petition shall, upon request, fully cooperate with the conducting of the postplacement investigation by disclosing any relevant information requested, whether contained in sealed records or not.

5. Any person conducting an investigation under subsection 1, paragraph "c", subsection 3, or subsection 4, may, in the investigation or subsequent report, include, utilize, or rely upon any reports, studies, or examinations to the extent they are relevant.

6. Any person conducting an investigation under subsection 1, paragraph "c", subsection 3, or subsection 4, may charge a fee which does not exceed the reasonable cost of the services rendered and which is based on a sliding scale schedule relating to the investigated person's ability to pay.

7. Any investigation or report required under this section shall not apply when the person to be adopted is an adult or when the prospective adoption petitioner or adoption petitioner is a stepparent of the person to be adopted. However, in the case of a stepparent adoption, the court, upon the request of an interested person or on its own motion stating the reasons therefor of record, may order an investigation or report pursuant to this section.

8. Any person designated to make an investigation and report under this section may request an agency or state agency, within or outside this state, to conduct a portion of the investigation or the report, as may be appropriate, and to file a supplemental report of such investigation or report with the court. In the case of the adoption of a minor person by a person domiciled or residing in any other jurisdiction of the United States, any investigation or report required under this section which has been conducted pursuant to the standards of

that other jurisdiction shall be recognized in this state.

9. The department may investigate, on its own initiative or on order of the court, any placement made or adoption petition filed under this chapter or chapter 600A and may report its resulting recommendation to the court.

10. The department or an agency or investigator may conduct any investigations required for an interstate or interagency placement. Any interstate investigations or placements shall follow the procedures and regulations under the interstate compact on the placement of children. Such investigations and placements shall be in compliance with the laws of the states involved.

11. Any person who assists in or impedes the placement or adoption of a minor person in violation of the provisions of this section shall be, upon conviction, guilty of a simple misdemeanor.

12. Any investigation and report required under subsection 1 of this section may be waived by the court if the adoption petitioner is related within the fourth degree of consanguinity to the person to be adopted.

99 Acts, ch 138, §1, 2
Subsection 1, paragraph c stricken and rewritten
Subsections 4-6 amended

600.9 Report of expenditures.

1. a. A biological parent shall not receive any thing of value as a result of the biological parent's child or former child being placed with and adopted by another person, unless that thing of value is an allowable expense under subsection 2.

b. Any person assisting in any way with the placement or adoption of a minor person shall not charge a fee which is more than usual, necessary, and commensurate with the services rendered.

c. If the biological parent receives any prohibited thing of value, if a person gives a prohibited thing of value, or if a person charges a prohibited fee under this subsection, the person is guilty of a simple misdemeanor.

2. An adoption petitioner of a minor person shall file with the court, prior to the adoption hearing, a full accounting of all disbursements of any thing of value paid or agreed to be paid by or on behalf of the petitioner in connection with the petitioned adoption. This accounting shall be made by a report prescribed by the court and shall be signed and verified by the petitioner. Only expenses incurred in connection with the following and any other expenses approved by the court are allowable:

a. The birth of the minor person to be adopted.

b. Placement of the minor person with the adoption petitioner and legal expenses related to the termination of parental rights and adoption processes.

c. Pregnancy-related medical care received by the biological parents or the minor person during

the pregnancy or delivery of the minor person and for medically necessary postpartum care for the biological parent and the minor person.

d. Living expenses of the mother, permitted in an amount not to exceed the cost of room and board or rent and food, and transportation, for medical purposes only, on a common carrier of persons or an ambulance, for no longer than thirty days after the birth of the minor person.

e. Costs of the counseling provided to the biological parents prior to the birth of the child, prior to the release of custody, and any counseling provided to the biological parents for not more than sixty days after the birth of the child.

f. Living expenses of the minor person if the minor person is placed in foster care during the pendency of the termination of parental rights proceedings.

All payments for allowable expenses shall be made to the provider, if applicable, and not directly to the biological parents. The provisions of this subsection do not apply in a stepparent adoption.

99 Acts, ch 138, §3
Subsection 2, paragraph e amended

600.13 Adoption decrees.

1. At the conclusion of the adoption hearing, the court shall:

- a.* Issue a final adoption decree;
- b.* Issue an interlocutory adoption decree; or,
- c.* Dismiss the adoption petition if the requirements of this Act have not been met or if dismissal of the adoption petition is in the best interest of the person whose adoption has been petitioned. Upon dismissal, the court shall determine who is to be guardian or custodian of a minor child, including the adoption petitioner if it is in the best interest of the minor person whose adoption has been petitioned.

2. An interlocutory adoption decree automatically becomes a final adoption decree at a date specified by the court in the interlocutory adoption decree, which date shall not be less than one hundred eighty days nor more than three hundred sixty days from the date the interlocutory decree is issued. However, an interlocutory adoption decree may be vacated prior to the date specified for it to become final. Also, the court may provide in the interlocutory adoption decree for further observation, investigation, and report of the conditions of and the relationships between the adoption petitioner and the person petitioned to be adopted.

3. If an interlocutory adoption decree is vacated under subsection 2, it shall be void from the date of issuance and the rights, duties, and liabilities of all persons affected by it shall, unless they have become vested, be governed accordingly. Upon vacation of an interlocutory adoption decree, the court shall proceed under the provisions of subsection 1, paragraph "c".

4. A final adoption decree terminates any parental rights, except those of a spouse of the adoption petitioner, existing at the time of its issuance and establishes the parent-child relationship between the adoption petitioner and the person petitioned to be adopted. Unless otherwise specified by law, such parent-child relationship shall be deemed to have been created at the birth of the child.

5. An interlocutory or a final adoption decree shall be entered with the clerk of the court. Such decree shall set forth any facts of the adoption petition which have been proven to the satisfaction of the court and any other facts considered to be relevant by the court and shall grant the adoption petition. If so designated in the adoption decree, the name of the adopted person shall be changed by issuance of that decree. The clerk of the court shall, within thirty days of issuance, deliver one certified copy of any adoption decree to the petitioner, one copy of any adoption decree to the department and any agency or person making an independent placement who placed a minor person for adoption, and one certification of adoption as prescribed in section 144.19 to the state registrar of vital statistics. Upon receipt of the certification, the state registrar shall prepare a new birth certificate pursuant to section 144.23 and deliver to the parents named in the decree and any adult person adopted by the decree a copy of the new birth certificate. The parents shall pay the fee prescribed in section 144.46. If the person adopted was born outside the state, the state registrar shall forward the certification of adoption to the appropriate agency in the state or foreign nation of birth. A copy of any interlocutory adoption decree vacation shall be delivered and another birth certificate shall be prepared in the same manner as a certification of adoption is delivered and the birth certificate was originally prepared.

99 Acts, ch 43, §2
Subsection 6 stricken

600.15 Foreign and international adoptions.

1. *a.* A decree establishing a parent-child relationship by adoption which is issued pursuant to due process of law by a court of any other jurisdiction in the United States shall be recognized in this state.

b. A decree terminating a parent-child relationship which is issued pursuant to due process of law by a court of any other jurisdiction in the United States shall be recognized in this state.

c. Documentation demonstrating that a child has been legally released or approved for adoption by the child's country of origin shall be accepted as evidence that termination of parental rights has been completed in that country and shall be recognized in this state.

2. If an adoption has occurred in the minor person's country of origin, a further adoption must occur in the state where the adopting parents reside in accordance with the adoption laws of that state.

3. A licensed child-placing agency as defined in section 238.2, a person making an independent placement as defined in section 600A.2, or an investigator may provide necessary assistance to an eligible citizen of Iowa who desires to, in accordance with the immigration laws of the United States, make an international adoption.

99 Acts, ch 138, §4

Subsection 1, paragraph c stricken and rewritten

600.16 Adoption record — penalty for violations.

1. Any information compiled under section 600.8, subsection 1, paragraph "c", relating to medical and developmental histories shall be made available at any time by the clerk of court, the department, or any agency which made the placement to:

a. The adopting parents.

b. The adopted person, provided that person is an adult at the time the request for information is made. For the purposes of this paragraph "adult" means a person twenty-one years of age or older or a person who attains majority by marriage.

c. Any person approved by the department if the person uses this information solely for the purposes of conducting a legitimate medical research project or of treating a patient in a medical facility.

d. A descendant of an adopted person.

2. Information regarding an adopted person's existing medical and developmental history and family medical history, which meets the definition of background information in section 600.8, subsection 1, paragraph "c", shall be made available as provided in subsection 1. However, the identity of the adopted person's biological parents shall not be disclosed.

3. The provisions of this section also apply to information collected pursuant to section 600A.4, pertaining to the family medical history, medical and developmental history, and social history of the person to be adopted.

4. Any person other than the adopting parents or the adopted person, who discloses information in violation of this section, is guilty of a simple misdemeanor for the first offense, a serious misdemeanor for a second offense, and an aggravated misdemeanor for a third or subsequent offense.

99 Acts, ch 138, §5

Subsection 1, unnumbered paragraph 1 amended

CHAPTER 600A

TERMINATION OF PARENTAL RIGHTS

600A.4 Relationship unaltered — release of custody — voluntariness of release.

1. A parent shall not permanently alter the parent-child relationship, except as ordered by a juvenile court or court. However, custody of a minor child may be assumed by a stepparent or a relative of that child within the fourth degree of consanguinity or transferred by an acceptance of a release of custody. A person who assumes custody or an agency which accepts a release of custody under this section becomes, upon assumption or acceptance, the custodian of the minor child.

2. A release of custody:

a. Shall be accepted only by an agency or a person making an independent placement.

b. Shall not be accepted by a person who in any way intends to adopt the child who is the subject of the release.

c. Shall be in writing.

d. Shall contain written acknowledgment of the biological parents that after the birth of the child three hours of counseling have been offered to the biological parents by the agency, the person making an independent placement, an investigator as defined in section 600.2, or other qualified counselor regarding the decision to release custody and the alternatives available to the biological parents.

The release of custody shall also contain written acknowledgment of the acceptance or refusal of the counseling. If accepted, the counseling shall be provided after the birth of the child and prior to the signing of a release of custody or the filing of a petition for termination of parental rights as applicable. Counseling shall be provided only by a person who is qualified under rules adopted by the department of human services which shall include a requirement that the person complete a minimum number of hours of training in the area of adoption-related counseling approved by the department. If counseling is accepted, the counselor shall provide an affidavit, which shall be attached to the release of custody, when practicable, certifying that the counselor has provided the biological parent with the requested counseling and documentation that the person is qualified to provide the requested counseling as prescribed by this paragraph. The requirements of this paragraph do not apply to a release of custody which is executed for the purposes of a stepparent adoption.

e. Shall contain a notice to the biological parent that if the biological parent chooses to identify the other biological parent and knowingly and intentionally identifies a person who is not the other biological parent in the written release of custody or in

any other document related to the termination of parental rights proceedings, the biological parent who provides the incorrect identifying information is guilty of a simple misdemeanor.

f. Shall be accompanied by a report which includes, to the extent available, the complete family medical and social history of the person to be adopted including any known genetic, metabolic, or familial disorders and the complete medical and developmental history of the person to be adopted, and a social history of the minor child and the minor child's family but which does not disclose the identity of the biological parents of the person to be adopted. The social history may include but is not limited to the minor child's racial, ethnic, and religious background and a general description of the minor child's biological parents and an account of the minor child's prior and existing relationship with any relative, foster parent, or other individual with whom the minor child regularly lives or whom the child regularly visits.

A biological parent may also provide ongoing information to the adoptive parents, as additional medical or social history information becomes known, by providing information to the clerk of court, the department of human services, or the agency which made the placement, and may provide the current address of the biological parent. The clerk of court, the department of human services, or the agency which made the placement shall transmit the information to the adoptive parents if the address of the adoptive parents is known.

A person who furnishes a report required under this paragraph and the court shall not disclose any information upon which the report is based except as otherwise provided in this section and such a person is subject to the penalties provided in section 600.16, as applicable. A person who is the subject of any report may bring a civil action against a person who discloses the information in violation of this section.

Information provided under this paragraph shall not be used as evidence in any civil or criminal proceeding against a person who is the subject of the information.

The department shall prescribe forms designed to obtain the family medical and social history and shall provide the forms at no charge to any agency or person who executes a release of custody of the minor child or who files a petition for termination of parental rights. The existence of this report does not limit a person's ability to petition the court for release of records in accordance with other provisions of law.

g. Shall be signed, not less than seventy-two hours after the birth of the child to be released, by all living parents. The seventy-two-hour minimum time period requirement shall not be waived.

h. Shall be witnessed by two persons familiar with the parent-child relationship.

i. Shall name the person who is accepting the release.

j. Shall be followed, within a reasonable time, by the filing of a petition for termination of parental rights under section 600A.5.

k. Shall state the purpose of the release, shall indicate that if it is not revoked it may be grounds for termination, and shall fully inform the signing parent of the manner in which a revocation of the release may be sought.

3. Notwithstanding the provisions of subsection 2, an agency or a person making an independent placement may assume custody of a minor child upon the signature of the one living parent who has possession of the minor child if the agency or a person making an independent placement immediately petitions the juvenile court designated in section 600A.5 to be appointed custodian and otherwise petitions, either in the same petition or within a reasonable time in a separate petition, for termination of parental rights under section 600A.5. Upon the custody petition, the juvenile court may appoint a guardian as well as a custodian.

4. Either a parent who has signed a release of custody, or a nonsigning parent, may, at any time prior to the entry of an order terminating parental rights, request the juvenile court designated in section 600A.5 to order the revocation of any release of custody previously executed by either parent. If such request is by a signing parent, and is within ninety-six hours of the time such parent signed a release of custody, the juvenile court shall order the release revoked. Otherwise, the juvenile court shall order the release or releases revoked only upon clear and convincing evidence that good cause exists for revocation. Good cause for revocation includes but is not limited to a showing that the release was obtained by fraud, coercion, or misrepresentation of law or fact which was material to its execution. In determining whether good cause exists for revocation, the juvenile court shall give paramount consideration to the best interests of the child including avoidance of a disruption of an existing relationship between a parent and child. The juvenile court shall also give due consideration to the interests of the parents of the child and of any person standing in the place of the parents.

CHAPTER 602

JUDICIAL BRANCH

602.1302 State funding.

1. Except as otherwise provided by sections 602.1303 and 602.1304 or other applicable law, the expenses of operating and maintaining the judicial branch shall be paid out of the general fund of the state from funds appropriated by the general assembly for the judicial branch. State funding shall be phased in as provided in section 602.11101.

2. The supreme court may accept federal funds to be used in the operation of the judicial branch, but shall not expend any of these funds except pursuant to appropriation of the funds by the general assembly.

3. A revolving fund is created in the state treasury for the payment of jury and witness fees and mileage by the judicial branch. The judicial branch shall deposit any reimbursements to the state for the payment of jury and witness fees and mileage in the revolving fund. Notwithstanding section 8.33, unencumbered and unobligated receipts in the revolving fund at the end of a fiscal year do not revert to the general fund of the state. The judicial branch shall on or before February 1 file a financial accounting of the moneys in the revolving fund with the legislative fiscal bureau. The accounting shall include an estimate of disbursements from the revolving fund for the remainder of the fiscal year and for the next fiscal year.

4. The judicial branch shall reimburse counties for the costs of witness and mileage fees and for attorney fees paid pursuant to section 232.141, subsection 1.

Use of revolving fund moneys for interpreter fees; see §622A.4
Section not amended; footnote added

602.1304 Revenues — enhanced court collections fund.

1. Except as provided in article 8 and subsection 2 of this section, all fees and other revenues collected by judicial officers and court employees shall be paid into the general fund of the state.

2. *a.* The enhanced court collections fund is created in the state treasury under the authority of the supreme court. The fund shall be separate from the general fund of the state and the balance in the fund shall not be considered part of the balance of the general fund of the state. Notwithstanding section 8.33, moneys in the fund shall not revert to the general fund, unless and to the extent the total amount of moneys deposited into the fund in a fiscal year would exceed the maximum annual deposit amount established for the collections fund by the general assembly. The initial maximum annual deposit amount for a fiscal year is four million dollars. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys in the collections fund shall remain in the collections fund and any

interest and earnings shall be in addition to the maximum annual deposit amount.

b. For each fiscal year, a judicial collection estimate for that fiscal year shall be equally and proportionally divided into a quarterly amount. The judicial collection estimate shall be calculated by using the state revenue estimating conference estimate made by December 15 pursuant to section 8.22A, subsection 3, of the total amount of fines, fees, civil penalties, costs, surcharges, and other revenues collected by judicial officers and court employees for deposit into the general fund of the state. The revenue estimating conference estimate shall be reduced by the maximum amounts allocated to the Iowa prison infrastructure fund pursuant to section 602.8108A, the court technology and modernization fund pursuant to section 602.8108, and the road use tax fund pursuant to section 602.8108, subsection 5, and the remainder shall be the judicial collection estimate. In each quarter of a fiscal year, after revenues collected by judicial officers and court employees equal to that quarterly amount are deposited into the general fund of the state and after the required amount is deposited during the quarter into the Iowa prison infrastructure fund pursuant to section 602.8108A and into the court technology and modernization fund pursuant to section 602.8108, the director of revenue and finance shall deposit the remaining revenues for that quarter into the enhanced court collections fund in lieu of the general fund. However, after total deposits into the collections fund for the fiscal year are equal to the maximum deposit amount established for the collections fund, remaining revenues for that fiscal year shall be deposited into the general fund. If the revenue estimating conference agrees to a different estimate at a later meeting which projects a lesser amount of revenue than the initial estimate amount used to calculate the judicial collection estimate, the director of revenue and finance shall recalculate the judicial collection estimate accordingly. If the revenue estimating conference agrees to a different estimate at a later meeting which projects a greater amount of revenue than the initial estimate amount used to calculate the judicial collection estimate, the director of revenue and finance shall recalculate the judicial collection estimate accordingly but only to the extent that the greater amount is due to an increase in the fines, fees, civil penalties, costs, surcharges, or other revenues allowed by law to be collected by judicial officers and court employees.

c. Moneys in the collections fund shall be used by the judicial branch for the Iowa court information system; records management equipment, ser-

vices, and projects; other technological improvements; electronic legal research equipment, systems, and projects; and the study, development, and implementation of other innovations and projects that would improve the administration of justice. The moneys in the collection fund may also be used for capital improvements necessitated by the installation of or connection with the Iowa court information system, the Iowa communications network, and other technological improvements approved by the judicial branch.

Restrictions on use of funds for 1997-1998 fiscal year; 97 Acts, ch 205, §13
Exception to the maximum deposit amount for 1999-2000 fiscal year; 99 Acts, ch 202, §13

Section not amended; footnote added

602.1501 Judicial salaries.

1. The chief justice and each justice of the supreme court shall receive the salary set by the general assembly.

2. The chief judge and each judge of the court of appeals shall receive the salary set by the general assembly.

3. The chief judge of each judicial district and each district judge shall receive the salary set by the general assembly.

4. District associate judges shall receive the salary set by the general assembly. However, an alternate district associate judge whose appointment is authorized under section 602.6303 shall receive a salary for each day of actual duty equal to a district associate judge's daily salary.

5. Full-time associate juvenile judges and full-time associate probate judges shall receive the salary set by the general assembly.

6. Magistrates shall receive the salary set by the general assembly, subject to section 602.6402.

99 Acts, ch 93, §5

NEW subsection 5 and former subsection 5 renumbered as 6

602.4101 Justices — quorum.

1. The supreme court consists of seven justices. A majority of the justices sitting constitutes a quorum, but fewer than three justices is not a quorum.

2. Justices of the supreme court shall be nominated and appointed and shall stand for retention in office as provided in chapter 46. Justices of the supreme court shall qualify for office as provided in chapter 63.

98 Acts, ch 1184, §1, 4

Transition of number of members on supreme court to seven members by attrition through vacancies; 98 Acts, ch 1184, §3
Appropriation including additional court personnel; 99 Acts, ch 202, §12
Subsection 1 amended

602.5102 Judges — quorum.

1. The court of appeals consists of nine judges; three judges of the court of appeals constitute a quorum.

2. Judges of the court of appeals shall be nominated and appointed and shall stand for retention in office as provided in chapter 46. Judges of the court of appeals shall qualify for office as provided in chapter 63.

3. A person appointed as a judge of the court of appeals must satisfy all requirements for a justice of the supreme court.

4. The court of appeals may be divided into divisions of three or more judges in a manner as it may prescribe by rule. The divisions may hold open court separately and cases may be submitted to each division separately in accordance with rules the court may prescribe. The rules shall provide for submitting a case or petition for rehearing or hearing en banc at the direction of the chief judge or at the request of a specified number of judges designated in the rules. The court of appeals shall prescribe all rules necessary to provide for the submission of cases to the whole court or to a division.

98 Acts, ch 1184, §2, 4

Appropriation including additional court personnel; 99 Acts, ch 202, §12
Subsection 1 amended

602.5104 Sessions — location.

The court of appeals shall meet at the seat of state government and elsewhere as the court orders, and at the times specified by order of the court.

99 Acts, ch 144, §6

Section amended

602.6104 Judicial officers.

1. The jurisdiction of the Iowa district court shall be exercised by district judges, district associate judges, associate juvenile judges, associate probate judges, and magistrates.

2. Judicial officers of the district court shall not sit together in the trial of causes nor upon the hearings of motions for new trials. They may hold court in the same county at the same time.

99 Acts, ch 93, §6

Subsection 1 amended

602.6201 Office of district judge — apportionment.

1. District judges shall be nominated and appointed and shall stand for retention in office as provided in chapter 46. District judges shall qualify for office as provided in chapter 63.

2. A district judge must be a resident of the judicial election district in which appointed and retained. Subject to the provision for reassignment of judges under section 602.6108, a district judge shall serve in the district of the judge's residence while in office, regardless of the number of judgeships to which the district is entitled under subsection 3.

3. *a.* A judicial election district containing a city of fifty thousand or more population is entitled to the number of judgeships equal to the average, rounded to the nearest whole number, of the following two quotients, each rounded to the nearest hundredth:

(1) The combined civil and criminal filings in the election district divided by five hundred fifty.

(2) The election district's population divided by forty thousand.

However, the seat of government is entitled to one additional judgeship.

b. All other judicial election districts are entitled to the number of judgeships equal to the average, rounded to the nearest whole number, of the following two quotients, each rounded to the nearest hundredth:

(1) The combined civil and criminal filings in the election district divided by four hundred fifty.

(2) The election district's population divided by forty thousand.

However, the judicial election district in which the Iowa state penitentiary at Fort Madison is located is entitled to one additional judgeship.

c. The filings included in the determinations to be made under this subsection shall not include small claims or nonindictable misdemeanors, and shall not include either civil actions for money judgment where the amount in controversy does not exceed five thousand dollars or indictable misdemeanors or felony violations of section 321J.2, which were assigned to district associate judges and magistrates as shown on their administrative reports, but shall include appeals from decisions of magistrates, district associate judges, and district judges sitting as magistrates. The figures on filings shall be the average for the latest available previous three-year period and when current census figures on population are not available, figures shall be taken from the Iowa department of public health computations.

4. For purposes of this section, a vacancy means the death, resignation, retirement, or removal of a district judge, or the failure of a district judge to be retained in office at the judicial election, or an increase in judgeships under this section.

5. In those judicial election districts having more district judges than the number of judgeships specified by the formula in subsection 3, vacancies shall not be filled.

6. In those judicial election districts having fewer or the same number of district judges as the number of judgeships specified by the formula in subsection 3, vacancies in the number of district judges shall be filled as they occur.

7. In those judicial districts that contain more than one judicial election district, a vacancy in a judicial election district shall not be filled if the total number of district judges in all judicial election districts within the judicial district equals or exceeds the aggregate number of judgeships to which all of the judicial election districts of the judicial district are authorized.

8. Vacancies shall not be filled in a judicial election district which becomes entitled to fewer judgeships under subsection 3, but an incumbent district judge shall not be removed from office because of a reduction in the number of authorized judgeships.

9. During February of each year, and at other times as appropriate, the state court administrator shall make the determinations required under this

section, and shall notify the appropriate nominating commissions and the governor of appointments that are required.

10. Notwithstanding the formula for determining the number of judgeships in this section, the number of district judges shall not exceed one hundred sixteen during the period commencing July 1, 1999.

99 Acts, ch 202, §22
Subsection 10 amended

602.7103 Associate juvenile judge — jurisdiction — appeals.

1. An associate juvenile judge shall have the same jurisdiction to conduct juvenile court proceedings, to issue warrants, nontestimonial identification orders, and contempt arrest warrants for adults in juvenile court proceedings, and to issue orders, findings, and decisions as the judge of the juvenile court. However, the chief judge may limit the exercise of juvenile court jurisdiction by the associate juvenile judge.

2. The parties to a proceeding heard by an associate juvenile judge are entitled to appeal the order, finding, or decision of an associate juvenile judge, in the manner of an appeal from orders, findings, or decisions of district court judges. An appeal does not automatically stay the order, finding, or decision of an associate juvenile judge.

99 Acts, ch 93, §7; 99 Acts, ch 208, §60
Section amended

602.7103A Part-time associate juvenile judge — appointment — removal — qualifications.

The chief judge may appoint and may remove for cause with due process a part-time associate juvenile judge. The part-time associate juvenile judge shall be an attorney admitted to practice law in this state, and shall be qualified for duties by training and experience.

99 Acts, ch 93, §8
NEW section

602.7103B Appointment and resignation of full-time associate juvenile judges.

1. Full-time associate juvenile judges shall be appointed by the district judges of the judicial election district from persons nominated by the county magistrate appointing commission. In the case of a full-time associate juvenile judge to be appointed to more than one county, the appointment shall be from persons nominated by the county magistrate appointing commissions acting jointly and in the case of a full-time associate juvenile judge to be appointed to more than one judicial election district of the same judicial district, the appointment shall be by a majority of the district judges in each judicial election district.

2. In November of any year in which an impending vacancy is created because a full-time associate juvenile judge is not retained in office pursuant to a judicial election, the county magistrate

appointing commission shall publicize notice of the vacancy in at least two publications in the official county newspaper. The commission shall accept applications for consideration for nomination as full-time associate juvenile judge for a minimum of fifteen days prior to certifying nominations. The commission shall consider the applications and shall, by majority vote, certify to the chief judge of the judicial district not later than December 15 of that year the names of three applicants who are nominated by the commission for the vacancy. If there are three or fewer applicants, the commission shall certify all applicants who meet the statutory qualifications. Nominees shall be chosen solely on the basis of the qualifications of the applicants, and political affiliation shall not be considered.

3. Within thirty days after a county magistrate appointing commission receives notification of an actual or impending vacancy in the office of full-time associate juvenile judge, other than a vacancy referred to in subsection 2, the commission shall certify to the chief judge of the judicial district the names of three applicants who are nominated by the commission for the vacancy. The commission shall publicize notice of the vacancy in at least two publications in the official county newspaper. The commission shall accept applications for consideration for nomination as full-time associate juvenile judge for a minimum of fifteen days prior to certifying nominations. The commission shall consider the applications and shall, by majority vote, certify to the chief judge of the judicial district the names of three applicants who are nominated by the commission for the vacancy. If there are three or fewer applicants, the commission shall certify all applicants who meet the statutory qualifications. Nominees shall be chosen solely on the basis of the qualifications of the applicants, and political affiliation shall not be considered. As used in this subsection, a vacancy is created by the death, retirement, resignation, or removal of a full-time associate juvenile judge, or by an increase in the number of positions authorized.

4. Within fifteen days after the chief judge of a judicial district has received the list of nominees to fill a vacancy in the office of full-time associate juvenile judge, the district judges in the judicial election district shall, by majority vote, appoint one of those nominees to fill the vacancy.

5. A full-time associate juvenile judge who seeks to resign from the office of full-time associate juvenile judge shall notify in writing the chief judge of the judicial district as to the full-time associate juvenile judge's intention to resign and the effective date of the resignation. The chief judge of the judicial district, upon receipt of the notice, shall notify the county magistrate appointing commission and the state court administrator of the actual or impending vacancy in the office of full-time associate juvenile judge due to resignation.

6. The supreme court may prescribe rules of procedure to be used by county magistrate appointing commissions when exercising the duties specified in this section.

99 Acts, ch 93, §9, 15; 99 Acts, ch 208, §61
 Status and retention of associate juvenile judges serving full-time as of July 1, 1999; 99 Acts, ch 93, §15
 NEW section
 Subsection 5 amended

602.7103C Full-time associate juvenile judges — term, retention, qualifications.

1. Full-time associate juvenile judges shall serve terms and shall stand for retention in office within the judicial election districts of their residences as provided under sections 46.16 through 46.24.

2. A person does not qualify for appointment to the office of full-time associate juvenile judge unless the person is at the time of appointment a resident of the county in which the vacancy exists, licensed to practice law in Iowa, and will be able, measured by the person's age at the time of appointment, to complete the initial term of office prior to reaching age seventy-two. An applicant for full-time associate juvenile judge shall file a certified application form, to be provided by the supreme court, with the chairperson of the county magistrate appointing commission.

3. A full-time associate juvenile judge must be a resident of a county in which the office is held during the entire term of office. A full-time associate juvenile judge shall serve within the judicial district in which appointed, as directed by the chief judge, and is subject to reassignment under section 602.6108.

4. Full-time associate juvenile judges shall qualify for office as provided in chapter 63 for district judges.

99 Acts, ch 93, §10, 15
 Status and retention of associate juvenile judges serving full-time as of July 1, 1999; 99 Acts, ch 93, §15
 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. Refund amounts less than one dollar only upon written application.

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. Monthly, notify the county commissioner of registration and the state registrar of voters of persons seventeen and one-half years of age and older who have been convicted of a felony during the preceding calendar month or persons who at any time during the preceding calendar month have been legally declared to be mentally incompetent to vote.

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. Destroy all records and files of a court proceeding maintained under section 135L.3 in accordance with section 135L.3, subsection 3, paragraph "o".

32. Reserved.

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. Reserved.

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 person with mental retardation as provided in sections 222.37 through 222.40.

37. Keep a separate docket of proceedings of cases relating to persons with mental retardation 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 persons with mental impairments 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. Forward to the superintendent of each correctional institution a copy of the sheriff's certification concerning 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 per-

form the clerk's responsibilities under this subsection.

47B. Perform the duties relating to establishment and operation of a state case registry pursuant to section 252B.24.

47C. Perform duties relating to implementation and operation of requirements for the collection services center pursuant to section 252B.13A, subsection 2.

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 driver's 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. Reserved.

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. Reserved.

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. Reserved.

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 598B.

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 556F.

111. Carry out duties relating to the recovery of real property as provided in section 646.23.

112. Endorse the court's approval of a restored record as provided in section 647.3.

113. When a judgment of foreclosure is entered, file with the recorder an instrument acknowledging the foreclosure and the date of decree and upon payment of the judgment, file an instrument with the recorder acknowledging the satisfaction as provided in sections 655.4 and 655.5.

114. Carry out duties relating to the issuance of a writ of habeas corpus as provided in sections 663.9, 663.43, and 663.44.

115. Accept and docket an application for post-conviction review of a conviction as provided in section 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 a 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 or juvenile delinquency petition, alleging a delinquent act which would be a serious or aggravated misdemeanor or felony if committed by an adult, filed in the district or juvenile 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.

126A. Upon the failure of a person charged to appear in person or by counsel to defend against the offense charged pursuant to a uniform citation and complaint as provided in section 805.6, enter a conviction and render a judgment in the amount of the appearance bond in satisfaction of the penalty plus court costs.

127. Provide for a traffic and scheduled violations office for the district court and service the locked collection boxes at weigh stations as provided in section 805.7.

128. Issue a summons to corporations to answer an indictment as provided in section 807.5.

129. Carry out duties relating to the disposition of seized property as provided in chapter 809.

130. Docket undertakings of bail as liens on real estate and enter them upon the lien index as provided in section 811.4.

131. Hold the amount of forfeiture and judgment of bail in the clerk's office for sixty days as provided in section 811.6.

132. Carry out duties relating to appeals from the district court as provided in chapter 814.

133. Certify costs and fees payable by the state as provided in section 815.1.

134. Notify the director of the Iowa department of corrections of the commitment of a convicted person as provided in section 901.7.

135. Carry out duties relating to deferred judgments, probations, and restitution as provided in sections 907.4 and 907.8, and chapter 910.

135A. Assess the drug abuse resistance education surcharge as provided by section 911.2.

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. 106, 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. 108, Ia. Ct. Rules, 3d ed.

146. Maintain a motion calendar as provided in R.C.P. 115, 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 and 365, 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. Reserved.

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 318, 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.

99 Acts, ch 96, §49; 99 Acts, ch 103, §46; 99 Acts, ch 151, §84, 89
 Subsection 59 stricken
 Subsection 85 amended
 Subsection 152 stricken

602.8103 General powers.

The clerk may:

1. Administer oaths and take affirmations as provided in section 63A.1.

2. Reproduce original records of the court by any reasonably permanent legible means including, but not limited to, reproduction by photographing, photostating, microfilming, computer cards, and electronic digital format. The reproduction shall include proper indexing. The reproduced record has the same authenticity as the original record. The supreme court shall adopt rules to provide for continued evaluation of the accessibility of records stored or reproduced in electronic digital format.

3. After the original record is reproduced and after approval of a majority of the judges of the district court by court order, destroy the original records including, but not limited to, dockets, journals, scrapbooks, files, and marriage license applications. The order shall state the specific records which are to be destroyed. An original court file shall not be destroyed until after the contents have been reproduced. As used in this subsection and subsection 4, "destroy" includes the transmission of the original records which are of general historical interest to any recognized historical society or association.

4. Destroy the following original records without prior court order or reproduction except as otherwise provided in this subsection:

a. Records including, but not limited to, journals, scrapbooks, and files, forty years after final disposition of the case. However, judgments, decrees, stipulations, records in criminal proceedings, probate records, and orders of court shall not be destroyed unless they have been reproduced as provided in subsection 2.

b. Administrative records, after five years, including, but not limited to, warrants, subpoenas, clerks' certificates, statements, praecipis, and depositions.

c. Records, dockets, and court files of civil and criminal actions heard in the municipal court which were transferred to the clerk, other than juvenile and adoption proceedings, or heard in justice

of the peace proceedings, after a period of twenty years from the date of filing of the actions.

d. Original court files on dissolutions of marriage, one year after dismissal by the parties or under R.C.P. 215, 1a. Ct. Rules, 3d ed.

e. Small claims files, one year after dismissal with or without prejudice.

f. Uniform traffic citations in the magistrate court or traffic and scheduled violations office, one year after final disposition.

g. Court reporters' notes and certified transcripts of those notes in civil cases, ten years after final disposition of the case. For purposes of this section, "*final disposition*" means one year after dismissal of the case, after judgment or decree without appeal, or after procedendo or dismissal of appeal is filed in cases where appeal is taken.

h. Court reporters' notes and certified transcripts of those notes in criminal cases, ten years after dismissal of all charges, or ten years after the expiration of all sentences imposed or the date probation is granted, whichever later occurs. For purposes of this subsection "*sentences imposed*" include all sentencing options pursuant to section 901.5.

i. Court files, as provided by rules prescribed by the supreme court, ten years after final disposition in civil cases, or ten years after expiration of all sentences in criminal cases. For purposes of this paragraph, "*purging*" means the removal and destruction of documents in the court file which have no legal, administrative, or historical value. Purging shall be done without reproduction of the removed documents. For purposes of this paragraph, "*civil cases*" does not include juvenile, mental health, probate, or adoption proceedings.

j. Court reporters' notes and certified transcripts of those notes in mental health hearings under section 229.12 and substance abuse hearings under section 125.82, ninety days after the respondent has been discharged from involuntary custody.

5. Invest money which is paid to the clerk to be paid to any other person in a savings account of a supervised financial organization as defined in section 537.1301, subsection 42, except a credit union operating pursuant to chapter 533. The provisions of chapter 12C relating to the deposit and investment of public funds apply to the deposit and investment of the money except that a supervised financial organization other than a credit union may be designated as a depository and the money shall be available upon demand. The interest earnings shall be paid into the general fund of the state, except as otherwise provided by law.

In addition, the money may be invested in an open-end management investment company organized in trust form registered with the federal securities and exchange commission under the federal Investment Company Act of 1940, 15 U.S.C. § 80(a), and operated in accordance with 17 C.F.R.

§ 270.2a-7, the portfolio of which is limited to obligations of the United States of America or agencies or instrumentalities of the United States of America and to repurchase agreements fully collateralized by obligations of the United States of America or an agency or instrumentality of the United States of America if the investment company takes delivery of the collateral either directly or through an authorized custodian.

6. Establish and maintain a procedure to set off against amounts held by the clerk of the district court and payable to the person any debt which is in the form of a liquidated sum due, owing and payable to the clerk. The procedure shall meet all of the following conditions:

a. Before setoff, the clerk shall provide written notice to the debtor of the clerk's claim to all or a portion of the amount held by the clerk for the debtor and the clerk's right to recover the amount of the claim through the setoff procedure, the opportunity to request in writing, that a jointly or commonly owned right to payment be divided among owners, and the opportunity to give written notice to the clerk of the district court of the person's intent to contest the amount of the claim. The debtor must file a notice of intent to contest the claim within fifteen days after the mailing of the notice of claim by the clerk or, if the notice of claim was provided by the clerk at the time the debtor appeared in the clerk's office to claim payment, within fifteen days of that date.

b. Upon the request of the debtor or the owner of a jointly or commonly owned right to payment, the clerk of the district court shall divide the payment. Unless otherwise stated in a judgment or court order, any jointly or commonly owned right to payment is presumed to be owned in equal portions by joint or common owners.

c. Upon timely filing of a notice of intent to contest the setoff, the matter shall be set for hearing before a judge or magistrate. The clerk shall notify the debtor in writing of the time and date of the hearing.

d. If the claim is not contested or upon final determination of a contested claim authorizing a setoff, the clerk shall set off the debt against any amount the clerk is holding for payment to the debtor and pay any balance of the amount to the debtor. The amount set off shall be applied by the clerk of the district court according to the order of priority set out in section 602.8107, subsection 2.

99 Acts, ch 144, §7
NEW subsection 6

602.8108A Prison infrastructure fund.

1. The Iowa prison infrastructure fund is created and established as a separate and distinct fund in the state treasury. Notwithstanding any other provision of this chapter to the contrary, the first eight million dollars and, beginning July 1, 1997, the first nine million five hundred thousand

dollars, of moneys remitted to the treasurer of state from fines, fees, costs, and forfeited bail collected by the clerks of the district court in criminal cases, including those collected for both scheduled and non-scheduled violations, collected in each fiscal year commencing with the fiscal year beginning July 1, 1995, shall be deposited in the fund. Interest and other income earned by the fund shall be deposited in the fund. However, beginning with the fiscal year beginning July 1, 1998, all fines and fees attributable to commercial vehicle violation citations issued after July 1, 1998, shall be deposited as provided in section 602.8108, subsection 5. If the treasurer of state determines pursuant to 1994 Iowa Acts, chapter 1196, that bonds can be issued pursuant to this section and section 16.177, then the moneys in the fund are appropriated to and for the purpose of paying the principal of, premium, if any, and interest on bonds issued by the Iowa finance authority under section 16.177. Except as otherwise provided in subsection 2, amounts in the funds shall not be subject to appropriation for any purpose by the general assembly, but shall be used only 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 department of corrections including the automatic disbursement of funds pursuant to the terms of bond indentures and documents and security provisions to trustees and custodians. The treasurer of state is authorized to invest the funds deposited in the fund subject to any limitations contained in any applicable bond proceedings. Any amounts remaining in the fund at the end of each fiscal year shall be transferred to the general fund of the state.

2. If the treasurer of state determines that bonds cannot be issued pursuant to this section and section 16.177, the treasurer of state shall deposit the moneys in the prison infrastructure fund into the general fund of the state.

Transfer of funds on June 30, 1999, to department of corrections for start-up costs at correctional institution and facility in lieu of reversion; 99 Acts, ch 202, §6

Section not amended; footnote added

602.9204 Salary — annuity of senior judge and retired senior judge.

1. A judge who retires on or after July 1, 1994, and who is appointed a senior judge under section 602.9203 shall be paid a salary as determined by the general assembly. A senior judge or retired senior judge shall be paid an annuity under the judicial retirement system in the manner provided in section 602.9109, but computed under this section in lieu of section 602.9107, as follows: The annuity paid to a senior judge or retired senior judge shall be an amount equal to three percent of the basic senior judge salary, multiplied by the judge's years of service prior to retirement as a judge of one or more of the courts included under this article, for which contributions were made to the system, except the annuity of the senior judge or retired senior judge shall not exceed fifty percent of the basic

senior judge salary used in calculating the annuity. However, following the twelve-month period during which the senior judge or retired senior judge attains seventy-eight years of age, the annuity paid to the person shall be an amount equal to three percent of the basic senior judge salary cap, multiplied by the judge's years of service prior to retirement as a judge of one or more of the courts included under this article, for which contributions were made to the system, except that the annuity shall not exceed fifty percent of the basic senior judge salary cap. A senior judge or retired senior judge shall not receive benefits calculated using a basic senior judge salary established after the twelve-month period in which the senior judge or retired senior judge attains seventy-eight years of age. The state shall provide, regardless of age, to an active senior judge or a senior judge with six years of service as a senior judge and to the judge's spouse, and pay for medical insurance until the judge attains the age of seventy-eight years.

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

a. "*Basic senior judge salary*" means the basic annual salary which the judge is receiving at the time the judge becomes separated from full-time service, as would be used in computing an annuity pursuant to section 602.9107 without service as a senior judge, plus seventy-five percent of the escalator.

b. "*Basic senior judge salary cap*" means the basic senior judge salary, at the end of the twelve-month period during which the senior judge or retired senior judge attained seventy-eight years of age, of the office in which the person last served as a judge before retirement as a judge or senior judge.

c. "*Escalator*" means the difference between the current basic salary, as of the time each payment is made up to and including the twelve-month period during which the senior judge or retired senior judge attains seventy-eight years of age, of the office in which the senior judge last served as a judge before retirement as a judge or senior judge, and the basic annual salary which the judge is receiving at the time the judge becomes separated from full-time service as a judge of one or more of the courts included in this article, as would be used in computing an annuity pursuant to section 602.9107 without service as a senior judge.

99 Acts, ch 200, §22
Subsection 1 amended

602.9206 Temporary service by senior judge.

Section 602.1612 does not apply to a senior judge but does apply to a retired senior judge. During the tenure of a senior judge, if the judge is able to serve, the judge may be assigned by the supreme court to temporary judicial duties on courts of this state without salary for an aggregate of thirteen weeks out of each twelve-month period, and for additional weeks with the judge's consent. A senior judge

shall not be assigned to judicial duties on the supreme court unless the judge has been appointed to serve on the supreme court prior to retirement. While serving on temporary assignment, a senior judge has and may exercise all of the authority of the office to which the judge is assigned, shall continue to be paid the judge's annuity as senior judge, shall be reimbursed for the judge's actual expenses to the extent expenses of a district judge are reimbursable under section 602.1509, may, if permitted by the assignment order, appoint a temporary court reporter, who shall be paid the remuneration and reimbursement for actual expenses provided by law for a reporter in the court to which the senior judge is assigned, and, if assigned to the court of appeals or the supreme court, shall be given the assistance of a law clerk and a secretary designated by the court administrator of the judicial branch from

the court administrator's staff. Each order of temporary assignment shall be filed with the clerks of court at the places where the senior judge is to serve.

A senior judge also shall be available to serve in the capacity of administrative law judge under chapter 17A, and the supreme court may assign a senior judge for temporary duties as an administrative law judge. A senior judge shall not be required to serve a period of time as an administrative law judge which, when added to the period of time being served by the person as a judge, if any, would exceed the maximum period of time the person agreed to serve pursuant to section 602.9203, subsection 2.

98 Acts, ch 1202, §43, 46
 1998 amendment to unnumbered paragraph 2 is effective July 1, 1999, and applies to agency proceedings commenced, or conducted on remand from a court or other agency, on or after that date; 98 Acts, ch 1202, §43, 46
 Unnumbered paragraph 2 amended

CHAPTER 614

LIMITATIONS OF ACTIONS

614.14 Real estate interest transferred by trustee.

1. If an interest in real estate is held of record by a trustee, a bona fide purchaser acquires all rights in the real estate which the trustee and the beneficiary of the trust had and any rights of persons claiming by, through or under them, free of any adverse claim.

2. A bona fide purchaser is a purchaser for value in good faith and without notice of any adverse claim, who has relied on a current, recorded affidavit in substantially the following form delivered to the purchaser:

[Individual trustee]
 Affidavit in re
 [insert legal description]

I, , being first duly sworn and under oath state of my personal knowledge that:

1. I am the trustee under the trust dated , 19 , to which the above-described real estate was conveyed to the trustee by , pursuant to an instrument recorded the day of , 19 , recorded in the office of the County Recorder in [insert recording data].

2. I am the presently existing trustee under the trust and am authorized to [describe the transfer to be made by the trustee to the bona fide purchaser], without any limitation or qualification whatsoever.

3. The trust is in existence and I as trustee am authorized to transfer the interests in the real estate as described in paragraph 2, free and clear of any adverse claims.

.....
 [signature of affiant]

Sworn to and subscribed before me by
 on this day of , 19

.....
 [Notary Public in and for the
 State of]

[Corporate trustee]
 Affidavit in re
 [insert legal description]

I, , being first duly sworn and under oath state of my personal knowledge that:

1. is the trustee under the trust dated , 19 , to which the above-described real estate was conveyed to the trustee by , pursuant to an instrument recorded the day of , 19 , recorded in the office of the County Recorder in [insert recording data].

2. is the presently existing trustee under the trust and is authorized to [describe the transfer to be made by the trustee to the bona fide purchaser], without any limitation or qualification whatsoever, and I am [officer] of the corporate trustee.

3. The trust is in existence and as trustee is authorized to transfer the interests in the

real estate as described in paragraph 2, free and clear of any adverse claims.

.....
[signature of affiant]

Sworn to and subscribed before me by
....., on this day of, 19....
.....
[Notary Public in and for the
State of]

3. As used in this section, "adverse claim" includes a claim that a transfer was or would be wrongful, a claim that a particular adverse person is the owner of or has an interest in the real estate, and a claim that would be disclosed by the examination of any document not of record.

4. Unless clearly provided to the contrary by the instrument of transfer to a purchaser, a trustee transferring an interest in real estate warrants to the transferee all of the following:

a. That the trust pursuant to which the transfer is made is duly executed and in existence.

b. That, to the knowledge of the trustee, the person creating the trust was under no disability or infirmity at the time the trust was created.

c. That the transfer by the trustee to the purchaser is effective and rightful.

d. That the trustee knows of no facts or legal claims which might impair the validity of the trust or the validity of the transfer.

5. a. A person holding an adverse claim arising or existing prior to January 1, 1992, by reason of a transfer of an interest in real estate by a trustee, or a purported trustee, shall not file an action to enforce such claim after December 31, 1993, at law or in equity, in any court to recover or establish any interest in or claim to such real estate, legal or equitable, against the holder of the record title to the real estate.

b. An action based upon an adverse claim arising on or after January 1, 1992, by reason of a transfer of an interest in real estate by a trustee, or a purported trustee, shall not be maintained either at law or in equity, in any court to recover or establish any interest in or claim to such real estate, legal or equitable, against the holder of the record title to the real estate, legal or equitable, more than one year after the date of recording of the instrument from which such claim may arise.

6. This section shall not be construed to limit any personal action against the trustee or purported trustee.

99 Acts, ch 56, §1
Subsection 4, paragraph b amended

CHAPTER 622

EVIDENCE

622.10A Tax advice — confidential communications.

1. With respect to communications involving tax advice between a taxpayer and a federally authorized tax practitioner, the same protections of confidentiality which apply to a communication between a taxpayer and an attorney shall also apply to that communication to the extent the communication would be considered a privileged communication if it were between a taxpayer and an attorney.

2. The confidentiality privilege under this section applies to either of the following:

a. A noncriminal tax matter before the Iowa department of revenue and finance.

b. A noncriminal tax proceeding in federal or state court brought by or against the state of Iowa.

3. As used in this section:

a. "Federally authorized tax practitioner"

means an individual who is authorized under federal law to practice before the Internal Revenue Service if such practice is subject to federal regulation under 31 U.S.C. § 330.

b. "Tax advice" means advice given by an individual with respect to a matter which is within the scope of the individual's authority to practice described in paragraph "a".

4. The confidentiality privilege under this section shall not apply to a written communication between a federally authorized tax practitioner and a director, shareholder, officer, employee, agent, or representative of a corporation in connection with the promotion of the direct or indirect participation of that corporation in a tax shelter as defined in section 6662(d)(2)(C)(iii) of the Internal Revenue Code.

99 Acts, ch 25, §1
NEW section

CHAPTER 622A

INTERPRETERS IN LEGAL PROCEEDINGS

622A.3 Costs — when taxed.

1. An interpreter shall be appointed without expense to the person requiring assistance in the following cases:

a. If the person requiring assistance is a witness in the civil legal proceeding.

b. If the person requiring assistance is indigent and financially unable to secure an interpreter.

2. In civil cases, every court shall tax the cost of an interpreter the same as other court costs. In criminal cases, where the defendant is indigent, the interpreter shall be considered as a defendant's witness under R.Cr.P. 14 for the purpose of receiving fees, except that subpoenas shall not be required. If the proceeding is before an administrative agency, that agency shall provide such interpreter but may require that a party to the pro-

ceeding pay the expense thereof.

3. Moneys recovered as court costs for interpreters paid through the revolving fund established in section 602.1302, subsection 3, shall be deposited in that fund.

99 Acts, ch 144, §8
Section amended

622A.4 Fee set by court — payment.

Every interpreter appointed by a court or administrative agency shall receive a fee to be set by the court or administrative agency. If the interpreter is appointed by the court in a civil case for a person who is indigent and unable to secure an interpreter, the fee for the interpreter shall be paid from the revolving fund established in section 602.1302, subsection 3.

99 Acts, ch 144, §9
Section amended

CHAPTER 624

TRIAL AND JUDGMENT

624.37 Satisfaction of judgment — penalty.

When the amount due upon judgment is paid off, or satisfied in full, the party entitled to the proceeds thereof, or those acting for that party, must acknowledge satisfaction of the judgment by the execution of an instrument referring to it, duly acknowledged and filed in the office of the clerk in ev-

ery county wherein the judgment is a lien. A failure to do so within thirty days after having been requested in writing shall subject the delinquent party to a penalty of one hundred dollars plus reasonable attorney fees incurred by the party aggrieved, to be recovered in an action for the satisfaction or acknowledgment by the party aggrieved.

99 Acts, ch 144, §10
Section amended

CHAPTER 627

EXEMPTIONS

627.6 General exemptions.

A debtor who is a resident of this state may hold exempt from execution the following property:

1. All wearing apparel of the debtor and the debtor's dependents kept for actual use and the trunks or other receptacles necessary for the wearing apparel, not to exceed in value one thousand dollars in the aggregate. In addition, the debtor's interest in any wedding or engagement ring owned and received by the debtor or the debtor's dependents on or before the date of marriage.

2. One shotgun, and either one rifle or one musket.

3. Private libraries, family bibles, portraits, pictures and paintings not to exceed in value one thousand dollars in the aggregate.

4. An interment space or an interest in a public or private burying ground, not exceeding one acre for any defendant.

5. The debtor's interest in household furnishings, household goods, and appliances held primarily for the personal, family, or household use of the debtor or a dependent of the debtor, not to exceed in value two thousand dollars in the aggregate.

6. The interest of an individual in any accrued dividend or interest, loan or cash surrender value of, or any other interest in a life insurance policy owned by the individual if the beneficiary of the policy is the individual's spouse, child, or dependent. However, the amount of the exemption shall not exceed ten thousand dollars in the aggregate of any interest or value in insurance acquired within

two years of the date execution is issued or exemptions are claimed, or for additions within the same time period to a prior existing policy which additions are in excess of the amount necessary to fund the amount of face value coverage of the policies for the two-year period. For purposes of this paragraph, acquisitions shall not include such interest in new policies used to replace prior policies to the extent of any accrued dividend or interest, loan or cash surrender value of, or any other interest in the prior policies at the time of their cancellation.

In the absence of a written agreement or assignment to the contrary, upon the death of the insured any benefit payable to the spouse, child, or dependent of the individual under a life insurance policy shall inure to the separate use of the beneficiary independently of the insured's creditors.

A benefit or indemnity paid under an accident, health, or disability insurance policy is exempt to the insured or in case of the insured's death to the spouse, child, or dependent of the insured, from the insured's debts.

In case of an insured's death the avails of all matured policies of life, accident, health, or disability insurance payable to the surviving spouse, child, or dependent are exempt from liability for all debts of the beneficiary contracted prior to death of the insured, but the amount thus exempted shall not exceed fifteen thousand dollars in the aggregate.

7. Professionally prescribed health aids for the debtor or a dependent of the debtor.

8. The debtor's rights in:

a. A social security benefit, unemployment compensation, or any public assistance benefit.

b. A veteran's benefit.

c. A disability or illness benefit.

d. Alimony, support, or separate maintenance, to the extent reasonably necessary for the support of the debtor and dependents of the debtor.

e. A payment or a portion of a payment under a pension, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, unless the payment or a portion of the payment results from contributions to the plan or contract by the debtor within one year prior to the filing of a bankruptcy petition, which contributions are above the normal and customary contributions under the plan or contract, in which case the portion of the payment attributable to the contributions above the normal and customary rate is not exempt.

f. Contributions and assets, including the accumulated earnings and market increases in value, in any of the plans or contracts as follows:

(1) Transfers from a retirement plan qualified under the Employee Retirement Income Security Act of 1974 (ERISA), as codified at 29 U.S.C. § 1001 et seq., to another ERISA-qualified plan or to another pension or retirement plan authorized under federal law, as described in subparagraph (3).

(2) Retirement plans established pursuant to qualified domestic relations orders, as defined in 26 U.S.C. § 414. However, nothing in this section shall be construed as making any retirement plan exempt from the claims of the beneficiary of a qualified domestic relations order or from claims for child support or alimony.

(3) For simplified employee pension plans, self-employed pension plans, Keogh plans (also known as H.R. 10 plans), individual retirement accounts, Roth individual retirement accounts, savings incentive matched plans for employees, salary reduction simplified employee pension plans (also known as SARSEPs), and similar plans for retirement investments authorized in the future under federal law, the exemption for contributions shall not exceed, for each tax year of contributions, the actual amount of the contribution or two thousand dollars, whichever is less. The exemption for accumulated earnings and market increases in value of plans under this subparagraph shall be limited to an amount determined by multiplying all the accumulated earnings and market increases in value by a fraction, the numerator of which is the total amount of exempt contributions as determined by this subparagraph, and the denominator of which is the total of exempt and nonexempt contributions to the plan.

For purposes of this paragraph "f", "market increases in value" shall include, but shall not be limited to, dividends, stock splits, interest, and appreciation. "Contributions" means contributions by the debtor and by the debtor's employer.

9. Any combination of the following, not to exceed a value of five thousand dollars in the aggregate:

a. Musical instruments, not including radios, television sets, or record or tape playing machines, held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

b. One motor vehicle.

c. In the event of a bankruptcy proceeding, the debtor's interest in accrued wages and in state and federal tax refunds as of the date of filing of the petition in bankruptcy, not to exceed one thousand dollars in the aggregate. This exemption is in addition to the limitations contained in sections 642.21 and 537.5105.

10. If the debtor is engaged in any profession or occupation other than farming, the proper implements, professional books, or tools of the trade of the debtor or a dependent of the debtor, not to exceed in value ten thousand dollars in the aggregate.

11. If the debtor is engaged in farming and does not exercise the delay of the enforceability of a deficiency judgment or general execution under section 654.6 in relation to the execution under which the exemption is claimed, any combination of the following, not to exceed a value of ten thousand dollars in the aggregate:

a. Implements and equipment reasonably related to a normal farming operation. This exemption is in addition to a motor vehicle held exempt under subsection 9.

b. Livestock and feed for the livestock reasonably related to a normal farming operation.

12. If the debtor is engaged in farming the agricultural land upon the commencement of an action for the foreclosure of a mortgage on the agricultural land or for the enforcement of an obligation secured by a mortgage on the agricultural land, if a deficiency judgment is issued against the debtor, and if the debtor does not exercise the delay of the enforceability of the deficiency judgment or general execution under section 654.6 in relation to the execution under which the exemption is claimed, the disposable earnings of the debtor are exempt from garnishment to enforce the deficiency judgment after two years from the entry of the deficiency judgment, sections 642.21 and 642.22 notwithstanding. However, earnings paid to the debtor directly or indirectly by the debtor are not exempt.

13. The debtor's interest, not to exceed one hundred dollars in the aggregate, in any cash on hand, bank deposits, credit union share drafts, or other deposits, wherever situated, or other personal property not otherwise specifically provided for

in this chapter.

14. The debtor's interest, not to exceed five hundred dollars in the aggregate, in any combination of the following property:

a. Any residential rental deposit held by a landlord as a security deposit, as well as any interest earned on such deposit as a result of any statute or rule requiring that such deposit be placed in an interest-bearing account.

b. Any residential utility deposit held by any electric, gas, telephone, or water company as a condition for initiation or reinstatement of such utility service, as well as any interest earned on such deposit as a result of any statute or rule requiring that such deposit be placed in an interest-bearing account.

c. Any rent paid to the landlord in advance of the date due under any unexpired residential lease.

Notwithstanding the provisions of this subsection, a debtor shall not be permitted to claim these exemptions against a landlord or utility company, with regard to sums held under the terms of a rental agreement, or for utility services furnished to the debtor.

99 Acts, ch 131, §1-3

For effective date and applicability provisions pertaining to 1999 amendments, see 99 Acts, ch 131, §3

Subsection 8, paragraph a amended and NEW paragraph f

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 three thousand dollars or less for actions commenced on or after July 1, 1994, and before July 1, 1995, and four thousand dollars or less for actions commenced on or after July 1, 1995, 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 three thousand dollars or less for actions commenced on or after July 1, 1994, and before July 1, 1995, and four thousand dollars or less for actions commenced on or after July 1, 1995. 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 relat-

ing to executions against personal property, including garnishments, where the value of the property or garnisheed money involved is three thousand dollars or less for actions commenced on or after July 1, 1994, and before July 1, 1995, and four thousand dollars or less for actions commenced on or after July 1, 1995.

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 four thousand dollars is sought for actions commenced on or after July 1, 1995. If commenced under this chapter, the action is a small claim for the purposes of this chapter.

6. The district court sitting in small claims has concurrent jurisdiction of an action to challenge a mechanic's lien pursuant to sections 572.24 and 572.32.

99 Acts, ch 79, §5
NEW subsection 6

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 reple-

vin 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 49(e), 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 three 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 two 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 three days prior to the date set for hearing. The attempts to perfect personal service may be made on the same day. In addition to posting, the plaintiff shall also mail, by certified 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 three 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, whether or not the defendant signs a receipt for the notice.

d. If personal service cannot be made upon each defendant in an action for forcible entry or detention of real property joined with an action for rent or recovery pursuant to section 648.19, service may be made pursuant to paragraph "c".

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.

99 Acts, ch 155, §13, 14
Subsection 2, NEW paragraph d

631.12 Entry of judgment — setting aside default judgment.

The clerk shall immediately enter the judgment in the small claims docket and district court lien book, without recording. Such relief shall be granted as is appropriate. Upon entering judgment, the court may provide for installment payments to be made directly by the party obligated to the party entitled thereto; and in such event execution shall not issue as long as such payments are made but execution shall issue for the full unpaid balance of the judgment upon the filing of an affidavit of default. When entered on the small claims docket and district court lien book, a small claims judgment shall constitute a lien to the same extent as regular judgments entered on the district court judgment docket and lien book; but if a small claims judgment requires installment payments, it shall not be enforceable until an affidavit of default is filed.

A defendant may move to set aside a default judgment in the manner provided for doing so in district court by rule of civil procedure 236.

99 Acts, ch 144, §11
Section amended

CHAPTER 633

PROBATE CODE

See 99 Acts, ch 125, for new division XX creating the Iowa trust code effective July 1, 2000

633.10 Jurisdiction.

The district court sitting in probate shall have jurisdiction of:

1. *Estates of decedents and absentees.*

The probate and contest of wills; the appointment of personal representatives; the granting of letters testamentary and of administration; the administration, settlement and distribution of estates of decedents and absentees, whether such estates consist of real or personal property or both.

2. *Construction of wills and trust instruments.*

The construction of wills and trust instruments during the administration of the estate or trust, whether said construction be incident to such administration, or as a separate proceeding.

3. *Conservatorships and guardianships.*

The appointment of conservators and guardians; the granting of letters of conservatorship and guardianship; the administration, settlement and closing of conservatorships and guardianships.

4. *Trusts and trustees.*

a. Except as otherwise provided in this subsection, the appointment of trustees; the granting of letters of trusteeship; the administration of testamentary trusts; the administration of express trusts where jurisdiction is specifically conferred on the court by the trust instrument; the administration of express trusts where the administration of the court is invoked by the trustee, beneficiary, or any interested party; the administration of trusts which are established by a decree of court and result in the administration thereof by the court; and the settlement and closing of all such trusts.

b. A trust which is administered solely or jointly by a bank or trust company referred to in section 633.63, subsection 2, is not subject to the jurisdiction of the court unless jurisdiction is invoked by the trustee or beneficiary, or if otherwise provided by the governing instrument. Upon application by a bank or trust company administering a trust which was in existence on May 20, 1985, and is subject to the court's jurisdiction, and following notice to the beneficiaries as provided in section 633.40, subsection 4, the court shall release the trust from further jurisdiction unless one or more beneficiaries object, on the condition that jurisdiction may be thereafter invoked by the trustee or beneficiary.

c. The provisions of paragraph "b" shall be effective for applications filed on or after July 1, 1991.

d. A trust that is administered solely or jointly by an individual trustee or trustees is not subject to the jurisdiction of the court unless jurisdiction is invoked by a trustee or beneficiary, or if otherwise

provided by the governing instrument. Upon application of all trustees administering a trust which is subject to the court's jurisdiction, and following notice to beneficiaries as provided in section 633.40, subsection 4, the court shall release the trust from further jurisdiction unless one or more beneficiaries object, on the condition that jurisdiction may thereafter be invoked by a trustee or beneficiary. The provisions of this paragraph shall be effective for applications filed on or after July 1, 1997.

5. *Actions for accounting.*

An action for an accounting against a beneficiary of a transfer on death security registration, pursuant to this chapter.

99 Acts, ch 56, §2
Subsection 4, NEW paragraph d

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 account established under section 602.8108.

3. A person appointed as an associate probate judge shall have jurisdiction to audit accounts of fiduciaries and to perform ministerial duties and judicial functions as the court prescribes.

99 Acts, ch 93, §11
Subsection 3 amended

633.20A Part-time associate probate judge — appointment — removal — qualifications.

The chief judge of a judicial district may appoint a part-time associate probate judge and may remove the part-time 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.

99 Acts, ch 93, §12

*"Part-time associate probate judge" probably intended; corrective legislation is pending
NEW section

633.20B Appointment and resignation of full-time associate probate judges.

1. Full-time associate probate judges shall be appointed by the district judges of the judicial election district from persons nominated by the county magistrate appointing commission. In the case of a full-time associate probate judge to be appointed to more than one county, the appointment shall be from persons nominated by the county magistrate appointing commissions acting jointly and in the case of a full-time associate probate judge to be appointed to more than one judicial election district of the same judicial district, the appointment shall be by a majority of the district judges in each judicial election district.

2. In November of any year in which an impending vacancy is created because a full-time associate probate judge is not retained in office pursuant to a judicial election, the county magistrate appointing commission shall publicize notice of the vacancy in at least two publications in the official county newspaper. The commission shall accept applications for consideration for nomination as full-time associate probate judge for a minimum of fifteen days prior to certifying nominations. The commission shall consider the applications and shall, by majority vote, certify to the chief judge of the judicial district not later than December 15 of that year the names of three applicants who are nominated by the commission for the vacancy. If there are three or fewer applicants, the commission shall certify all applicants who meet the statutory qualifications. Nominees shall be chosen solely on the basis of the qualifications of the applicants, and political affiliation shall not be considered.

3. Within thirty days after a county magistrate appointing commission receives notification of an actual or impending vacancy in the office of full-time associate probate judge, other than a vacancy referred to in subsection 2, the commission shall certify to the chief judge of the judicial district the names of three applicants who are nominated by the commission for the vacancy. The commission shall publicize notice of the vacancy in at least two publications in the official county newspaper. The commission shall accept applications for consideration for nomination as full-time associate probate judge for a minimum of fifteen days prior to certifying nominations. The commission shall consider the applications and shall, by majority vote, certify to the chief judge of the judicial district the names of three applicants who are nominated by the commission for the vacancy. If there are three or fewer applicants, the commission shall certify all applicants who meet the statutory qualifications. Nominees shall be chosen solely on the basis of the qualifications of the applicants, and political affiliation shall not be considered. As used in this subsection, a vacancy is created by the death, retirement, resignation, or removal of a full-time associate probate

judge, or by an increase in the number of positions authorized.

4. Within fifteen days after the chief judge of a judicial district has received the list of nominees to fill a vacancy in the office of full-time associate probate judge, the district judges in the judicial election district shall, by majority vote, appoint one of those nominees to fill the vacancy.

5. A full-time associate probate judge who seeks to resign from the office of full-time associate probate judge shall notify in writing the chief judge of the judicial district as to the full-time associate probate judge's intention to resign and the effective date of the resignation. The chief judge of the judicial district, upon receipt of the notice, shall notify the county magistrate appointing commission and the state court administrator of the actual or impending vacancy in the office of full-time associate probate judge due to resignation.

6. The supreme court may prescribe rules of procedure to be used by county magistrate appointing commissions when exercising the duties specified in this section.

99 Acts, ch 93, §13, 15; 99 Acts, ch 208, §62

Status and retention of associate probate judges serving full-time as of July 1, 1999; 99 Acts, ch 93, §15

NEW section

Subsection 5 amended

633.20C Full-time associate probate judges — term, retention, qualifications.

1. Full-time associate probate judges shall serve terms and shall stand for retention in office within the judicial election districts of their residences as provided under sections 46.16 through 46.24.

2. A person does not qualify for appointment to the office of full-time associate probate judge unless the person is at the time of appointment a resident of the county in which the vacancy exists, licensed to practice law in Iowa, and will be able, measured by the person's age at the time of appointment, to complete the initial term of office prior to reaching age seventy-two. An applicant for full-time associate probate judge shall file a certified application form, to be provided by the supreme court, with the chairperson of the county magistrate appointing commission.

3. A full-time associate probate judge must be a resident of a county in which the office is held during the entire term of office. A full-time associate probate judge shall serve within the judicial district in which appointed, as directed by the chief judge, and is subject to reassignment under section 602.6108.

4. Full-time associate probate judges shall qualify for office as provided in chapter 63 for district judges.

99 Acts, ch 93, §14, 15

Status and retention of associate probate judges serving full-time as of July 1, 1999; 99 Acts, ch 93, §15

NEW section

633.29 Probate record. Repealed by 99 Acts, ch 144, § 15.

633.31 Calendar — fees in probate.

1. The clerk shall keep a court calendar, and enter thereon such matters as the court may prescribe.

2. The clerk shall charge and collect the following fees in connection with probate matters, which shall be deposited in the account established under section 602.8108:

a. For services performed in short form probates pursuant to sections 450.22 and 450.44	\$ 15.00
b. For services performed in probate of will without administration	15.00
c. For filing and indexing a transcript	5.00
d. For taking and approving a bond, or the sureties on a bond	20.00
e. For entering a rule or order	10.00
f. For certificate and seal	10.00
g. For making a complete record where real estate is sold per 100 words	.20
h. For making a transcript or copies of orders or records filed in the clerk's office	per 100 words .50
i. For certifying change of title ...	10.00
j. For issuing commission to appraisers	2.00
k. For other services performed in the settlement of the estate of any decedent, minor, person with mental illness, or other persons laboring under legal disability, except where actions are brought by the administrator, guardian, trustee, or person acting in a representative capacity or against that person, or as may be otherwise provided herein, where the value of the personal property and real estate of such a person falls within the following indicated amounts, the fee opposite such amount shall be charged.	
Up to \$3,000.00	5.00
3,000.00 to 5,000.00	10.00
5,000.00 to 7,000.00	15.00
7,000.00 to 10,000.00	20.00
10,000.00 to 15,000.00	25.00
15,000.00 to 25,000.00	30.00
For each additional \$25,000.00 or major fraction thereof	25.00
l. For services performed in small estate administration	15.00

3. The fee set forth in subsection 2, paragraph "k", shall not be charged on any property transferred to a testamentary trust from an estate that has been administered in this state and for which court costs have been assessed and paid.

99 Acts, ch 56, §3
NEW subsection 3

633.48 Certified copies affecting foreign real estate.

A certified copy of any proceedings, order, judgment, or deed, affecting real estate in any county other than that in which administration or conservatorship is originally granted, shall be furnished to the clerk of the court of the county where such real estate is situated. Upon receipt of the certified copy, the clerk of court shall assign a probate case number to the certified copy and file the copy using the name of the probate proceeding in the county sending the copy. The file created by the county receiving a certified copy as provided in this section shall not be considered an active file for administrative purposes.

99 Acts, ch 144, §12
Section amended

633.51 Filing of certified copy by receiving court.

The clerk of the court to which the proceedings are transferred shall file, within a new file of the clerk's county, the certified copy of the record entries referred to in section 633.50.

99 Acts, ch 144, §13
Section amended

633.103 Certain corporate distributions. Repealed by 99 Acts, ch 124, § 32.

633.123 Model prudent person investment Act.

1. *Investments by fiduciaries.* When investing, reinvesting, purchasing, acquiring, exchanging, selling, and managing property for the benefit of another, a fiduciary shall exercise the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use to attain the purposes of the account. This standard requires that when making investment decisions, a fiduciary shall consider the role that the investment plays within the account's portfolio of assets and may consider the general economic conditions, the anticipated tax consequences of the investment, the anticipated duration of the account, and the needs of all beneficiaries of the account.

The propriety of an investment decision is to be determined by what the fiduciary knew or should have known at the time of the decision about the inherent nature and expected performance of the investment, the attributes of the account portfolio, the general economy, and the needs and objectives of the beneficiaries of the account as they existed at the time of the investment decision.

2. *Actions pursuant to governing instrument.* A fiduciary acting under a governing instrument is not liable to anyone whose interests arise from the instrument for the fiduciary's good faith reliance on the express provisions of the instrument. In the

absence of an express provision to the contrary in the governing instrument, a fiduciary shall not be deemed to have breached the person's fiduciary duties for continuing to hold property received into an account at the account's inception or subsequently added to the account or acquired pursuant to proper authority if the fiduciary, in good faith and with reasonable prudence, considers that retention is in the best interest of the trust or estate or in furtherance of the goals of the governing instrument.

If a fiduciary is expressly directed or permitted by a will, agreement, court order, or other instrument creating or defining the fiduciary's duties and powers, to invest in United States government obligations, the fiduciary may, in the absence of an express prohibition in the instrument, invest in and hold such obligations either directly or in the form of interests in an investment company or investment trust registered under the Investment Company Act of 1940, 15 U.S.C. § 80a, the portfolio of which is limited to United States government obligations and to repurchase agreements fully collateralized by United States government obligations, if the investment company or investment trust takes delivery of the collateral either directly or through an authorized custodian.

3. *Powers of court to authorize investment.* Nothing contained in this section shall be construed as restricting the power of the court, after such notice as the court may prescribe, to permit a fiduciary to deviate from the terms of any will, agreement, or other instrument relating to the acquisition, investment, reinvestment, exchange, retention, sale or management of fiduciary property.

4. *Scope of application.* The provisions of this section shall govern all fiduciaries acting under the jurisdiction of the court whether the wills, agreements or other instruments under which they are acting now exist, or are hereafter made.

See 99 Acts, ch 125, §108, 109, for repeal of section effective July 1, 2000
Section not amended; footnote added

633.123A Investments in investment companies and investment trusts.

1. Notwithstanding any other provision of law, a bank or trust company acting as a fiduciary, in addition to other investments authorized by law for the investment of funds by a fiduciary or by the instrument governing the fiduciary and in the exercise of its investment discretion or at the direction of another person authorized to direct investment of funds held by the fiduciary, may invest and reinvest such funds in the securities of an open-end or closed-end management investment company or investment trust registered under the federal Investment Company Act of 1940, 15 U.S.C. § 80a-1 et seq. Investment and reinvestment under this section is allowed as long as the portfolio of such investment company or investment trust consists substantially of investments not otherwise prohib-

ited by section 633.123 or by the governing instrument.

Investment and reinvestment under this section is not precluded merely because the bank or trust company or an affiliate of the bank or trust company provides the services of an investment advisor, custodian, transfer agent, registrar, sponsor, distributor, or manager to the investment company or investment trust and receives a reasonable fee for the services.

2. This section is applicable to all fiduciaries whether the will, agreement, or other instrument under which they are acting now exists on or before July 1, 1996.

See 99 Acts, ch 125, §105, 109, for future amendment to subsection 1 effective July 1, 2000
Section not amended; footnote added

633.348 Right to retain existing property.

Notwithstanding the provisions of section 633.123, any personal representative may continue to hold any investment or property originally received by the personal representative and also any increase thereof.

See 99 Acts, ch 125, §106, 109, for future amendment effective July 1, 2000
Section not amended; footnote added

633.352 Collection of rents and payment of taxes and charges.

Unless otherwise provided by the will, the personal representative shall allocate and distribute income of an estate in accordance with chapter 637.

99 Acts, ch 124, §31
Section amended

633.357 Custodial independent retirement accounts.

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

a. "*Custodial independent retirement account*" means an individual retirement account in accordance with section 408(a) of the Internal Revenue Code or a Roth individual retirement account in accordance with section 408A of the Internal Revenue Code, the assets of which are not held in trust.

b. "*Designator*" means a person entitled to designate the beneficiary or beneficiaries of a custodial independent retirement account.

2. The assets of a custodial independent retirement account shall pass on or after the death of the designator of the custodial independent retirement account to the beneficiary or beneficiaries specified in the custodial independent retirement account agreement signed by the designator or designated by the designator in writing pursuant to the custodial independent retirement account agreement. Assets that pass to a beneficiary pursuant to this section shall not be considered part of the designator's probate estate except to the extent that the designator's estate is a beneficiary. The designation of a beneficiary shall not be considered testamentary and does not have to be witnessed.

3. This section applies to a custodial independent retirement account established and a beneficiary designation made prior to, on, or after July 1, 1999. This section shall be considered to be declarative of the law as the law existed immediately prior to July 1, 1999.

4. This section shall not be construed to imply that assets or benefits that are payable upon the death of a person to a beneficiary or beneficiaries designated in or pursuant to a written arrangement not described in this section, other than a will, are part of the person's probate estate or that the arrangement is testamentary.

99 Acts, ch 56, §4
NEW section

633.358 through 633.360 Reserved.

633.440 Contents of notice of disallowance.

Such a notice of disallowance shall advise the claimant that the claim has been disallowed and will be forever barred unless the claimant shall within twenty days after the date of mailing the notice, file a request for hearing on the claim with the clerk, and mail a copy of such request for hearing to the personal representative and the attorney of record, if any, by certified mail.

99 Acts, ch 56, §5
Section amended

633.646 Powers of the conservator without order of court.

The conservator shall have the full power, without prior order of court, with relation to the estate of the ward:

- 1. To collect, receive, receipt for any principal or income, and to enforce, defend against or prosecute any claim by or against the ward or the conservator; to sue on and defend claims in favor of, or against, the ward or the conservator.
- 2. To sell and transfer personal property of a perishable nature and personal property for which there is a regularly established market.
- 3. To vote at corporate meetings in person or by proxy.
- 4. To receive additional property from any source.
- 5. Notwithstanding the provisions of section 633.123, to continue to hold any investment or other property originally received by the conservator, and also any increase thereof, pending the timely filing of the first annual report.

See 99 Acts, ch 125, §107, 109, for future amendment to subsection 5 effective July 1, 2000
Section not amended; footnote added

633.704 Disclaimer.

1. *Right of disclaimer.* A person, including a person designated to take pursuant to a power of appointment, is not required to take as a distributee, as a beneficiary, as an annuitant, or as a transferee including as a transferee in joint tenancy, or

otherwise, and a person, as a donee of a power, is not required to accept any right of appointment. If the requirements of this section are met, a person may disclaim, in whole or in part, the transfer of a power, or the transfer, receipt of, or entitlement or succession to, any property, real or personal, or any interest in property, including but not limited to an interest in trust, and including but not limited to ownership, proceeds of, or other benefits to or under a life insurance policy or annuity contract, by delivering a written instrument of disclaimer within the time and in the manner provided in this section. The instrument shall:

- a. Describe the property, interest, or right disclaimed.
- b. Declare the disclaimer and the extent of the disclaimer.
- c. Be signed and acknowledged by the disclaimant.

2. *Time of disclaimer — filing — irrevocability.*

a. *Time of disclaimer.* The disclaimer instrument shall be received by the transferor of the property, interest, or right, the transferor's fiduciary, or the holder of the legal title to which the property, interest, or right relates, not later than the date which is nine months after the later of the date on which the transfer of the property, interest, or right is made, or the date on which the disclaimant attains eighteen years of age. The nine-month period for making a disclaimer shall be determined with reference to each transfer. With respect to a testamentary transfer, the transfer occurs upon the date of the decedent's death. Any property, interest, or right may be disclaimed nine months after the date of the disclaimant's eighteenth birthday even though the disclaimant received benefits from the property, interest, or right without any action on the disclaimant's part before attaining eighteen years of age. However, if a person entitled to disclaim does not have actual knowledge of the existence of the transfer, the disclaimer may be made not later than nine months after the person has actual knowledge of the existence of the transfer.

b. *Filing.* A copy of an instrument of disclaimer affecting real estate shall be filed in the office of the county recorder of the county where the real estate is located. Failure to file with the county recorder within the time permitted for disclaimer does not invalidate the disclaimer. A copy of an instrument of disclaimer, regardless of subject, may be filed with the clerk of court of the county in which proceedings for administration have been commenced, if applicable.

c. *Irrevocability.* An instrument of disclaimer shall be unqualified and is irrevocable from and after the date of its receipt.

3. *Effective disclaimer.*

a. *Passage of disclaimed interest or property.*

Unless the transferor has otherwise provided, the property, interest, or right disclaimed, and any future interest which is to take effect in possession or enjoyment at or after the termination of the interest or right disclaimed, descends or shall be distributed as if the disclaimant has died prior to the date of the transfer, or if the disclaimant is one designated to take pursuant to a power of appointment exercised by testamentary instrument, then as if the disclaimant has predeceased the donee of the power unless the donee of the power has otherwise provided. In every case, the disclaimer relates back for all purposes to the date of the transfer. In the case of a disclaimer under a will by a spouse, the property, interest, or right disclaimed lapses unless from the terms of the transferor's will the intent is clear and explicit to the contrary.

b. *Future interest.* A person who has a present and a future interest in property and who disclaims the present interest, in whole or in part, shall be deemed to have disclaimed the future interest to the same extent. However, if such person disclaims only the future interest, in whole or in part, that person shall retain the present interest, and the disclaimer shall only affect the future interest involved.

c. *Death or disability of disclaimant.* If a person eligible to disclaim dies within the time allowed for a disclaimer, the right to disclaim continues for the time allowed and the personal representative of the person eligible to disclaim has the same right to disclaim as the disclaimant and may disclaim on behalf of the personal representative's decedent. If a person entitled to disclaim is disabled, the court may authorize or direct a conservator or guardian to exercise the right to disclaim on behalf of the person under disability if the court finds it is in the person's best interests.

d. *Disclaimer by attorney in fact.* Whenever a principal designates in writing another as the principal's attorney in fact or agent by a power of attorney, and the designation authorizes the attorney in fact to disclaim the principal's interest in any property, the attorney in fact has the same right to disclaim as the disclaimant and may disclaim on behalf of the attorney in fact's principal.

4. *Waiver and bar.* An assignment, conveyance, encumbrance, pledge, or transfer of any prop-

erty, interest, or right, or a contract therefor, or a written waiver of the right to disclaim, or an acceptance of any property, interest, or right, by an heir, devisee, donee, transferee, joint owner, person succeeding to a disclaimed interest, annuitant, beneficiary under a life insurance policy, or person designated to take pursuant to a power of appointment exercised by testamentary instrument, or a sale of property by execution, made before the expiration of the period in which a person may disclaim as provided in this section, bars the right to disclaim that property, interest, or right. An election by a surviving spouse under sections 633.236 to 633.246 is not a waiver or bar of the right to disclaim. The right to disclaim exists irrespective of any limitation on the interest of the disclaimant in the nature of a spendthrift provision or similar restriction. A disclaimer, when received, as provided in this section, or a written waiver of the right to disclaim, is binding upon the disclaimant or person waiving and all parties claiming by, through, and under the disclaimant or person waiving. If a beneficiary who disclaims any property, interest, or right is also a fiduciary, actions taken by the person in the exercise of fiduciary powers to preserve or maintain the property, interest, or right shall not be treated as an acceptance of the property, interest, or right. A fiduciary power to distribute any property, interest, or right to designated beneficiaries, if subject to an ascertainable standard, does not bar the right to disclaim by a beneficiary who is also a fiduciary.

5. *Exclusiveness of remedy.* This section does not abridge the right of a person to assign, convey, release, or renounce any property, interest, or right arising under any other statute.

6. *Effective date.* This section applies only to transfers occurring on or after July 1, 1981.

99 Acts, ch 56, §6
See chapter 559, power of appointment
Subsection 3, paragraph a amended

633.812 through 633.1100 Reserved.

DIVISION XX

IOWA TRUST CODE

633.1101 through 633.6307 Reserved.

See 99 Acts, ch 125, for new division XX creating the Iowa trust code effective July 1, 2000

CHAPTER 637

UNIFORM PRINCIPAL AND INCOME ACT

Chapter applies to every trust or decedent's estate on and after July 1, 2000, except as otherwise provided; see §637.601

SUBCHAPTER 1

DEFINITIONS AND FIDUCIARY DUTIES

637.101 Short title.

This Act may be cited as the “Uniform Principal and Income Act”.

99 Acts, ch 124, §1
NEW section

637.102 Definitions.

As used in this chapter:

1. “*Accounting period*” means a calendar year, unless another twelve-month period is selected by a fiduciary. The term includes a portion of a calendar year or other twelve-month period that begins when an income interest begins or ends when an income interest ends.

2. “*Beneficiary*” includes, in the case of a decedent's estate, an heir, legatee, and devisee, and, in the case of a trust, an income beneficiary and a remainder beneficiary.

3. “*Fiduciary*” means a personal representative or a trustee. The term includes an executor, administrator, successor personal representative, special administrator, and a person performing substantially the same function.

4. “*Income*” means money or property a fiduciary receives as the current return from a principal asset. The term includes a portion of the receipts from a sale, exchange, or liquidation of a principal asset, to the extent provided in subchapter 4.

5. “*Income beneficiary*” means a person to whom a trust's net income is or may be payable.

6. “*Income interest*” means an income beneficiary's right to receive all or part of the net income, whether the terms of the trust require it to be distributed or authorize it to be distributed in the trustee's discretion.

7. “*Mandatory income interest*” means an income beneficiary's right to receive net income that the terms of the trust require the fiduciary to distribute.

8. “*Net income*” means the total receipts allocated to income during an accounting period minus the disbursements made from income during the period. In this definition, receipts and disbursements include items transferred to or from income during the period under this chapter.

9. “*Person*” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, or any other legal or commercial entity. The term does not

include a government or governmental subdivision, agency, or instrumentality.

10. “*Principal*” means property held in trust for distribution to a remainder beneficiary when the trust terminates.

11. “*Remainder beneficiary*” means a person, including another trust, entitled to receive principal when an income interest ends.

12. “*Terms of a trust*” means the manifestation of the intent of a settlor or decedent with respect to the trust, expressed in a manner that admits of its proof in a judicial proceeding, whether by written or spoken words or by conduct.

13. “*Trustee*” includes an original, additional, or successor trustee, whether or not appointed or confirmed by a court.

99 Acts, ch 124, §2
NEW section

637.103 Fiduciary duties — general principles.

1. In allocating receipts and disbursements to or between principal and income, and in any matter within the scope of subchapters 2 and 3, a fiduciary shall do all of the following:

a. Administer a trust or estate in accordance with the terms of the trust or the will, even if there is a different provision in this chapter.

b. Administer a trust or estate by the exercise of a discretionary power of administration given the fiduciary by the terms of the trust or the will, although the fiduciary may exercise that power in a manner different from a provision of this chapter.

c. Administer a trust or estate in accordance with this chapter if the terms of the trust or the will do not contain a different provision or do not give the fiduciary a discretionary power of administration.

d. Add a receipt or charge a disbursement to principal to the extent that the terms of the trust and this chapter do not provide a rule for allocating the receipt or disbursement to or between principal and income.

2. In exercising a discretionary power of administration regarding a matter within the scope of this chapter, whether granted by the terms of a trust, a will, or this chapter, a fiduciary shall administer a trust or estate impartially, based on what is fair and reasonable to all of the beneficiaries, unless the terms of the trust or the will clearly manifest an intention that the fiduciary shall or may favor one or more of the beneficiaries. A determination in accordance with this chapter is pre-

sumed to be fair and reasonable to all of the beneficiaries.

99 Acts, ch 124, §3
NEW section

SUBCHAPTER 2

DECEDENT'S ESTATE OR TERMINATING INCOME INTEREST

637.201 Determination and distribution of net income.

After a decedent dies, in the case of an estate, or after an income interest in a trust ends, the following rules apply:

1. A fiduciary of an estate or a terminating income interest shall determine the amount of net income and net principal receipts received from property specifically given to a beneficiary under the rules in subchapters 3 through 5 that apply to trustees, and under the rules in subsection 5. The fiduciary shall distribute the net income and net principal receipts to the beneficiary who is to receive the specific property.

2. A fiduciary shall determine the remaining net income of a decedent's estate or a terminating income interest under the rules in subchapters 3 through 5 that apply to trustees, and by doing the following:

a. Including in net income all income from property used to discharge liabilities.

b. Paying from income or principal, in the fiduciary's discretion, fees of attorneys, accountants, and fiduciaries; court costs and other expenses of administration; and interest on death taxes, but the fiduciary may pay those expenses from income of property passing to a trust for which the fiduciary claims an estate tax marital or charitable deduction only to the extent that the payment of those expenses from income will not cause the loss of the deduction.

c. Paying from principal all other disbursements made or incurred in connection with the settlement of a decedent's estate or the winding up of a terminating income interest, including debts, funeral expenses, disposition of remains, family allowances, and death taxes and related penalties that are apportioned to the estate or terminating income interest by the will, the terms of the trust, or applicable law.

3. A fiduciary shall distribute to a beneficiary who receives a pecuniary amount outright the amount, if any, provided by the will, the terms of the trust, or applicable law, from net income determined under subsection 2 or from principal to the extent the net income is insufficient. If a beneficiary is to receive a pecuniary amount outright from a trust after an income interest ends and no amount is provided for by the terms of the trust or applicable law, the fiduciary shall distribute the amount to which the beneficiary would be entitled under ap-

plicable law if the pecuniary amount were required to be paid under a will.

4. A fiduciary shall distribute the net income remaining after distributions required by subsection 3 in the manner described in section 637.202 to all other beneficiaries, including a beneficiary who receives a pecuniary amount in trust, even if the beneficiary holds an unqualified power to withdraw assets from the trust or other presently exercisable general power of appointment over the trust.

5. A fiduciary shall not reduce principal or income receipts from property described in subsection 1 because of a payment described in section 637.501 or 637.502 to the extent that the will, the terms of the trust, or applicable law requires the fiduciary to make the payment from assets other than the property or to the extent that the fiduciary recovers or expects to recover the payment from a third party. The property's net income and principal receipts are determined by including all of the amounts the fiduciary receives or pays with respect to the property, whether those amounts accrued or became due before, on, or after the date of a decedent's death or an income interest's terminating event, and by making a reasonable provision for amounts that the fiduciary believes the estate or terminating income interest may become obligated to pay after the property is distributed.

99 Acts, ch 124, §4
NEW section

637.202 Distribution to residuary and remainder beneficiaries.

1. Each beneficiary described in section 637.201, subsection 4, is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in undistributed principal assets, using values as of the distribution date. If a fiduciary makes more than one distribution of assets to beneficiaries to whom this section applies, each beneficiary, including one who does not receive part of the distribution, is entitled, as of each distribution date, to the net income the fiduciary has received after the date of death or terminating event or earlier distribution date but has not distributed as of the current distribution date.

2. In determining a beneficiary's share of net income, the following rules apply:

a. The beneficiary is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in the undistributed principal assets immediately before the distribution date, including assets that later may be sold to meet principal obligations.

b. The beneficiary's fractional interest in the undistributed principal assets must be calculated without regard to property specifically given to a beneficiary and property required to be pay* pecuniary amounts not in trust.

c. The beneficiary's fractional interest in the undistributed principal assets must be calculated

on the basis of the aggregate value of those assets as of the distribution date without reducing the value by any unpaid principal obligation.

d. The distribution date for purposes of this section may be the date as of which the fiduciary calculates the value of the assets if that date is reasonably near the date on which assets are actually distributed.

3. The rules in this section apply to net gain or loss realized after the date of death or terminating event or earlier distribution date from the disposition of a principal asset if this section applies to the income from the asset.

4. If a fiduciary does not distribute all of the collected but undistributed net income or gain to each person as of a distribution date, the fiduciary shall maintain appropriate records showing the interest of each beneficiary in that net income or gain.

99 Acts, ch 124, §5

**Required to pay" probably intended; corrective legislation is pending
NEW section

SUBCHAPTER 3

APPORTIONMENT AT BEGINNING AND END OF INCOME INTEREST

637.301 When right to income begins and ends.

1. An income beneficiary is entitled to net income from the date on which the income interest begins. An income interest begins on the date specified in the terms of the trust or, if no date is specified, on the date an asset becomes subject to a trust or successive income interest.

2. An asset becomes subject to a trust at the first occurrence of one of the following events:

a. On the date it is transferred to the trust in the case of an asset that is transferred to a trust during the transferor's life.

b. On the date of a testator's death in the case of an asset that becomes subject to a trust by reason of a will, even if there is an intervening period of administration of the testator's estate.

c. On the date of an individual's death in the case of an asset that is transferred to a fiduciary by a third party because of the individual's death.

3. An asset becomes subject to a successive income interest on the day after the preceding income interest ends, as determined under subsection 4, even if there is an intervening period of administration to wind up the preceding income interest.

4. An income interest ends on the day before an income beneficiary dies or another terminating event occurs. For purposes of this chapter, an income interest also ends on the last day of a period during which there is no beneficiary to whom a trustee may distribute income.

99 Acts, ch 124, §6
NEW section

637.302 Apportionment of receipts and disbursements when decedent dies or income interest begins.

1. An income receipt or disbursement other than one to which section 637.201, subsection 1, applies must be allocated to principal if its due date occurs before a decedent dies in the case of an estate, or before an income interest begins in the case of a trust or successive income interest.

2. An income receipt or disbursement must be allocated to income if its due date occurs on or after the date on which a decedent dies or an income interest begins and it is a periodic due date. An income receipt or disbursement must be treated as accruing from day to day if its due date is not periodic or it has no due date. The portion of the receipt or disbursement accruing before the date on which a decedent dies or an income interest begins must be allocated to principal and the balance must be allocated to income.

3. An item of income or an obligation is due on the date on which the payor is required to make a payment. If there is no stated payment date, there is no due date for the purposes of this chapter. Distributions to shareholders or other owners from an entity to which section 637.401 applies are deemed to be due on the date fixed by the entity for determining who is entitled to receive the distribution or, if no date is fixed, on the declaration date for the distribution. A due date is periodic for receipts or disbursements that must be paid at regular intervals under a lease or an obligation to pay interest or if an entity customarily makes distributions at regular intervals.

99 Acts, ch 124, §7
NEW section

637.303 Apportionment when income interest ends.

1. For purposes of this section, "*undistributed income*" means net income received before the date on which an income interest ends. The term does not include an item of income or expense that is due or accrued or net income that has been added or is required to be added to principal pursuant to the terms of the trust.

2. When a mandatory income interest ends, the trustee shall pay to a mandatory income beneficiary who survives that date, or the estate of a deceased mandatory income beneficiary whose death causes the interest to end, the beneficiary's share of the undistributed income that is not disposed of pursuant to the terms of the trust unless the beneficiary has an unqualified power to revoke more than five percent of the trust immediately before the income interest ends. In the latter case, the undistributed income from the portion of the trust that may be revoked must be added to principal.

3. When a trustee's obligation to pay a fixed annuity or a fixed fraction of the value of the trust's assets ends, the trustee shall prorate the final payment if and to the extent required by applicable law

to accomplish a purpose of the trust or its settlor relating to income, gift, estate, or other tax requirements.

99 Acts, ch 124, §8
NEW section

SUBCHAPTER 4

ADMINISTRATION OF TRUST

PART 1

RECEIPTS FROM ENTITIES

637.401 Character of receipts.

1. For purposes of this section, “entity” means a corporation, partnership, joint venture, limited liability company, regulated investment company, real estate investment trust, common trust fund, and any other organization in which a trustee has an interest other than a trust or estate to which section 637.402 applies or a business or activity to which section 637.403 applies.

2. Except as otherwise provided in this section, cash received by a trustee from an entity must be allocated to income.

3. Receipts from an entity which must be allocated to principal include the following items:

a. Property other than cash, except as otherwise provided in paragraph “d”.

b. Cash or property received in one distribution or a series of related distributions in exchange for part or all of a trust’s interest in the entity.

c. Cash or property received in total or partial liquidation of the entity.

d. Cash or property received from an entity that is a regulated investment company or a real estate investment trust if the distribution is a capital gain dividend for federal income tax purposes.

4. Cash or property is received in partial liquidation according to one of the following principles:

a. To the extent that the entity, at or near the time of a distribution, indicates that it is a distribution in partial liquidation.

b. If the total amount received in a distribution or series of related distributions is greater than twenty percent of the entity’s gross assets, as shown by the entity’s year-end financial statements immediately preceding the initial receipt.

5. Cash shall not be received in partial liquidation, nor shall it be taken into account under subsection 4, paragraph “b”, to the extent that it does not exceed the amount of income tax that a trustee or beneficiary must pay on taxable income of the entity that distributes the cash.

6. A trustee may rely upon a statement made by an entity about the source or character of a distribution if the statement is made at or near the time of distribution by the entity’s board of directors or other person or group of persons authorized to exercise powers to pay money or transfer proper-

ty comparable to those of a corporation’s board of directors.

99 Acts, ch 124, §9
NEW section

637.402 Distribution from trust or estate.

1. Subject to the terms of a recipient trust, an amount received as a distribution of income from a trust or an estate in which the trust has an interest other than a purchased interest shall be allocated to income.

2. An amount received as a distribution of principal from such a trust or estate shall be allocated to principal.

3. If a trustee purchases an interest in a trust that is an investment entity, or a decedent or donor transfers an interest in such a trust to a trustee, section 637.401 applies to a receipt from the trust.

99 Acts, ch 124, §10
NEW section

637.403 Business and other activities conducted by trustee.

1. If a trustee who conducts a business or other activity determines that it is in the best interest of all the beneficiaries to account separately for the business or activity instead of accounting for it as part of the trust’s general accounting records, the trustee may maintain separate accounting records for its transactions, whether or not its assets are segregated from other trust assets.

2. A trustee who accounts separately for a business or other activity shall determine the extent to which its net cash receipts must be retained for working capital, the acquisition or replacement of fixed assets, and other reasonably foreseeable needs of the business or activity, and the extent to which the remaining net cash receipts are accounted for as principal or income in the trust’s general accounting records. If a trustee sells assets of the business or other activity, other than in the ordinary course of the business or activity, the trustee shall account for the net amount received as principal in the trust’s general accounting records to the extent the trustee determines that the amount received is no longer required in the conduct of the business.

3. The trustee may maintain separate accounting records for any of the following activities:

a. Retail, manufacturing, service, and other traditional business activities.

b. Farming.

c. Raising and selling livestock and other animals.

d. Management of rental properties.

e. Extraction of minerals and other natural resources.

f. Timber operations.

g. Activities to which section 637.426 applies.

99 Acts, ch 124, §11
NEW section

637.404 through 637.409 Reserved.

PART 2

RECEIPTS NOT NORMALLY APPORTIONED

637.410 Principal receipts.

The following items must be allocated to principal:

1. To the extent not allocated to income under this chapter, assets received from any of the following sources:

- a. A transferor during the transferor's lifetime.
- b. A decedent's estate.
- c. A trust with a terminating income interest.
- d. A payor pursuant to a contract naming the trust or its trustee as beneficiary.

2. Cash or other property received from the sale, exchange, liquidation, or change in form of a principal asset, including realized profit, subject to this subchapter.

3. Amounts recovered from third parties to reimburse the trust because of disbursements described in section 637.502, subsection 1, paragraph "g", or for other reasons to the extent not based on the loss of income.

4. Proceeds of property taken by eminent domain, but a separate award made for the loss of income with respect to an accounting period during which a current income beneficiary had a mandatory income interest is income.

5. Net income received in a period during which there is no beneficiary to whom a trustee may or must distribute income.

6. Other receipts, as provided in part 3.

99 Acts, ch 124, §12
NEW section

637.411 Rental property.

1. An amount received as rent of real or personal property, including an amount received for cancellation or renewal of a lease, must be allocated to income.

2. An amount received as a refundable deposit, including a security deposit or a deposit that is to be applied as rent for future periods, must be added to principal and held subject to the terms of the lease and is not available for distribution to a beneficiary until the trustee's contractual obligations have been satisfied with respect to that amount.

99 Acts, ch 124, §13
NEW section

637.412 Obligation to pay money.

1. An amount received as interest, whether determined at a fixed, variable, or floating rate, on an obligation to pay money to the trustee, including an amount received as consideration for prepaying principal, must be allocated to income without any provision for amortization of premium.

2. An amount received from the sale, redemption, or other disposition of an obligation to pay

money to the trustee more than one year after it is purchased or acquired by the trustee, including an obligation whose purchase price or value when it is acquired is less than its value at maturity, must be allocated to principal. If the obligation matures within one year after it is purchased or acquired by the trustee, an amount received in excess of its purchase price or its value when acquired by the trust must be allocated to income.

3. This section does not apply to obligations to which sections 637.421 through 637.424, 637.426, and 637.427 apply.

99 Acts, ch 124, §14
NEW section

637.413 Insurance policies and similar contracts.

1. Proceeds from a life insurance policy whose beneficiary is the trust or its trustee or a policy that insures the trust or its trustee against loss for the damage or destruction of, or loss of title to, a principal asset must be allocated to principal. Dividends received from an insurance policy and the proceeds of any other contract in which the trust or its trustee is named as beneficiary must also be allocated to principal.

2. Insurance proceeds must be allocated to income if they are from a policy that insures the trustee against the loss of occupancy or other use by an income beneficiary, the loss of income, or, subject to section 637.403, the loss of profits from a business.

3. This section does not apply to a contract to which section 637.421 applies.

99 Acts, ch 124, §15
NEW section

637.414 through 637.419 Reserved.

PART 3

RECEIPTS NORMALLY APPORTIONED

637.420 Insubstantial allocations not required.

1. If a trustee determines that an allocation between principal and income required by sections 637.421 through 637.424 or section 637.427 is insubstantial, the trustee may allocate the entire receipt to principal.

2. An allocation is presumed to be insubstantial if either of the following would be true if an allocation was made:

a. The amount of the allocation would increase or decrease an accounting period's net income, as determined before the allocation, by less than ten percent.

b. The value of the asset producing the receipt for which the allocation would be made is less than ten percent of the total value of the trust's assets at the beginning of the accounting period.

99 Acts, ch 124, §16
NEW section

637.421 Deferred compensation, annuities, and similar payments.

1. This section applies to payments that a trustee may receive over a fixed number of years or during the life of one or more individuals because of services rendered or property transferred to the payor in exchange for future payments. The payments include those made in cash or property from the payor's general assets or from a separate fund created by the payor, including a private or commercial annuity, an individual retirement account, and a pension, profit sharing, stock bonus, or stock ownership plan. This section does not apply to payments to which section 637.422 applies.

2. To the extent that a payment is characterized as interest or a dividend or a payment made in lieu of interest or a dividend, it must be allocated to income. The balance of the payment and any other payment received in the same accounting period that is not characterized as interest, a dividend, or an equivalent payment must be allocated to principal.

3. If no part of a payment is characterized as interest, a dividend, or an equivalent payment, and all or part of the payment is required to be made, a trustee shall allocate to income ten percent of the part that is required to be made during the accounting period and the balance to principal. If no part of a payment is required to be made or the payment received is the entire amount to which the trustee is entitled, the entire payment must be allocated to principal.

4. If, to obtain an estate tax marital deduction for a trust, a trustee must allocate more of a payment to income than provided for by this section, the trustee shall allocate to income the additional amount necessary to obtain the marital deduction.

99 Acts, ch 124, §17
NEW section

637.422 Liquidating asset.

1. In this section, "*liquidating asset*" means an asset whose value will diminish or terminate because the asset is expected to produce receipts for a period of limited duration. The term includes leaseholds, patents, trademarks, copyrights, royalty rights, and rights to receive payments during a period of more than one year under an arrangement that does not provide for the payment of interest on the unpaid balance. The term does not include deferred compensation that is subject to section 637.421, natural resources that are subject to section 637.423, timber that is subject to section 637.424, an activity that is subject to section 637.426, or any asset for which the trustee establishes a reserve for depreciation under section 637.503.

2. A trustee shall allocate to income ten percent of the receipts from a liquidating asset and the balance to principal.

99 Acts, ch 124, §18
NEW section

637.423 Minerals, water, and other natural resources.

1. Receipts from an interest in minerals or other natural resources must be allocated according to the type of payment, as follows:

a. If received as nominal delay rental or annual rent on a lease, a receipt must be allocated to income.

b. If received from a production payment, a receipt must be allocated to income to the extent that the agreement creating the production payment provides a factor for interest or its equivalent. The balance must be allocated to principal.

c. If an amount received as a royalty, bonus, or delay rental is more than nominal, ninety percent must be allocated to principal and the balance to income.

d. If an amount is received from a working interest or any other interest not provided for in paragraph "a", "b", or "c", ninety percent of the net amount received must be allocated to principal and the balance to income.

2. An amount received on account of an interest in water that is renewable must be allocated to income. If the water is not renewable, ninety percent of the amount must be allocated to principal and the balance to income.

3. This chapter applies without regard to whether a decedent or donor was extracting minerals, water, or other natural resources before the interest became subject to the trust.

4. If a trust owns an interest in minerals, water, or other natural resources on or before July 1, 1999,* the trustee may allocate receipts from the interest as provided in this section or in the manner used by the trustee before July 1, 1999.* If the trust acquires an interest in minerals, water, or other natural resources after July 1, 1999,* the trustee shall allocate receipts from the interest as provided in this section.

99 Acts, ch 124, §19

July 1, 2000 probably intended; corrective legislation is pending
NEW section

637.424 Timber.

1. A trustee may account for net receipts from the sale of timber and related products under subsection 2 or section 637.403 or, if the trustee determines that net receipts are insubstantial, may allocate the net receipts to principal. The presumptions in section 637.420 apply in determining whether net receipts are insubstantial. If a trust owns more than one block of timberland, the trustee may use different methods to account for net receipts from different blocks.

2. If a trustee does not account under section 637.403 for net receipts from the sale of timber and related products or allocate the net receipts to principal because they are insubstantial, the trustee shall allocate the net receipts according to one of the following rules:

a. Allocate the net receipts to income to the extent that the amount of timber removed from the land does not exceed the rate of growth of the block as a whole during the accounting periods in which a beneficiary has a mandatory income interest.

b. Allocate the net receipts to principal to the extent that the amount of timber removed from the land exceeds the block's rate of growth or the net receipts are from the sale of standing timber.

c. Allocate the net receipts to or between income and principal if the net receipts are from the lease of timberland or from a contract to cut timber from land owned by a trust, by determining the amount of timber removed from the land under the lease or contract and applying the rules in paragraphs "a" and "b".

d. Allocate the net receipts to principal to the extent that advance payments, bonuses, and other payments are not allocated pursuant to paragraph "a", "b", or "c".

3. In determining the net receipts from the sale of timber, a trustee shall deduct and transfer to principal a reasonable amount for depletion.

4. This chapter applies regardless of whether a decedent or transferor was harvesting timber from the property before it became subject to the trust.

5. If a trust owns an interest in timberland on or before July 1, 1999,* the trustee may allocate net receipts from the sale of timber and related products as provided in this section or in the manner used by the trustee before July 1, 1999.* If the trust acquires an interest in timberland after July 1, 1999,* the trustee shall allocate net receipts from the sale of timber and related products as provided in this section.

99 Acts, ch 124, §20

*July 1, 2000" probably intended; corrective legislation is pending

NEW section

637.425 Property not productive of income.

1. If a marital deduction is allowed for all or part of a trust whose assets consist substantially of property that does not provide the surviving spouse with sufficient income from or use of the trust assets, the spouse may require the trustee to make property productive of income or convert property within a reasonable time. The trustee may decide which action or combination of actions to take.

2. In all other cases, proceeds from the sale or other disposition of an asset are principal without regard to the amount of income the asset produces during any accounting period.

99 Acts, ch 124, §21

NEW section

637.426 Derivatives and options.

1. For purposes of this section, "derivative" means a contract or financial instrument or a combination of contracts and financial instruments which gives a trust the right or obligation to partic-

ipate in some or all changes in the price of a tangible or intangible asset or group of assets, or changes in a rate, an index of prices or rates, or other market indicator for an asset or a group of assets.

2. To the extent that a trustee does not account under section 637.403 for transactions in derivatives, receipts from and disbursements made in connection with those transactions must be allocated to principal.

3. If a trustee grants an option to buy property from the trust, whether or not the trust owns the property when the option is granted, grants an option that permits another person to sell property to the trust, or acquires an option to buy property for the trust or an option to sell an asset owned by the trust, and the trustee or other owner of the asset is required to deliver the asset if the option is exercised, an amount received for granting the option must be allocated to principal, and an amount paid to acquire the option must be paid from principal. A gain or loss realized upon the exercise of an option, including an option granted to a settlor of the trust for services rendered, must be allocated to principal.

99 Acts, ch 124, §22

NEW section

637.427 Asset-backed securities.

1. For purposes of this section, "asset-backed security" means an asset whose value is based upon the right it gives the owner to receive distributions from the proceeds of financial assets that provide collateral for the security. The term includes an asset that gives the owner the right to receive only the interest or other current return from the collateral financial assets or only the proceeds from the capital investment in the collateral financial assets. It does not include an asset to which section 637.401 or 637.421 applies.

2. If a trust receives a payment from the interest or other current return and the capital investment of the collateral financial assets, the trustee shall allocate to income the portion of a payment that the payor identifies as being from the interest or other current return, and shall allocate the balance of the payment to principal.

3. If a trust receives one or more payments in exchange for the trust's entire interest in an asset-backed security in one accounting period, the trustee shall allocate the payments to principal. If a payment is one of a series of payments that will result in the liquidation of the trust's interest in the security over more than one accounting period, the trustee shall allocate ten percent of the payment to income and the balance to principal.

99 Acts, ch 124, §23

NEW section

SUBCHAPTER 5

ALLOCATION OF DISBURSEMENTS DURING
ADMINISTRATION OF TRUST**637.501 Disbursements from income.**

A trustee shall make disbursements from income, to the extent that they are not disbursements to which section 637.201, subsection 2, paragraph “b” or “c”, applies, according to the following:

1. One-half of the regular compensation of the trustee and of any person providing investment advisory or custodial services to the trustee.

2. One-half of all expenses for accountings, judicial proceedings, or other matters that involve both the income and remainder interests.

3. All of the other ordinary expenses incurred in connection with the administration, management, or preservation of trust property and the distribution of income, including interest, ordinary repairs, regularly recurring taxes assessed against principal, and expenses of a proceeding or other matter that concerns primarily the income interest.

4. Recurring premiums on insurance covering the loss of a principal asset or the loss of income from or use of the asset.

99 Acts, ch 124, §24
NEW section

637.502 Disbursements from principal.

1. A trustee shall make disbursements from principal according to the following:

a. The remaining one-half of the disbursements described in section 637.501, subsections 1 and 2.

b. All of the trustee’s compensation calculated on principal as an acceptance, distribution, or termination fee, and disbursements made to prepare property for sale.

c. Payments on the principal of a trust debt.

d. Expenses of a proceeding that concerns primarily principal, including a proceeding to construe the trust or to protect the trust or its property.

e. Insurance premiums paid on a policy not described in section 637.501, subsection 4, of which the trust is the owner and beneficiary.

f. Estate, inheritance, and other transfer taxes, including penalties, apportioned to the trust.

g. Disbursements related to environmental matters, including reclamation, assessing environmental conditions, remedying and removing environmental contamination, monitoring remedial activities and the release of substances, preventing future releases of substances, collecting amounts from persons liable or potentially liable for the costs of those activities, penalties imposed under environmental laws or regulations and other payments made to comply with those laws or regulations, statutory or common law claims by third parties,

and defending claims based on environmental matters.

2. If a trust owns a policy of insurance on the life of an individual and the trust is not the beneficiary of the policy, premiums paid on the policy are a distribution from principal to the policy beneficiary.

3. If a principal asset is encumbered with an obligation that requires income from that asset to be paid directly to the creditor, the trustee shall transfer from principal to income an amount equal to the income paid to the creditor in reduction of the obligation’s principal balance.

99 Acts, ch 124, §25
NEW section

637.503 Transfers from income to principal for depreciation.

1. For purposes of this section, “depreciation” means a reduction in value of a fixed asset having a useful life of more than one year due to wear, tear, decay, corrosion, or gradual obsolescence.

2. A trustee may transfer to principal a reasonable amount of the net cash receipts from a principal asset that is subject to depreciation, but a transfer shall not be made for depreciation under any of the following circumstances:

a. When the depreciation involves the portion of real property used or available for use by a beneficiary as a residence, or tangible personal property held or made available for the personal use or enjoyment of a beneficiary.

b. When the depreciation occurs during the administration of a decedent’s estate.

c. If the trustee is accounting under section 637.403 for the business or activity in which the asset is used.

3. An amount transferred to principal need not be held as a separate fund.

99 Acts, ch 124, §26
NEW section

637.504 Transfers from income to reimburse principal.

1. If a trustee makes or expects to make a principal disbursement described in this section, the trustee may transfer an appropriate amount from income to principal in one or more accounting periods to reimburse principal or to provide a reserve for future principal disbursements.

2. Principal disbursements to which subsection 1 applies include all of the following, but only to the extent that the trustee has not been and does not expect to be reimbursed by a third party:

a. An amount chargeable to income but paid from principal because it is unusually large, including extraordinary repairs.

b. A capital improvement to a principal asset, whether in the form of changes to an existing asset or the construction of a new asset, including special assessments.

c. Disbursements made to prepare property for rental, including leasehold improvements and broker's commissions.

d. Periodic payments on an obligation secured by a principal asset to the extent that the amount transferred from income to principal for depreciation is less than the periodic payments.

e. Disbursements described in section 637.502, subsection 1, paragraph "g".

3. If the asset whose ownership gives rise to the disbursements becomes subject to a successive income interest after an income interest ends, a trustee may continue to transfer amounts from income to principal as provided in subsection 1.

99 Acts, ch 124, §27
NEW section

637.505 Income taxes.

1. A tax required to be paid by a trustee based on receipts allocated to income must be paid from income.

2. A tax required to be paid by a trustee based on receipts allocated to principal must be paid from principal, even if the tax is called an income tax by the taxing authority.

3. A tax required to be paid by a trustee on the trust's share of an entity's taxable income must be paid proportionately, according to all of the following principles:

a. From income, to the extent that receipts from the entity are allocated to income.

b. From principal, to the extent that the following principles are observed:

(1) Receipts from the entity are allocated to principal.

(2) The trust's share of the entity's taxable income exceeds the total receipts in paragraph "a" and in subparagraph (1).

4. For purposes of this section, receipts allocated to principal or income shall be reduced by the amount distributed to a beneficiary from principal or income for which the trust receives a deduction in calculating the tax.

99 Acts, ch 124, §28
NEW section

637.506 Adjustments between principal and income because of taxes.

1. A fiduciary may make adjustments between principal and income to offset the shifting of economic interests or tax benefits between income

beneficiaries and remainder beneficiaries which arise from any of the following:

a. Elections and decisions, other than those described in subsection 2, that the fiduciary makes from time to time regarding tax matters.

b. An income tax or any other tax that is imposed upon the fiduciary or a beneficiary as a result of a transaction involving or a distribution from the estate or trust.

c. The ownership by an estate or trust of an interest in an entity whose taxable income, whether or not distributed, is includable in the taxable income of the estate, trust, or a beneficiary.

2. If the amount of an estate tax marital deduction or charitable contributions deduction is reduced because a fiduciary deducts an amount that is paid from principal for income tax purposes instead of deducting it for estate tax purposes, and as a result estate taxes paid from principal are increased and income taxes paid by an estate, trust, or beneficiary are decreased, each estate, trust, or beneficiary that benefits from the decrease in income tax shall reimburse the principal from which the increase in estate tax is paid. The total reimbursement must equal the increase in the estate tax to the extent that the principal used to pay the increase would have qualified for a marital deduction or charitable contributions deduction but for the payment. The proportionate share of the reimbursement for each estate, trust, or beneficiary whose income taxes are reduced must be the same as its proportionate share of the total decrease in income tax. An estate or trust shall reimburse principal from income.

99 Acts, ch 124, §29
NEW section

SUBCHAPTER 6

MISCELLANEOUS PROVISIONS

637.601 Application of chapter to existing trusts and estates — chapter prevails.

This chapter applies to every trust or decedent's estate on and after July 1, 2000, except as otherwise expressly provided in the will, the terms of the trust, or in this chapter. Notwithstanding any Code provision to the contrary, the provisions of this chapter shall prevail over any other applicable Code provision.

99 Acts, ch 124, §30
NEW section

CHAPTER 655

SATISFACTION OF MORTGAGES

655.2 Penalty — attorney fees. Repealed by 99 Acts, ch 54, § 3.

655.3 Penalty for failure to discharge.

If a mortgagee, or a mortgagee's personal representative or assignee, upon full performance of the conditions of the mortgage, fails to discharge such mortgage within thirty days after a request for discharge, the mortgagee is liable to the mortgagor and the mortgagor's heirs or assigns, for all actual

damages caused by such failure, including reasonable attorney fees. A claim for such damages may be asserted in an action for discharge of the mortgage. If the defendant is not a resident of this state, such action may be maintained upon the expiration of thirty days after the conditions of the mortgage have been performed, without such previous request or tender.

99 Acts, ch 54, §2
NEW section

CHAPTER 657

NUISANCES

657.11 Animal feeding operations.

1. The purpose of this section is to protect animal agricultural producers who manage their operations according to state and federal requirements from the costs of defending nuisance suits, which negatively impact upon Iowa's competitive economic position and discourage persons from entering into animal agricultural production. This section is intended to promote the expansion of animal agriculture in this state by protecting persons engaged in the care and feeding of animals. The general assembly has balanced all competing interests and declares its intent to protect and preserve animal agricultural production operations.

2. An animal feeding operation, as defined in section 455B.161, shall not be found to be a public or private nuisance under this chapter or under principles of common law, and the animal feeding operation shall not be found to interfere with another person's comfortable use and enjoyment of the person's life or property under any other cause of action. However, this section shall not apply if the person bringing the action proves that an injury to the person or damage to the person's property is proximately caused by either of the following:

a. The failure to comply with a federal statute or regulation or a state statute or rule which applies to the animal feeding operation.

b. Both of the following:

(1) The animal feeding operation unreasonably and for substantial periods of time interferes with the person's comfortable use and enjoyment of the person's life or property.

(2) The animal feeding operation failed to use existing prudent generally accepted management practices reasonable for the operation.

3. This section does not apply to a person during any period that the person is classified as a chronic violator under this subsection as to any

confinement feeding operation in which the person holds a controlling interest, as defined by rules adopted by the department of natural resources. This section shall apply to the person on and after the date that the person is removed from the classification of chronic violator. For purposes of this subsection, "*confinement feeding operation*" means an animal feeding operation in which animals are confined to areas which are totally roofed, and which are regulated by the department of natural resources or the environmental protection commission.

a. A person shall be classified as a chronic violator if the person has committed three or more violations as described in this subsection prior to, on, or after July 1, 1996. In addition, in relation to each violation, the person must have been subject to either of the following:

(1) The assessment of a civil penalty by the department or the commission in an amount equal to three thousand dollars or more.

(2) A court order or judgment for a legal action brought by the attorney general after referral by the department or commission.

Each violation must have occurred within five years prior to the date of the latest violation, counting any violation committed by a confinement feeding operation in which the person holds a controlling interest. A violation occurs on the date the department issues an administrative order to the person assessing a civil penalty of three thousand dollars or more, or on the date the department notifies a person in writing that the department will recommend that the commission refer, or the commission refers the case to the attorney general for legal action, or the date of entry of the court order or judgment, whichever occurs first. A violation under this subsection shall not be counted if the civil penalty ultimately imposed is less than three thou-

sand dollars, the department or commission does not refer the action to the attorney general, the attorney general does not take legal action, or a court order or judgment is not entered against the person. A person shall be removed from the classification of chronic violator on the date on which the person and all confinement feeding operations in which the person holds a controlling interest have committed less than three violations described in this subsection for the prior five years.

b. For purposes of counting violations, a continuing and uninterrupted violation shall be considered as one violation. Different types of violations shall be counted as separate violations regardless of whether the violations were committed during the same period. The violation must be a violation of a state statute, or a rule adopted by the department, which applies to a confinement feeding operation and any related animal feeding operation structure, including an anaerobic lagoon, earthen manure storage basin, formed manure storage structure, or egg washwater storage structure; or any related pollution control device or practice. The structure, device, or practice must be part of the confinement feeding operation. The violation must be one of the following:

(1) Constructing or operating a related animal feeding operation structure or installing or using a related pollution control device or practice, for which the person must obtain a permit, in violation of statute or rules adopted by the department, including the terms or conditions of the permit.

(2) Intentionally making a false statement or misrepresenting information to the department as part of an application for a construction permit for the related animal feeding operation structure, or the installation of the related pollution control device or practice, for which the person must obtain a construction permit from the department.

(3) Failing to obtain a permit or approval by the department for a permit to construct or operate a

confinement feeding operation or use a related animal feeding operation structure or pollution control device or practice, for which the person must obtain a permit from the department.

(4) Operating a confinement feeding operation, including a related animal feeding operation structure or pollution control device or practice, which causes pollution to the waters of the state, if the pollution was caused intentionally, or caused by a failure to take measures required to abate the pollution which resulted from an act of God.

(5) Failing to submit a manure management plan as required, or operating a confinement feeding operation required to have a manure management plan without having submitted the manure management plan.

4. This section shall apply regardless of the established date of operation or expansion of the animal feeding operation. A defense against a cause of action provided in this section includes, but is not limited to, a defense for actions arising out of the care and feeding of animals; the handling or transportation of animals; the treatment or disposal of manure resulting from animals; the transportation and application of animal manure; and the creation of noise, odor, dust, or fumes arising from an animal feeding operation.

5. If a court determines that a claim is frivolous, a person who brings the claim as part of a losing cause of action against a person who may raise a defense under this section shall be liable to the person against whom the action was brought for all costs and expenses incurred in the defense of the action.

6. This section does not apply to an injury to a person or damages to property caused by the animal feeding operation before May 21, 1998.

99 Acts, ch 114, §58, 59

Section not amended; 1998 legislation relating to applicability date of requirements in this section, corrected; 99 Acts, ch 114, §58, 59

CHAPTER 669

STATE TORT CLAIMS

669.14 Exceptions.

The provisions of this chapter shall not apply with respect to any claim against the state, to:

1. Any claim based upon an act or omission of an employee of the state, exercising due care, in the execution of a statute or regulation, whether or not such statute or regulation be valid, or based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a state agency or an employee of the state, whether or not the discretion be abused.

2. Any claim arising in respect to the assessment or collection of any tax or fee, or the detention of any goods or merchandise by any law enforcement officer.

3. Any claim for damages caused by the imposition or establishment of a quarantine by the state, whether such quarantine relates to persons or property.

4. Any claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresent-

sentation, deceit, or interference with contract rights.

5. Any claim by an employee of the state which is covered by the Iowa workers' compensation law or the Iowa occupational disease law.

6. Any claim by an inmate as defined in section 85.59.

7. A claim based upon damage to or loss or destruction of private property, both real and personal, or personal injury or death, when the damage, loss, destruction, injury or death occurred as an incident to the training, operation, or maintenance of the national guard while not in "active state service" as defined in section 29A.1, subsection 1.

8. Any claim based upon or arising out of a claim of negligent design or specification, negligent adoption of design or specification, or negligent construction or reconstruction of a highway, secondary road, or street as defined in section 321.1, subsection 78, that was constructed or reconstructed in accordance with a generally recognized engineering or safety standard, criteria, or design theory in existence at the time of the construction or reconstruction. A claim under this chapter shall not be allowed for failure to upgrade, improve, or alter any aspect of an existing highway, secondary road, or street, to new, changed, or altered design standards. In respect to highways and roads, seal-coating, asphaltting, patching, resurfacing, ditching, draining, repairing, graveling, rocking, blading, or maintaining an existing highway or road does not constitute reconstruction. This subsection shall not apply to claims based upon gross negligence.

9. Any claim based upon or arising out of a claim of negligent design or specification, negligent adoption of design or specification, or negligent construction or reconstruction of a public improvement as defined in section 384.37, subsection 19, or other public facility that was constructed or reconstructed in accordance with a generally recognized

engineering or safety standard, criteria, or design theory in existence at the time of the construction or reconstruction. A claim under this chapter shall not be allowed for failure to upgrade, improve, or alter any aspect of an existing public improvement or other public facility to new, changed, or altered design standards. This subsection shall not apply to claims based upon gross negligence. This subsection takes effect July 1, 1984, and applies to all cases tried or retried on or after July 1, 1984.

10. Any claim based upon the enforcement of chapter 89B.

11. Any claim for financial loss based upon an act or omission in financial regulation, including but not limited to examinations, inspections, audits, or other financial oversight responsibilities, pursuant to chapters 87, 203, 203A, 203C, 203D, 421B, 486, 487, and 490 through 553, excluding chapters 540A, 542B, 542C, 543B, 543C, 543D, 544A, and 544B.

This subsection applies to all cases filed on or after July 1, 1986, and does not expand any existing cause of action or create any new cause of action against the state.

12. Any claim based upon the actions of a resident advocate committee member in the performance of duty if the action is undertaken and carried out in good faith.

13. A claim relating to a swimming pool or spa as defined in section 135I.1 which has been inspected in accordance with chapter 135I, or a swimming pool or spa inspection program, which has been established or certified by the state in accordance with that chapter, unless the claim is based upon an act or omission of an officer or employee of the state and the act or omission constitutes actual malice or a criminal offense.

14. Any claim arising in respect to technical assistance provided by the department of education pursuant to section 279.14A.

99 Acts, ch 129, §18
Subsection 12 amended

CHAPTER 674

CHANGING NAMES

674.2 Petition to court.

The verified petition shall be addressed to the district court of the county where the applicant resides and shall state and provide for each person seeking a name change:

1. The name at the time the petition is filed of the person whose name is to be changed and the person's county of residence. If the person whose name is to be changed is a minor child, the petition shall state the name of the petitioner and the petitioner's relationship to the minor child.

2. A description including height, weight, color of hair, color of eyes, race, sex, and date and place of birth.

3. Residence at time of petition and any prior residences for the past five years.

4. Reason for change of name, briefly and concisely stated.

5. A legal description of all real property in this state owned by the petitioner.

6. The name the petitioner proposes to take.

7. A certified copy of the birth certificate to be attached to the petition. If a certified copy of the birth certificate is not available, the reason for the unavailability shall be stated and another form of identification, which may include documents pro-

vided by the United States department of immigration and naturalization service, shall be attached in lieu of the certified copy of the birth certificate.

99 Acts, ch 150, §2
Subsection 7 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 simple misdemeanor or 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 simple misdemeanor subject to an enhanced penalty for conviction of a second or subsequent offense, a serious misdemeanor, an aggravated misdemeanor, or a 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. The court shall also order that a juvenile adjudicated delinquent for an offense which would be an offense other than a simple misdemeanor if committed by an adult, be fingerprinted and the prints submitted to the department of public safety if the juvenile has not previously been fingerprinted. The taking of fingerprints for a serious misdemeanor offense under chapter 321 or 321A is not required under this section.

99 Acts, ch 37, §2
See also §232.148
Section amended

CHAPTER 691

STATE CRIMINALISTICS LABORATORY AND MEDICAL EXAMINER

691.5 State medical examiner.

The office and position of state medical examiner is established for administrative purposes within the Iowa department of public health. Other state agencies shall cooperate with the state medical examiner in the use of state-owned facilities when appropriate for the performance of nonadministrative duties of the state medical examiner. The state medical examiner shall be a physician and surgeon or osteopathic physician and surgeon, be licensed to practice medicine in the state of Iowa, and be board certified or eligible to be board certified in anatomic and forensic pathology by the American board of pathology. The state medical examiner shall be appointed by and serve at the pleasure of the director of public health upon the advice of and in consultation with the director of public safety and the governor. The state medical examiner, in consultation with the director of public health, shall be responsible for developing and administer-

ing the medical examiner's budget and for employment of medical examiner staff and assistants. The state medical examiner may be a faculty member of the college of medicine or the college of law at the university of Iowa, and any of the examiner's assistants or staff may be members of the faculty or staff of the college of medicine or the college of law at the university of Iowa.

99 Acts, ch 208, §6, 14
Section amended

691.6 Duties of state medical examiner.

The duties of the state medical examiner shall be:

1. To provide assistance, consultation, and training to county medical examiners and law enforcement officials.
2. To keep complete records of all relevant information concerning deaths or crimes requiring investigation by the state medical examiner.

3. To adopt rules pursuant to chapter 17A, and subject to the approval of the director of public health, with the advice and approval of the state medical examiner advisory council.

99 Acts, ch 208, §7, 14
Subsection 3 amended

691.6A Deputy state medical examiner — creation and duties.

The position of deputy state medical examiner is created within the office of the state medical examiner. The deputy state medical examiner shall report to and be responsible to the state medical examiner. The deputy state medical examiner shall meet the qualification criteria established in section 691.5 for the state medical examiner and shall be subject to rules adopted by the state medical examiner as provided in section 691.6, subsection 3. The state medical examiner and the deputy state medical examiner shall function as a team, providing peer review as necessary, fulfilling each other's job responsibilities during times of absence, and working jointly to provide services and education to county medical examiners, law enforcement officials, hospital pathologists, and other individuals and entities. The deputy medical examiner may be, but is not required to be, a full-time salaried faculty member of the department of pathology of the college of medicine at the university of Iowa. If the medical examiner is a full-time salaried faculty member of the department of pathology of the college of medicine at the university of Iowa, the Iowa department of public health and the state board of regents shall enter into a chapter 28E agreement to define the activities and functions of the deputy medical examiner, and to allocate deputy medical examiner costs, consistent with the requirements of this section.

99 Acts, ch 208, §8, 14
NEW section

691.6B Interagency coordinating council.

An interagency coordinating council is created to advise the state medical examiner concerning the assurance of effective coordination of the functions and operations of the office of the state medical examiner with the needs and interests of the departments of public safety and public health. Members

of the interagency coordinating council shall include the state medical examiner, or when the state medical examiner is not available, the deputy state medical examiner; the commissioner of public safety or the commissioner's designee; the director of public health or the director's designee; and the governor or the governor's designee. The interagency coordinating council shall meet on a regular basis.

99 Acts, ch 208, §9, 14
NEW section

691.6C State medical examiner advisory council.

A state medical examiner advisory council is established to advise and consult with the state medical examiner on a range of issues affecting the organization and functions of the office of the state medical examiner and the effectiveness of the medical examiner system in the state. Membership of the state medical examiner advisory council shall be determined by the state medical examiner, in consultation with the director of public health, and shall include, but not necessarily be limited to, representatives from the office of the attorney general, the Iowa county attorneys association, the Iowa medical society, the Iowa association of pathologists, the Iowa association of county medical examiners, the departments of public safety and public health, the statewide emergency medical system, and the Iowa funeral directors association. The advisory council shall meet on a quarterly or more frequent basis, and shall be organized and function as established by the state medical examiner by rule.

99 Acts, ch 208, §10, 14
NEW section

691.7 Commissioner to accept federal or private grants.

The commissioner of public safety may accept federal or private funds or grants to aid in the establishment or operation of the state criminalistics laboratory, and the director of public health or the state board of regents may accept federal or private funds or grants to aid in the establishment or operation of the position of state medical examiner.

99 Acts, ch 208, §11, 14
Section amended

CHAPTER 692

CRIMINAL HISTORY AND INTELLIGENCE DATA

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 or delinquent act has been committed in its jurisdiction, the law enforcement agency shall report information concerning the

public offense or delinquent act to the department on a form to be furnished by the department not more than thirty-five days from the time the public offense or delinquent act first comes to the attention of the law enforcement agency. The reports shall be used to generate crime statistics. The de-

partment 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 or takes a juvenile into custody which is reported to the department, the law enforcement agency making the arrest or taking the juvenile into custody and any other law enforcement agency which obtains custody of the arrested person or juvenile taken into custody shall furnish a disposition report to the department if the arrested person or juvenile taken into custody is transferred to the custody of another law enforcement agency or is released without having a complaint or information or petition under section 232.35 filed with any court.

3. The law enforcement agency making an arrest and securing fingerprints pursuant to section 690.2 or taking a juvenile into custody and securing fingerprints pursuant to section 232.148 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 or taking into custody occurred or to the juvenile court officer who received

the referral.

4. The county attorney of each county or juvenile court officer who received the referral 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, or a petition is filed under section 232.35, the final disposition form shall be forwarded to either the clerk of the district court or juvenile court of that county.

5. If a criminal complaint or information or petition under section 232.35 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.

8. The fact that a person was convicted for a sexually predatory offense under chapter 901A shall be reported with other conviction data regarding that person.

99 Acts, ch 37, §3

**"Arrest or taking into custody" probably intended; corrective legislation is pending

Subsections 3 and 4 amended

CHAPTER 692A

SEX OFFENDER REGISTRY

692A.1 Definitions.

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

1. "*Aggravated offense*" means a conviction for any of the following offenses:

a. Sexual abuse in the first degree in violation of section 709.2.

b. Sexual abuse in the second degree in violation of section 709.3.

c. Sexual abuse in the third degree in violation of section 709.4, subsection 1.

d. Lascivious acts with a child in violation of section 709.8, subsection 1.

e. Assault with intent to commit sexual abuse in violation of section 709.11.

f. Burglary in the first degree in violation of section 713.3, subsection 1, paragraph "d".

g. Kidnapping, if sexual abuse as defined in section 709.1 is committed during the offense.

h. Murder, if sexual abuse as defined in section 709.1 is committed during the offense.

2. "*Convicted*" or "*conviction*" means a person who is found guilty of, pleads guilty to, or is sentenced or adjudicated delinquent for an act which is an indictable offense in this state or in another jurisdiction, including, but not limited to, a juvenile

who has been adjudicated delinquent, but whose juvenile court records have been sealed under section 232.150, and a person who has received a deferred sentence or a deferred judgment or has been acquitted by reason of insanity. "*Convicted*" or "*conviction*" does not mean a plea, sentence, adjudication, deferral of sentence or judgment which has been reversed or otherwise set aside.

3. "*Criminal or juvenile justice agency*" means an agency or department of any level of government or an entity wholly owned, financed, or controlled by one or more such agencies or departments which performs as its principal function the apprehension, prosecution, adjudication, incarceration, or rehabilitation of criminal or juvenile offenders.

4. "*Criminal offense against a minor*" means any of the following criminal offenses or conduct:

a. Kidnapping of a minor, except for the kidnapping of a minor in the third degree committed by a parent.

b. False imprisonment of a minor, except if committed by a parent.

c. Any indictable offense involving sexual conduct directed toward a minor.

d. Solicitation of a minor to engage in an illegal sex act.

e. Use of a minor in a sexual performance.

f. Solicitation of a minor to practice prostitution.

g. Any indictable offense against a minor involving sexual contact with the minor.

h. An attempt to commit an offense enumerated in this subsection.

i. Incest committed against a minor.

j. Dissemination and exhibition of obscene material to minors in violation of section 728.2.

k. Admitting minors to premises where obscene material is exhibited in violation of section 728.3.

l. Stalking in violation of section 708.11, subsection 3, paragraph "b", subparagraph (3), if the fact-finder determines by clear and convincing evidence that the offense was sexually motivated.

m. Sexual exploitation of a minor in violation of section 728.12, subsection 2 or 3.

n. An indictable offense committed in another jurisdiction which would constitute an indictable offense under paragraphs "a" through "m".

5. "Department" means the department of public safety.

6. "Other relevant offense" means any of the following offenses:

a. Telephone dissemination of obscene materials in violation of section 728.15.

b. Rental or sale of hard-core pornography in violation of section 728.4.

c. Indecent exposure in violation of section 709.9.

d. A criminal offense committed in another jurisdiction which would constitute an indictable offense under paragraphs "a" through "c" if committed in this state.

7. "Residence" means the place where a person sleeps, which may include more than one location, and may be mobile or transitory.

8. "Sexually violent offense" means any of the following indictable offenses:

a. Sexual abuse as defined under section 709.1.

b. Assault with intent to commit sexual abuse in violation of section 709.11.

c. Sexual misconduct with offenders in violation of section 709.16.

d. Any of the following offenses, if the offense involves sexual abuse or attempted sexual abuse: murder, attempted murder, kidnapping, burglary, or manslaughter.

e. A criminal offense committed in another jurisdiction which would constitute an indictable offense under paragraphs "a" through "d" if committed in this state.

9. "Sexual exploitation" means sexual exploitation by a counselor or therapist under section 709.15.

10. "Sexually violent predator" means a person who has been convicted of an offense under the

laws of this state or of another state which would qualify the person as a sexually violent predator under the federal Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14071(a)(3)(B), (C), (D), and (E).

99 Acts, ch 23, §1-3, 5; 99 Acts, ch 112, §2, 3
 NEW subsection 1 and former subsections 1-9 renumbered as 2-10
 Subsection 4, NEW paragraphs a and b and former paragraphs a-1 relettered as c-n
 Subsection 4, paragraph n amended
 Subsection 8, paragraph d amended
 Subsection 10 amended

692A.2 Persons required to register.

1. A person who has been convicted of a criminal offense against a minor, an aggravated offense, sexual exploitation, an other relevant offense, or a sexually violent offense in this state or in another state, or in a federal, military, tribal, or foreign court, or a person required to register in another state under the state's sex offender registry, shall register as provided in this chapter. A person required to register under this chapter shall, upon a first conviction, register for a period of ten years commencing as follows:

a. From the date of placement on probation.

b. From the date of release on parole or work release.

c. From the date of release as a juvenile from foster care or residential treatment.

d. From the date of any other release from custody.

2. If a person is placed on probation, parole, or work release and the probation, parole, or work release is revoked, the ten years shall commence anew upon release from custody. If the person who is required to register under this chapter is incarcerated for a crime which does not require registration under this chapter, the period of registration is tolled until the person is released from incarceration for that crime.

3. A person who is required to register under this chapter shall, upon a second or subsequent conviction that requires a second registration, or upon conviction of an aggravated offense, or who has previously been convicted of one or more offenses that would have required registration under this chapter, register for the rest of the person's life.

4. A person is not required to register while incarcerated, in foster care, or in a residential treatment program. A person who is convicted, as defined in section 692A.1, of a criminal offense against a minor, sexual exploitation, a sexually violent offense, or an other relevant offense as a result of adjudication of delinquency in juvenile court shall be required to register as required in this chapter unless the juvenile court finds that the person should not be required to register under this chapter. If a juvenile is required to register and the court later modifies the order regarding the requirement to register, the court shall immediately notify the department. Convictions of more than one offense which require registration under this

chapter but which are prosecuted within a single indictment shall be considered as a single offense for purposes of registration.

5. A person who has been convicted of an offense under the laws of this state or of another state which would qualify the person as a sexually violent predator shall register as provided in this chapter for life.

99 Acts, ch 96, §50; 99 Acts, ch 112, §4-6
Subsection 1, unnumbered paragraph 1 amended
Subsections 3-5 amended

692A.3 Registration process.

1. A person required to register under this chapter shall register with the sheriff of the county of the person's residence within ten days of establishment of residence in this state or within ten days of any conviction for which the person is not incarcerated, a release from custody, or placement on probation, parole, or work release. A sheriff shall accept the registration of a nonresident of the county if the person required to register is a full-time or part-time student or is employed on a full-time or part-time basis in the county.

2. A person required to register under this chapter shall, within ten days of changing residence within a county in this state or within ten days of a change in the person's name as a result of marriage, dissolution of marriage, or a legal name change, notify the sheriff of the county in which the person is registered of the change of address, name, and any changes in the person's telephone number in writing on a form provided by the sheriff. The sheriff shall send a copy of the change of information to the department within three working days of receipt of notice of the change. The sex offender registry shall maintain and make available information from the registry cross-referenced by name at the time of conviction and by name subsequent to any change.

3. A person required to register under this chapter shall register with the sheriff of a county in which residence has been newly established and notify the sheriff of the county in which the person was registered, within ten days of changing residence to a location outside the county in which the person was registered. Registration shall be in writing on a form provided by the sheriff and shall include the person's change of address and any changes to the person's telephone number or name. The sheriff shall send a copy of the change of information to the department within three working days of receipt of notice of the change.

4. A person required to register under this chapter shall notify the sheriff of the county in which the person is registered, within ten days of changing residence to a location outside this state, of the new residence address and any changes in telephone number or name. The sheriff shall send a copy of the change to the department within three working days of receipt of notice of the change. The person must register with the registering agency of

the other state within ten days of changing residence, if persons are required to register under the laws of the other state. The department shall notify the registering agency in the other state of the registrant's new address, telephone number, or name.

5. The collection of information by a court or releasing agency under section 692A.5 shall serve as the person's initial registration for purposes of this section. The court or releasing agency shall forward a copy of the registration to the department within three working days of completion of registration.

99 Acts, ch 112, §7, 8
Subsections 1 and 4 amended

692A.5 Duty to facilitate registration.

1. When a person who is required to register under this chapter is released from confinement from a jail, prison, juvenile facility, or other correctional institution or facility, or when such a person is convicted but not incarcerated, the sheriff, warden, or superintendent or, in the case of release from foster care or residential treatment or conviction without incarceration, the court shall do the following prior to release or sentencing of the convicted person:

a. Obtain fingerprints, the social security number, and a photograph of the person if fingerprints and a photograph and the social security number have not already been obtained in connection with the offense that triggers registration. A current photograph shall also be required. Additional information for a person required to register as a sexually violent predator shall include, but not be limited to, other identifying factors, anticipated future places of residence, offense history, and documentation of any treatment received by the person for a mental abnormality or personality disorder.

b. Inform the person of the duty to register.

c. Inform the person that, within ten days of changing residence, registration with the sheriff in the county in which residence is established is required, if the residence is within the state.

d. Inform the person that if the person moves the person's residence to another state, the person must give the person's new address to the sheriff's department in the county of the person's old residence within ten days of changing addresses, and that, if the other state has a registration requirement, the person is also required to register in the new state of residence, not later than ten days after establishing residence in the other state and to verify the address at least annually.

e. Require the person to read and sign a form stating that the duty of the person to register under this chapter has been explained. If the person cannot read, is unable to write, or refuses to cooperate, the duty and the form shall be explained orally and a written record maintained by the person explaining the duty and the form.

f. Inform the person that if the person is a non-resident of a state where the person is a full-time or part-time student or is employed on a full-time or part-time basis, the person must register with the sheriff of the county where the person is employed or attending school. Full-time or part-time means a period of time exceeding fourteen days or an aggregate period of time exceeding thirty days during any calendar year pursuant to 42 U.S.C. § 14071(a)(3)(F).

2. When a person who is required to register under this chapter is released from confinement from a jail, prison, juvenile facility, or other correctional institution or facility, or when such a person is convicted but not incarcerated, the sheriff, warden, or superintendent or, in the case of release from foster care or residential treatment or conviction without incarceration, the court shall verify that the person has completed initial registration forms, and accept the forms on behalf of the sheriff of the county of registration. The sheriff, warden, superintendent, or the court shall send the initial registration information to the department within three working days of completion of the registration. Probation, parole, work release, or any other form of release after conviction shall not be granted unless the person has registered as required under this chapter.

If the offender refuses to register, the sheriff, warden, or superintendent shall immediately notify a prosecuting attorney in the county in which the offender was convicted or, if the offender no longer resides in that county, in the county in which the offender resides of the refusal to register. The prosecuting attorney shall bring a contempt of court action against the offender in the county in which the offender was convicted or, if the offender no longer resides in that county, in the county in which the offender resides. An offender who refuses to register shall be held in contempt and may be incarcerated following the entry of judgment by the court on the contempt action until the offender complies with the registration requirements.

3. The sheriff, warden, or superintendent or, in the case the person is placed on probation, the court shall forward one copy of the registration information to the department and to the sheriff of the county in which the person is to reside within three days after completion of the registration.

4. The court may order an appropriate law enforcement agency or the county attorney to assist the court in performing the requirements of subsection 1.

99 Acts, ch 112, §9
Subsection 1, NEW paragraph f

692A.10 Department duties — registry.

The department shall perform all of the following duties:

1. Develop and disseminate standard forms for use in registering of, verifying addresses of, and verifying understanding of registration require-

ments by persons required to register under this chapter. Forms used to verify addresses of persons required to register under this chapter shall contain a warning against forwarding of the forms and of the requirement to return the forms if the person to whom the form is directed no longer resides at the address listed on the form or the mailing.

2. Maintain a central registry of information collected from persons required to register under this chapter, which shall be known as the sex offender registry.

3. In consultation with the attorney general, adopt rules under chapter 17A which list specific offenses under present and former law which constitute criminal offenses against a minor under this chapter.

4. Adopt rules under chapter 17A, as necessary, to ensure compliance with registration and verification requirements of this chapter, to provide guidelines for persons required to assist in obtaining registry information, and to provide a procedure for the dissemination of information contained in the registry. The procedure for the dissemination of information shall include, but not be limited to, practical guidelines for use by criminal or juvenile justice agencies in determining when public release of information contained in the registry is appropriate and a requirement that if a member of the general public requests information regarding a specific individual in the manner provided in section 692A.13 the information shall be released. The department, in developing the procedure, shall consult with associations which represent the interests of law enforcement officers. Rules adopted shall also include a procedure for removal of information from the registry upon the reversal or setting aside of a conviction of a person who is registered under this chapter.

5. Submit sex offender registry data to the federal bureau of investigation for entry of the data into the national sex offender registry.

99 Acts, ch 112, §10, 11
Subsection 4 amended
NEW subsection 5

692A.13 Availability of records.

Information contained in the sex offender registry is a confidential record under section 22.7, subsection 9, and shall only be disseminated or redisseminated as provided in section 692A.13A or as follows:

1. The department, sheriff, or a police department may disclose information to criminal or juvenile justice agencies for law enforcement or prosecution purposes.

2. A department listed under section 692A.13A or a juvenile court officer conducting a risk assessment may disclose information to government agencies which are conducting confidential background investigations.

3. The department or a criminal or juvenile justice agency may release relevant information from

the registry except as otherwise provided in section 692A.13A, subsection 3, to members of the general public concerning a specific person who is required to register under this chapter as follows:

a. Any person may contact a sheriff's office or a police department in writing to request information regarding any person required to register. A request for information shall include the name and one or more of the following identifiers pertaining to the person about whom information is sought:

- (1) The person's date of birth.
- (2) The person's social security number.
- (3) The person's address.

b. A county sheriff or a police department shall also provide to any person upon request, access to the list of all registrants in that county who have been classified as "at-risk" in this state, however, records of persons protected under 18 U.S.C. § 3521 shall not be disclosed.

c. Upon the appropriation of sufficient funds, the department shall provide electronic access to relevant information from the registry for the following:

(1) Persons who commit a criminal offense against a minor, an aggravated offense, sexual exploitation, a sexually violent offense, or an other relevant offense on or after the effective date of this Act and who have been assessed to be a "moderate-risk" or "high-risk".

(2) Persons who committed an offense prior to July 1, 1999, and who have been assessed to be a "moderate-risk" or "high-risk" and whose opportunity to request a hearing regarding the assessment of risk has lapsed.

4. The department may disseminate departmental analyses of information contained in the sex offender registry to persons conducting bona fide research, if the data does not contain individually identified information, as defined under section 692.1.

5. Criminal history data contained in the registry may be released as provided in chapter 692 or used by criminal or juvenile justice agencies as an index for purposes of locating a relevant conviction record.

6. A criminal or juvenile justice agency shall not initiate affirmative public notification regarding an individual who has been convicted of kidnapping or false imprisonment, and the crime did not involve attempted sexual abuse or sexual abuse, and the person has not committed another offense that would require the person to register.

7. Notwithstanding sections 232.147 through 232.151, records concerning convictions for criminal offenses against a minor, sexual exploitation, other relevant offenses, or sexually violent offenses which are committed by a minor may be released in the same manner as records of convictions of adults.

8. The department shall provide information for purposes of the single contact repository estab-

lished pursuant to section 135C.33, in accordance with rules adopted by the department.

99 Acts, ch 23, § 4, 5; 99 Acts, ch 112, § 12-18; 99 Acts, ch 192, § 32
See Code editor's note to §10A.202
Unnumbered paragraph 1 and subsections 1 and 2 amended
Subsection 3, unnumbered paragraph 1 and paragraph b amended
Subsection 3, paragraph c stricken
Subsection 3, paragraph d amended and redesignated as c
Former subsections 6 and 7 stricken
NEW subsection 6
Former subsections 8 and 9 renumbered as 7 and 8

692A.13A Risk assessment and public notification.

1. The department of corrections, the department of human services, and the department of public safety shall, in consultation with one another, develop methods and procedures for the assessment of the risk that persons required to register under this chapter pose of reoffending. The department of corrections, in consultation with the department of human services, the department of public safety, and the attorney general, shall adopt rules relating to assessment procedures. The assessment procedures shall include procedures for the sharing of information between the department of corrections, department of human services, the juvenile court, and the division of criminal investigation of the department of public safety, as well as the communication of the results of the risk assessment to criminal and juvenile justice agencies. The assignment of responsibility for the assessment of risk shall be as follows:

a. The department of corrections or a judicial district department of correctional services shall perform the assessment of risk for persons who are incarcerated in institutions under the control of the director of the department of corrections, persons who are under the supervision of the department of corrections or a judicial district department of correctional services, and persons who are under the supervision or control of the department of corrections or a judicial district department of correctional services through an interstate compact.

b. The department of human services shall perform the assessment of risk for persons who are confined in institutions under the control of the director of human services, persons who are under the supervision of the department of human services, and persons who are under the supervision or control of the department of human services through an interstate compact.

c. The division of criminal investigation of the department of public safety shall perform the assessment of risk for persons who have moved to Iowa but are not under the supervision of the department of corrections, a judicial district department of correctional services, or the department of human services; federal parolees or probationers; persons who have been released from a county jail but are not under the supervision of the department of corrections, a judicial district department of correctional services, a juvenile court officer of

the judicial branch, or the department of human services; and persons who are convicted and released by the courts and are not incarcerated or placed under supervision pursuant to the court's sentencing order. Assessments of persons who have moved to Iowa and persons on federal parole or probation shall be performed on an expedited basis if the person was classified as a person with a high degree of likelihood of reoffending by the other jurisdiction or the federal government.

d. A juvenile court officer shall perform the assessment of risk for a juvenile who is adjudicated delinquent for a criminal offense listed in section 692A.1 and who is under the juvenile court officer's supervision.

2. Each department under subsection 1 or each juvenile court officer conducting the assessment of risk shall notify the offender as to the determination of the assessment conducted by that department or officer. An appeal of an assessment of risk determination performed by a department shall be made in accordance with chapter 17A. An appeal of an assessment of risk determination performed by a juvenile court officer shall be made in accordance with rules adopted by the department of public safety in consultation with the judicial branch.

3. The department of public safety shall be responsible for disclosing the assessment of risk information to a criminal or juvenile justice agency for law enforcement, prosecution, or for public notification purposes. A department, or a criminal or juvenile justice agency, may release the offender's name, address, a photograph, locations frequented by the offender, and relevant criminal history information from the registry and other relevant information. The degree of public notification utilized by a criminal or juvenile justice agency shall be determined as follows:

a. For offenders classified as "low-risk", registry information may be distributed to a criminal or juvenile justice agency or to members of the public upon requests made through a criminal or juvenile justice agency or by electronic access as provided in section 692A.13, subsection 3.

b. For offenders classified as "at-risk", including "moderate-risk" or "high-risk", registry information may be provided to any criminal or juvenile justice agency and to the public which includes public and private agencies, organizations, public places, public and private schools, child care facilities, religious and youth organizations, neighbors, and employers. However, if an offender is classified as "high-risk", information may also be provided to neighborhood associations or at community meetings. Registry information may be distributed to the public by printed materials, visual or audio press releases, and by a criminal or juvenile justice agency's web page. The scope of notification may include where the registrant resides, works, attends school, or frequents.

99 Acts, ch 112, §19
NEW section

692A.16 Applicability of chapter.

1. The registration requirements of this chapter shall apply to persons convicted of a criminal offense against a minor, sexual exploitation, an other relevant offense, or a sexually violent offense prior to July 1, 1995, who are released on or after July 1, 1995, who are participating in a work release or institutional work release program on or after July 1, 1995, or who are under parole or probation supervision by a judicial district department of correctional services on or after July 1, 1995.

2. Persons required to register under subsection 1 shall register for a period of ten years commencing with the later of either July 1, 1995, or the date of the person's release from confinement, release on work release or institutional work release, or release on parole or probation. For persons released from confinement, registration shall be initiated by the warden, sheriff, or superintendent in charge of the place of confinement in the same manner as provided in section 692A.5. For persons who are under parole or probation supervision, the person's parole or probation officer shall inform the person of the person's duty to register and shall obtain the registration information from the person as required under section 692A.5.

99 Acts, ch 96, §51
Subsection 1 amended

CHAPTER 702

DEFINITIONS

702.11 Forcible felony.

1. A "forcible felony" is any felonious child endangerment, assault, murder, sexual abuse, kidnapping, robbery, arson in the first degree, or burglary in the first degree.

2. Notwithstanding subsection 1, the following offenses are not forcible felonies:

a. Willful injury in violation of section 708.4, subsection 2.

b. Sexual abuse in the third degree committed between spouses.

c. Sexual abuse in violation of section 709.4, subsection 2, paragraph "c", subparagraph (4).

d. Sexual exploitation by a counselor or therapist in violation of section 709.15.

99 Acts, ch 65, §2
Section amended

702.18 Serious injury.

1. "Serious injury" means any of the following:
 - a. Disabling mental illness.
 - b. Bodily injury which does any of the following:
 - (1) Creates a substantial risk of death.
 - (2) Causes serious permanent disfigurement.

(3) Causes protracted loss or impairment of the function of any bodily member or organ.

c. Any injury to a child that requires surgical repair and necessitates the administration of general anesthesia.

2. "Serious injury" includes but is not limited to skull fractures, rib fractures, and metaphyseal fractures of the long bones of children under the age of four years.

99 Acts, ch 11, §1
Section amended

CHAPTER 707

HOMICIDE AND RELATED CRIMES

707.3 Murder in the second degree.

A person commits murder in the second degree when the person commits murder which is not murder in the first degree.

Murder in the second degree is a class "B" felony. However, notwithstanding section 902.9, subsection 2, the maximum sentence for a person convicted under this section shall be a period of confinement of not more than fifty years.

Definition of forcible felony, §702.11
Eligibility for deferred judgment, deferred sentence, suspended sentence, §907.3
Section not amended; internal reference change applied

CHAPTER 708

ASSAULT

708.2 Penalties for assault.

1. A person who commits an assault, as defined in section 708.1, with the intent to inflict a serious injury upon another, is guilty of an aggravated misdemeanor.

2. A person who commits an assault, as defined in section 708.1, and who causes bodily injury or mental illness, is guilty of a serious misdemeanor.

3. A person who commits an assault, as defined in section 708.1, and uses or displays a dangerous weapon in connection with the assault, is guilty of an aggravated misdemeanor. This subsection does not apply if section 708.6 or 708.8 applies.

4. A person who commits an assault, as defined in section 708.1, and who causes serious injury, is guilty of a class "D" felony.

5. Any other assault, except as otherwise provided, is a simple misdemeanor.

99 Acts, ch 65, §3
NEW subsection 4 and former subsection 4 renumbered as 5

708.2A Domestic abuse assault — mandatory minimums, penalties enhanced — extension of no-contact order.

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 causes bodily injury or 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 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 other-

wise be classified as a simple or serious misdemeanor.

4. On a third or subsequent offense of domestic abuse assault, a person commits a class "D" felony.

5. *a.* 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.

b. 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.

c. An offense shall be considered a prior offense regardless of whether it was committed upon the same victim.

6. *a.* A person convicted of violating subsection 2 or 3 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 person 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 person 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.

b. A person convicted of violating subsection 4 shall be sentenced as provided under section 902.9, subsection 5, and shall be denied parole or work release until the person has served a minimum of one year of the person's sentence. Notwithstanding section 901.5, subsections 1, 3, and 5 and section 907.3, the person cannot receive a suspended or deferred sentence or a deferred judgment; however, the person sentenced shall receive credit for any time the person was confined in a jail or detention facility following arrest.

7. If a person is convicted for, receives a deferred judgment for, or pleads guilty to a violation

of this section, the court shall modify the no-contact order issued upon initial appearance in the manner provided in section 236.14, regardless of whether the person is placed on probation.

8. 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.

9. In addition to the mandatory minimum term of confinement imposed by subsection 6, paragraph "a", the court shall order a person convicted under subsection 2 or 3 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 person 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.

99 Acts, ch 65, §4; 99 Acts, ch 114, §45
See Code editor's note to §10A.202
Subsection 6, paragraph b amended

708.3A Assaults on peace officers, jailers, correctional staff, fire fighters, and health care providers.

1. A person who commits an assault, as defined in section 708.1, against a peace officer, jailer, correctional staff, health care provider, or fire fighter, whether paid or volunteer, with the knowledge that the person against whom the assault is committed is a peace officer, jailer, correctional staff, health care provider, or fire fighter and with the intent to inflict a serious injury upon the peace officer, jailer, correctional staff, health care provider, or fire fighter, is guilty of a class "D" felony.

2. A person who commits an assault, as defined in section 708.1, against a peace officer, jailer, correctional staff, health care provider, or fire fighter, whether paid or volunteer, who knows that the person against whom the assault is committed is a peace officer, jailer, correctional staff, health care provider, or fire fighter and who uses or displays a dangerous weapon in connection with the assault, is guilty of a class "D" felony.

3. A person who commits an assault, as defined in section 708.1, against a peace officer, jailer, correctional staff, health care provider, or fire fighter, whether paid or volunteer, who knows that the person against whom the assault is committed is a peace officer, jailer, correctional staff, health care provider, or fire fighter, and who causes bodily injury or mental illness, is guilty of an aggravated misdemeanor.

4. Any other assault, as defined in section 708.1, committed against a peace officer, jailer, correctional staff, health care provider, or fire fight-

er, whether paid or volunteer, by a person who knows that the person against whom the assault is committed is a peace officer, jailer, correctional staff, health care provider, or fire fighter, is a serious misdemeanor.

5. As used in this section, "health care provider" means an emergency medical care provider as defined in chapter 147A or a person licensed or registered under chapter 148, 148C, 148D, 150, 150A, or 152 who is providing or who is attempting to provide emergency medical services, as defined in section 147A.1, or who is providing or who is attempting to provide health services as defined in section 135.61 in a hospital. A person who commits an assault under this section against a health care provider in a hospital, or at the scene or during out-of-hospital patient transportation in an ambulance, is presumed to know that the person against whom the assault is committed is a health care provider.

6. As used in this section, "correctional staff" means a person who is not a peace officer but who is employed by the department of corrections or a judicial district department of correctional services to work at or in a correctional institution, community-based correctional facility, or an institution under the management of the Iowa department of corrections which is used for the purposes of confinement of persons who have committed public offenses.

7. As used in this section, "jailer" means a person who is employed by a county or other political subdivision of the state to work at a county jail or other facility used for purposes of the confinement

of persons who have committed public offenses, but who is not a peace officer.

99 Acts, ch 64, §1
Section amended

708.4 Willful injury.

Any person who does an act which is not justified and which is intended to cause serious injury to another commits the following:

1. A class "C" felony, if the person causes serious injury to another.

2. A class "D" felony, if the person causes bodily injury to another.

99 Acts, ch 65, §5
Section amended

708.13 Disarming a peace officer of a dangerous weapon.

1. A person who knowingly or intentionally removes or attempts to remove a dangerous weapon, as defined in section 702.7, from the possession of a peace officer, as defined in section 724.2A, when the officer is in the performance of any act which is within the scope of the lawful duty or authority of that officer and the person knew or should have known the individual to be a peace officer, commits the offense of disarming a peace officer.

2. A person who disarms or attempts to disarm a peace officer is guilty of a class "D" felony.

3. A person who discharges the dangerous weapon while disarming or attempting to disarm the peace officer commits a class "C" felony.

99 Acts, ch 44, §1
NEW section

CHAPTER 709

SEXUAL ABUSE

709.1 Sexual abuse defined.

Any sex act between persons is sexual abuse by either of the persons when the act is performed with the other person in any of the following circumstances:

1. The act is done by force or against the will of the other. If the consent or acquiescence of the other is procured by threats of violence toward any person or if the act is done while the other is under the influence of a drug inducing sleep or is otherwise in a state of unconsciousness, the act is done against the will of the other.

2. Such other person is suffering from a mental defect or incapacity which precludes giving consent, or lacks the mental capacity to know the right and wrong of conduct in sexual matters.

3. Such other person is a child.

99 Acts, ch 159, §1
Definition of sex act, §702.17
Section amended

709.1A Incapacitation.

As used in this chapter, "incapacitated" means a person is disabled or deprived of ability, as follows:

1. "Mentally incapacitated" means that a person is temporarily incapable of apprising or controlling the person's own conduct due to the influence of a narcotic, anesthetic, or intoxicating substance.

2. "Physically helpless" means that a person is unable to communicate an unwillingness to act because the person is unconscious, asleep, or is otherwise physically limited.

3. "Physically incapacitated" means that a person has a bodily impairment or handicap that substantially limits the person's ability to resist or flee.

99 Acts, ch 159, §2
NEW section

709.3 Sexual abuse in the second degree.

A person commits sexual abuse in the second degree when the person commits sexual abuse under any of the following circumstances:

1. During the commission of sexual abuse the person displays in a threatening manner a dangerous weapon, or uses or threatens to use force creating a substantial risk of death or serious injury to any person.

2. The other person is under the age of twelve.

3. The person is aided or abetted by one or more persons and the sex act is committed by force or against the will of the other person against whom the sex act is committed.

Sexual abuse in the second degree is a class "B" felony.

99 Acts, ch 159, §3
Definition of forcible felony, §702.11
Section amended

709.4 Sexual abuse in the third degree.

A person commits sexual abuse in the third degree when the person performs a sex act under any of the following circumstances:

1. The act is done by force or against the will of the other person, whether or not the other person is the person's spouse or is cohabiting with the person.

2. The act is between persons who are not at the time cohabiting as husband and wife and if any of the following are true:

a. The other person is suffering from a mental defect or incapacity which precludes giving consent.

b. The other person is twelve or thirteen years of age.

c. The other person is fourteen or fifteen years of age and any of the following are true:

(1) The person is a member of the same household as the other person.

(2) The person is related to the other person by blood or affinity to the fourth degree.

(3) The person is in a position of authority over the other person and uses that authority to coerce the other person to submit.

(4) The person is four or more years older than the other person.

3. The act is performed while the other person is under the influence of a controlled substance, which may include but is not limited to flunitrazepam, and all of the following are true:

a. The controlled substance, which may include but is not limited to flunitrazepam, prevents the other person from consenting to the act.

b. The person performing the act knows or reasonably should have known that the other person was under the influence of the controlled substance, which may include but is not limited to flunitrazepam.

4. The act is performed while the other person is mentally incapacitated, physically incapacitated, or physically helpless.

Sexual abuse in the third degree is a class "C" felony.

99 Acts, ch 159, §4
Definition of forcible felony, see §702.11
Definition of sex act, see §702.17
Section amended

709.5 Resistance to sexual abuse.

Under the provisions of this chapter it shall not be necessary to establish physical resistance by a person in order to establish that an act of sexual abuse was committed by force or against the will of the person. However, the circumstances surrounding the commission of the act may be considered in determining whether or not the act was done by force or against the will of the other.

99 Acts, ch 159, §5
Section amended

CHAPTER 714**THEFT, FRAUD, AND RELATED OFFENSES****714.2 Degrees of theft.**

1. The theft of property exceeding ten thousand dollars in value, or the theft of property from the person of another, or from a building which has been destroyed or left unoccupied because of physical disaster, riot, bombing, or the proximity of battle, or the theft of property which has been removed from a building because of a physical disaster, riot, bombing, or the proximity of battle, is theft in the first degree. Theft in the first degree is a class "C" felony.

2. The theft of property exceeding one thousand dollars but not exceeding ten thousand dollars in value or theft of a motor vehicle as defined in chapter 321 not exceeding ten thousand dollars in

value, is theft in the second degree. Theft in the second degree is a class "D" felony. However, for purposes of this subsection, "motor vehicle" does not include a motorized bicycle as defined in section 321.1, subsection 40, paragraph "b".

3. The theft of property exceeding five hundred dollars but not exceeding one thousand dollars in value, or the theft of any property not exceeding five hundred dollars in value by one who has before been twice convicted of theft, is theft in the third degree. Theft in the third degree is an aggravated misdemeanor.

4. The theft of property exceeding two hundred dollars in value but not exceeding five hundred dollars in value is theft in the fourth degree. Theft in

the fourth degree is a serious misdemeanor.

5. The theft of property not exceeding two hundred dollars in value is theft in the fifth degree. Theft in the fifth degree is a simple misdemeanor.

99 Acts, ch 153, §11
Subsections 4 and 5 amended

714.8 Fraudulent practices defined.

A person who does any of the following acts is guilty of a fraudulent practice:

1. Makes, tenders or keeps for sale any warehouse receipt, bill of lading, or any other instrument purporting to represent any right to goods, with knowledge that the goods represented by such instrument do not exist.

2. Knowingly attaches or alters any label to any goods offered or kept for sale so as to materially misrepresent the quality or quantity of such goods, or the maker or source of such goods.

3. Knowingly executes or tenders a false certification under penalty of perjury, false affidavit, or false certificate, if the certification, affidavit, or certificate is required by law or given in support of a claim for compensation, indemnification, restitution, or other payment.

4. Makes any entry in or alteration of any public records, or any records of any corporation, partnership, or other business enterprise or nonprofit enterprise, knowing the same to be false.

5. Removes, alters or defaces any serial or other identification number, or any owners' identification mark, from any property not the person's own.

6. For the purpose of soliciting assistance, contributions, or other thing of value, falsely represents oneself to be a veteran of the armed forces of the United States, or a member of any fraternal, religious, charitable, or veterans organization, or any pretended organization of a similar nature, or to be acting on behalf of such person or organization.

7. Manufactures, sells, or keeps for sale any token or device suitable for the operation of a coin-operated device or vending machine, with the intent that such token or device may be so used, or with the representation that they can be so used; provided, that the owner or operator of any coin-operated device or vending machine may sell slugs or tokens for use in the person's own devices.

8. Manufactures or possesses any false or counterfeit label, with the intent that it be placed on merchandise to falsely identify its origin or quality, or who sells any such false or counterfeit label with the representation that it may be so used.

9. Alters or renders inoperative or inaccurate any meter or measuring device used in determining the value of or compensation for the purchase, use or enjoyment of property, with the intent to defraud any person.

10. Does any act expressly declared to be a fraudulent practice by any other section of the Code.

11. Removes, defaces, covers, alters, or destroys any component part number as defined in section 321.1, vehicle identification number as defined in section 321.1, or product identification number as defined in section 321.1, for the purpose of concealing or misrepresenting the identity or year of manufacture of the component part or vehicle.

12. Knowingly transfers or assigns a legal or equitable interest in property, as defined in section 702.14, for less than fair consideration, with the intent to obtain public assistance under chapters 16, 35B, 35D, and 347B, or Title VI, subtitles 2 through 6, or accepts a transfer of or an assignment of a legal or equitable interest in property, as defined in section 702.14, for less than fair consideration, with the intent of enabling the party transferring the property to obtain public assistance under chapters 16, 35B, 35D, and 347B, or Title VI, subtitles 2 through 6. A transfer or assignment of property for less than fair consideration within one year prior to an application for public assistance benefits shall be evidence of intent to transfer or assign the property in order to obtain public assistance for which a person is not eligible by reason of the amount of the person's assets. If a person is found guilty of a fraudulent practice in the transfer or assignment of property under this subsection the maximum sentence shall be the penalty established for a serious misdemeanor and sections 714.9, 714.10 and 714.11 shall not apply.

13. *Fraudulent practices in connection with targeted small business programs.*

a. Knowingly transfers or assigns assets, ownership, or equitable interest in property of a business to a woman or minority person primarily for the purpose of obtaining benefits under targeted small business programs if the transferor would otherwise not be qualified for such programs.

b. Solicits and is awarded a state contract on behalf of a targeted small business for the purpose of transferring the contract to another for a percentage if the person transferring or intending to transfer the work had no intention of performing the work.

c. Knowingly falsifying information on an application for the purpose of obtaining benefits under targeted small business programs.

A violation under this subsection is grounds for decertification of the targeted small business connected with the violation. Decertification shall be in addition to any penalty otherwise authorized by this section.

14. Makes payment pursuant to an agreement with a dealer or market agency for livestock held by the dealer or market agency by use of a financial instrument which is a check, share draft, draft, or written order on any financial institution, as defined in section 203C.1, if after seven days from the date that possession of the livestock is transferred

pursuant to the purchase, the financial institution refuses payment on the instrument because of insufficient funds in the maker's account.

This subsection is not applicable if the maker pays the holder of the instrument the amount due on the instrument within one business day from a receipt of notice by certified mail from the holder that payment has been refused by the financial institution.

As used in this subsection, "dealer" means a person engaged in the business of buying or selling livestock, either on the person's own account, or as an employee or agent of a vendor or purchaser. "Market agency" means a person engaged in the business of buying or selling livestock on a commission basis.

15. Obtains or attempts to obtain the transfer of possession, control, or ownership, of the property of another by deception through communications conducted primarily by telephone and involving direct or implied claims that the other person contacted has won or is about to win a prize, or involving direct or implied claims that the other person contacted may be able to recover any losses suffered by such other person in connection with a prize promotion.

16. Knowingly provides false information to the treasurer of state when claiming, pursuant to section 556.19, an interest in unclaimed property held by the state, or knowingly provides false information to a person or fails to disclose the nature, value, and location of unclaimed property prior to entering into a contract to receive compensation to recover or assist in the recovery of property reported as unclaimed pursuant to section 556.11.

17. A packer who includes a confidentiality provision in a contract with a livestock seller in violation of section 202A.4.

18. Manufactures, creates, reproduces, alters, possesses, uses, transfers, or otherwise knowingly contributes to the production or use of a fraudulent retail sales receipt or universal price code label with intent to defraud another person engaged in the business of retailing.

For purposes of this subsection:

a. "Retail sales receipt" means a document intended to evidence payment for goods or services.

b. "Universal price code label" means the unique ten-digit bar code placed on the packaging of an item that may be used for purposes including but not limited to tracking inventory, maintaining price information in a computerized database, and serving as proof of purchase of a particular item.

19. A contractor who enforces a provision in a production contract that provides that information contained in the production contract is confidential as provided in section 202.3.

99 Acts, ch 88, §9, 13; 99 Acts, ch 107, §1; 99 Acts, ch 108, §11; 99 Acts, ch 169, §21, 22, 24
Subsection 11 amended
NEW subsections 17-19

714.12 Fraudulent practice in the fourth degree.

Fraudulent practice in the fourth degree is a fraudulent practice where the amount of money or value of property or services involved exceeds two hundred dollars but does not exceed five hundred dollars.

Fraudulent practice in the fourth degree is a serious misdemeanor.

99 Acts, ch 153, §12
Unnumbered paragraph 1 amended

714.13 Fraudulent practice in the fifth degree.

Fraudulent practice in the fifth degree is a fraudulent practice where the amount of money or value of property or services involved does not exceed two hundred dollars.

Fraudulent practice in the fifth degree is a simple misdemeanor.

99 Acts, ch 153, §13
Unnumbered paragraph 1 amended

714.16B Identity theft — civil cause of action.

In addition to any other remedies provided by law, a person as defined under section 714.16, subsection 1, suffering a pecuniary loss as a result of an identity theft by another person under section 715A.8, may bring an action against such other person to recover the following:

1. One thousand dollars or three times the actual damages, whichever is greater.
2. Reasonable attorney fees and court costs.

99 Acts, ch 47, §1
NEW section

CHAPTER 714D

TELECOMMUNICATIONS SERVICE PROVIDER FRAUD

714D.1 Legislative intent.

The general assembly finds that customers of telephone services have been subjected to fraud in the sale and advertisement of telephone long distance and local service, as well as other services related to residential and business telephone service.

The general assembly further finds that companies acting in a lawful manner have lost customers to companies that obtain customers through fraud and deception.

It is the intent of the general assembly to protect telephone service subscribers from fraud and to

provide statutory remedies for the victims of fraud in the sale of telecommunications service. It is the intent of the general assembly to provide the attorney general with additional remedies to address the issue of fraud in the sale of telecommunications service. It is further the intent of the general assembly that this chapter does not limit the rights or remedies that are otherwise available to a consumer or the attorney general under any other law.

99 Acts, ch 16, §2
NEW section

714D.2 Definitions.

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

1. *"Advertisement"* means the same as defined in section 714.16, subsection 1.
2. *"Consumer"* means a person who is not a telecommunications service provider and who uses telecommunications services.
3. *"Deception"* means the same as defined in section 714.16, subsection 1.
4. *"Person"* means the same as defined in section 714.16, subsection 1.
5. *"Sweepstakes box"* means the box or receptacle into which a person may place an entry form or document used to enter a sweepstakes, contest, or drawing of any description, and promotional materials attached to such entry form or document.
6. *"Telecommunications Act"* means 47 U.S.C. § 258, a portion of the federal Telecommunications Act of 1996, relating to changes in telephone service, and including regulations adopted pursuant to that section.
7. *"Telecommunications service"* means local exchange or long distance telephone service, and any additional service or merchandise for which any charge or assessment appears on a billing statement directed to a person by a provider of local exchange or long distance telephone service, but does not include commercial mobile radio service or charges or assessments imposed on consumers of local exchange or long distance telephone service or on such additional service or merchandise by governmental entities.
8. *"Telecommunications service provider"* means a person who advertises, sells, leases, or provides telecommunications services to another person.
9. *"Unfair practice"* means the same as defined in section 714.16, subsection 1, and also means any failure of a person to comply with the Telecommunications Act or with any statute or rule enforced by the utilities board within the utilities division of the department of commerce relating to a telecommunications service selection or change.

99 Acts, ch 16, §3
NEW section

714D.3 Unfair and deceptive practices.

The act, use, or employment by a person of deception or an unfair practice in connection with the lease, sale, or advertisement of a telecommunica-

tions service or the solicitation of authority to provide or execute a change of a telecommunications service is an unlawful practice.

99 Acts, ch 16, §4
NEW section

714D.4 Prohibition of sweepstakes boxes.

The use of a sweepstakes box by a person to solicit authority to provide or execute a change of a consumer's telecommunications service is an unlawful practice.

99 Acts, ch 16, §5
NEW section

714D.5 Conditions on use of prize promotions to solicit authority to provide or change telecommunications services.

1. It is an unlawful practice for a person to use a form or document which is to be used or intended to be used by another person to enter a sweepstakes, contest, or drawing of any description as written authority to provide or execute a change of a consumer's telecommunications service.

2. It is an unlawful practice for a person to solicit the lease or sale of or to solicit the authority to provide or execute a change of a telecommunications service to another person through or in conjunction with a sweepstakes, contest, or drawing without clearly, conspicuously, and fully disclosing in all direct mail solicitations to the other person the fact that the sweepstakes, contest, or drawing is intended to solicit authority to provide or execute a change of a telecommunications service. The disclosure required shall include, at a minimum, all of the following:

- a. A statement that an acceptance or change of telecommunications service is not required to enter the sweepstakes, contest, or drawing.
- b. An alternative means by which a person may enter the sweepstakes, contest, or drawing without accepting or authorizing a change in a telecommunications service.
- c. The name and telephone number of the entity soliciting the person to accept or to authorize a change of telecommunications service through the use of or in conjunction with the sweepstakes, contest, or drawing.
- d. A brief description of the nature of the telecommunications service for which authorization is sought through the use of or in conjunction with the sweepstakes, contest, or drawing.

99 Acts, ch 16, §6
NEW section

714D.6 Private action.

1. In addition to any other remedy, a consumer may bring an action against a person who commits an unlawful practice under this chapter to recover from the person all of the following:

- a. The amount of any moneys or property acquired by the person from the consumer by means of an unlawful practice under this section, or two hundred dollars, whichever is greater.

b. If a court finds that the consumer prevails in the action and that the unlawful practice was an intentional violation of this chapter, five hundred dollars or twice the amount of the consumer's actual damages, whichever is greater.

c. Costs and reasonable attorney fees.

2. A cause of action under this section shall not apply unless, prior to filing the action, the consumer has submitted a complaint to the utilities board within the utilities division of the department of commerce, the utilities board has failed to resolve the complaint to the consumer's satisfaction within one hundred twenty days of the date the complaint was submitted, and the consumer dismisses the complaint before the utilities board. The requirement that a consumer complaint be submitted to the utilities board and resolved by the utilities board to the consumer's satisfaction within one hundred twenty days of filing before the consumer may file an action pursuant to this section shall not apply to an action by the attorney general to recover moneys for the consumer pursuant to section 714D.7 or any other law. A finding by the utilities board that a respondent has complied with rules governing carrier selection procedures adopted by the utilities board shall be an affirmative defense to any claim brought under this section or section 476.103 or 714D.7 that an unauthorized change in service has occurred.

99 Acts, ch 16, §7
NEW section

714D.7 Civil enforcement.

1. A violation of this chapter or a rule adopted pursuant to this chapter is a violation of section 714.16, subsection 2, paragraph "a". The remedies and penalties provided by section 714.16, including but not limited to injunctive relief and civil penalties, apply to violations of this chapter.

2. In seeking reimbursement pursuant to section 714.16, subsection 7, from a person who has committed an unlawful practice under this chapter, the attorney general may seek an order from the court that the person pay to the attorney general on behalf of consumers the amounts for which the person would be liable under section 714D.6 for each consumer who has a cause of action pursuant to section 714D.6. Section 714.16, as it relates to consumer reimbursement, applies to amounts recovered by the attorney general as reimbursement under this chapter. However, a consumer who is awarded monetary damages pursuant to section 714D.6 is not eligible for monetary relief under this section for the same unlawful practice.

3. The remedies provided pursuant to this chapter are in addition to any other remedies provided to the state or to a person under other law.

4. The attorney general shall not file a civil enforcement action under this chapter or under section 714.16 against a person for an act which is the subject of an administrative proceeding to impose a civil penalty which has been initiated against the person by the utilities board within the utilities division of the department of commerce. This subsection shall not be construed to limit the authority of the attorney general to file a civil enforcement or other enforcement action against a person for violating a prior agreement entered into by the person with the attorney general or a court order obtained by the attorney general against the person. This subsection shall not be construed to limit the authority of the attorney general to file a civil enforcement or other enforcement action against the person for acts which are not the subject of an administrative proceeding which has been initiated against the person by the utilities board.

99 Acts, ch 16, §8
NEW section

CHAPTER 714E

ELECTRONIC MAIL TRANSMISSIONS

714E.1 Restrictions on use of electronic mail — damages — exceptions.

1. *Definitions.* For purposes of this section, unless the context otherwise requires:

a. "*Advertisement*" means an electronic mail message sent to a computer for the purpose of promoting real property, goods, or services for sale, lease, barter, or auction.

b. "*Computer*" means an electronic device that performs logical, arithmetical, and memory functions by manipulations of electronic or magnetic impulses, and includes all input, output, processing, storage, and communication facilities which are connected or related to the computer, including a computer network. As used in this paragraph,

"*computer*" includes any central processing unit, front-end processing unit, miniprocessor, or microprocessor, and related peripheral equipment such as data storage devices, document scanners, data entry terminal controllers, and data terminal equipment and systems for computer networks.

c. "*Computer network*" means a set of related, remotely connected devices and communication facilities, including two or more computers with capability to transmit data among them through communication facilities.

d. "*Electronic mail*" means an electronic message, file, data, or other electronic information that is transmitted using an internet or intranet computer network to one or more persons.

e. “Interactive computer service” means an information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the internet, and such systems operated or services offered by a library or an educational institution.

f. “Internet domain name” means a globally unique, hierarchical reference to an internet host or service, assigned through a centralized internet naming authority, comprising a series of character strings separated by periods, with the right-most string specifying the top of the hierarchy.

g. “Recipient” means a person who receives electronic mail.

2. *Prohibited acts.* It is unlawful for a person to use an interactive computer service to initiate the sending of bulk electronic mail that the sender knows, or has reason to know, violates any of the following:

a. Uses the name of a third party in the return address field without permission of the third party.

b. Misrepresents any information in identifying the point of origin of the transmission path of the electronic mail.

c. Does not contain information identifying the point of origin or the transmission path of the electronic mail message.

d. With respect to an unsolicited advertisement, does not, at a minimum, provide an electronic mail address readily identifiable in the advertisement to which the recipient may send a request for declining such electronic mail.

e. Demonstrates a pattern of sending unsolicited advertisements to a recipient who has sent the person a request for declining such electronic mail following a reasonable time, which in no event shall be more than five business days, after the receipt by the person of such request.

3. *Civil damages.*

a. (1) Except as provided in paragraph “b”, a person who is injured in person or property as a result of a violation of this section may bring an action to recover damages. Such damages shall include, but are not limited to, actual damages including lost profits.

(2) Notwithstanding subparagraph (1), a person who transmits or causes to be transmitted electronic mail in violation of subsection 2 is liable to the recipient of the electronic mail for monetary damages in an amount equal to any actual damages, including lost profits, caused by such transmittal. The recipient, in lieu of actual damages, may elect to recover from the person transmitting or causing to be transmitted such electronic mail the greater of ten dollars for each bulk electronic mail message transmitted to the recipient in violation of this section, or five hundred dollars. In addition to the monetary damages, the recipient is also entitled to costs and reasonable attorney fees.

b. (1) Notwithstanding paragraph “a”, if the person injured is an interactive computer service and such injury arises from a person who transmits bulk electronic mail without authority, such service may recover actual damages, attorney fees, and costs. Such service, in lieu of recovering actual damages, may also elect to recover the greater of ten dollars for each unsolicited bulk electronic mail message transmitted in violation of this section, or twenty-five thousand dollars.

(2) For purposes of this paragraph, a person is “without authority” when the person has no right or permission of the owner to use a computer, or the person uses the computer in a manner which exceeds the person’s right or permission; or the person uses a computer, a computer network, or the computer services or an interactive computer service to transmit unsolicited bulk electronic mail in contravention of the authority granted by or in violation of the policies set by the interactive computer service to the extent the person has received actual notice of such policies. Transmission of electronic mail from an organization or similar entity to the members of such organization or similar entity shall not be deemed to be unsolicited bulk electronic mail.

c. In an action brought under this chapter, a court shall preserve the secrecy of an alleged trade secret by reasonable means, including but not limited to granting protective orders in connection with discovery proceedings, holding in-camera hearings, sealing the records of the action, and ordering a person involved in the litigation not to disclose an alleged trade secret without prior court approval.

d. This section shall not be construed to limit any person’s right to pursue any additional civil remedy otherwise allowed by law.

4. *Injunction.* In addition to any other remedy under this section, a recipient may also petition the district court for an injunction to prohibit the person from transmitting to the recipient any other electronic mail that includes an advertisement.

5. *Jurisdiction.* Transmitting or causing the transmission of unsolicited bulk electronic mail to or through an interactive computer service’s computer network located in this state shall constitute an act in this state. When jurisdiction over a person is based solely upon this section, only a cause of action arising from acts enumerated in this section may be asserted against that person. However, this chapter does not limit, restrict, or otherwise affect the jurisdiction of any court of this state over foreign corporations which are subject to service of process pursuant to any other statute, or the jurisdiction of any court of this state over a person for engaging in acts which result in jurisdiction under this section.

6. *Exceptions.*

a. This section does not apply to any of the following:

(1) A person who provides users with access to a computer network, and as part of that service, transmits electronic mail on behalf of those users, unless such person knowingly transmits electronic mail that includes an advertisement which the person prepared or caused to be prepared.

(2) A person who provides users with access to a computer network, and as part of that service, transmits electronic mail on behalf of those users, unless such person transmits electronic mail on behalf of those users which the person knows, or should have known was transmitted in violation of subsection 2.

(3) Electronic mail which is accessed by the recipient from an electronic bulletin board.

(4) A person who provides users with access at no charge to electronic mail, including receiving and transmitting such electronic mail, and as a condition of providing such access requires such users to receive unsolicited advertisements.

b. An interactive computer service is not liable under this section for an action voluntarily taken in good faith to block or prevent the receipt or transmission through its service of any commercial electronic mail which is reasonably believed to be in

violation of subsection 2.

99 Acts, ch 185, §1
NEW section

714E.2 Civil enforcement.

1. A violation of section 714E.1, subsection 2, is a violation of section 714.16, subsection 2, paragraph "a". All the powers conferred upon the attorney general to accomplish the objectives and carry out the duties prescribed pursuant to section 714.16 are also conferred upon the attorney general to enforce section 714E.1, including, but not limited to the power to issue subpoenas, adopt rules which shall have the force of law, and seek injunctive relief and civil penalties.

2. In seeking reimbursement pursuant to section 714.16, subsection 7, from a person who has committed a violation of section 714E.1, subsection 2, the attorney general may seek an order from the court that the person pay to the attorney general on behalf of consumers the amounts for which the person would be liable under section 714E.1, subsection 3, for each consumer who has a cause of action pursuant to section 714E.1, subsection 3. Section 714.16, as it relates to consumer reimbursement, shall apply to consumer reimbursement pursuant to this section.

99 Acts, ch 185, §2
NEW section

CHAPTER 715A

FORGERY AND RELATED FRAUDULENT CRIMINAL ACTS

715A.8 Identity theft.

1. For purposes of this section, "identification information" means the name, address, date of birth, telephone number, driver's license number, nonoperator's identification number, social security number, place of employment, employee identification number, parent's legal surname prior to marriage, demand deposit account number, savings or checking account number, or credit card number of a person.

2. A person commits the offense of identity theft if the person with the intent to obtain a benefit fraudulently obtains identification information of another person and uses or attempts to use that information to obtain credit, property, or services without the authorization of that other person.

3. If the value of the credit, property, or services exceeds one thousand dollars, the person commits a class "D" felony. If the value of the credit, property, or services does not exceed one thousand dollars, the person commits an aggravated misdemeanor.

4. A violation of this section is an unlawful practice under section 714.16.

99 Acts, ch 47, §2
NEW section

715A.9 Value for purposes of identity theft.

The value of property or services is its highest value by any reasonable standard at the time the identity theft is committed. Any reasonable standard includes but is not limited to market value within the community, actual value, or replacement value.

If credit, property, or services are obtained by two or more acts from the same person or location, or from different persons by two or more acts which occur in approximately the same location or time period so that the identity thefts are attributable to a single scheme, plan, or conspiracy, the acts may be considered as a single identity theft and the value may be the total value of all credit, property, and services involved.

99 Acts, ch 47, §3
NEW section

CHAPTER 716

DAMAGE AND TRESPASS TO PROPERTY

716.6 Criminal mischief in the fourth and fifth degrees.

Criminal mischief is criminal mischief in the fourth degree if the cost of replacing, repairing, or restoring the property so damaged, defaced, altered, or destroyed exceeds two hundred dollars, but does not exceed five hundred dollars. Criminal mischief in the fourth degree is a serious misdemeanor. All criminal mischief which is not criminal mischief in the first degree, second degree, third degree, or fourth degree is criminal mischief in the fifth degree. Criminal mischief in the fifth degree is a simple misdemeanor.

99 Acts, ch 153, §14
Section amended

716.8 Penalties.

1. Any person who knowingly trespasses upon the property of another commits a simple misdemeanor.

2. Any person committing a trespass as defined in section 716.7 which results in injury to any person or damage in an amount more than two hundred dollars to anything, animate or inanimate, located thereon or therein commits a serious misdemeanor.

3. A person who knowingly trespasses on the property of another with the intent to commit a hate crime, as defined in section 729A.2, commits a serious misdemeanor.

4. A person committing a trespass as defined in section 716.7 with the intent to commit a hate crime which results in injury to any person or damage in an amount more than two hundred dollars to anything, animate or inanimate, located thereon or therein commits an aggravated misdemeanor.

99 Acts, ch 153, §15, 16
Subsections 2 and 4 amended

716.10 Railroad vandalism.

1. A person commits railroad vandalism when the person does any of the following:

a. Shoots, fires, or otherwise discharges a firearm or other device at a train or train component.

b. Launches, releases, propels, casts, or directs a projectile, missile, or other device at a train or train component.

c. Intentionally throws or drops an object on or onto a train or train component.

d. Intentionally places or drops an object on or onto a railroad track.

e. Without the consent of the railway corporation, takes, removes, defaces, alters, or obscures any of the following:

- (1) A railroad signal.
- (2) A train control system.
- (3) A train dispatching system.

(4) A warning signal.

(5) A highway-railroad grade crossing signal or gate.

(6) A railroad sign, placard, or marker.

f. Without the consent of the railway corporation, removes parts or appurtenances from, damages, impairs, disables, interferes with the operation of, or renders inoperable any of the following:

(1) A railroad signal.

(2) A train control system.

(3) A train dispatching system.

(4) A warning signal.

(5) A highway-railroad grade crossing signal or gate.

(6) A railroad sign, placard, or marker.

g. Without the consent of the railway corporation, taking, removing, disabling, tampering, changing, or altering a part or component of any operating mechanism or safety device of any train or train component.

h. Without the consent of the railway corporation, takes, removes, tampers, changes, alters, or interferes with any of the following:

(1) A railroad roadbed.

(2) A railroad rail.

(3) A railroad tie.

(4) A railroad frog.

(5) A railroad sleeper.

(6) A railroad switch.

(7) A railroad viaduct.

(8) A railroad bridge.

(9) A railroad trestle.

(10) A railroad culvert.

(11) A railroad embankment.

(12) Any other structure or appliance which pertains or is appurtenant to a railroad.

2. *a.* A person commits railroad vandalism in the first degree if the person intentionally commits railroad vandalism which results in the death of any person. Railroad vandalism in the first degree is a class "B" felony. However, notwithstanding section 902.9, subsection 2, the maximum sentence for a person convicted under this section shall be a period of confinement of not more than fifty years.

b. A person commits railroad vandalism in the second degree if the person intentionally commits railroad vandalism which results in serious injury to any person. Railroad vandalism in the second degree is a class "B" felony.

c. A person commits railroad vandalism in the third degree if the person intentionally commits railroad vandalism which results in bodily injury to any person or results in property damage which costs more than ten thousand dollars to replace, re-

pair, or restore. Railroad vandalism in the third degree is a class “C” felony.

d. A person commits railroad vandalism in the fourth degree if the person intentionally commits railroad vandalism which results in property damage which costs ten thousand dollars or less but more than one thousand dollars to replace, repair, or restore. Railroad vandalism in the fourth degree is a class “D” felony.

e. A person commits railroad vandalism in the fifth degree if the person intentionally commits railroad vandalism which results in property damage which costs more than five hundred dollars but does not exceed one thousand dollars to replace, repair, or restore. Railroad vandalism in the fifth degree is an aggravated misdemeanor.

f. A person commits railroad vandalism in the sixth degree if the person intentionally commits railroad vandalism which results in property damage which costs more than one hundred dollars but does not exceed five hundred dollars to replace, re-

pair, or restore. Railroad vandalism in the sixth degree is a serious misdemeanor.

g. A person commits railroad vandalism in the seventh degree if the person intentionally commits railroad vandalism which results in property damage which costs one hundred dollars or less to replace, repair, or restore. Railroad vandalism in the seventh degree is a simple misdemeanor.

3. For purposes of this section, “*railway corporation*” means a corporation, company, or person owning, leasing, or operating any railroad in whole or in part within the state.

For purposes of this section, “*train component*” means any locomotive, engine, tender, railroad car, passenger car, freight car, box car, tank car, hopper car, flatbed, container, work equipment, rail-mounted equipment, or any other railroad rolling stock.

For purposes of this section, “*train*” means a series of two or more train components which are coupled together in a line.

Section not amended; internal reference change applied

CHAPTER 716A

COMPUTER CRIME

716A.7 Computer damage in the fourth degree.

Computer damage is computer damage in the fourth degree when the damage results in a loss of property or services of more than two hundred dollars but not more than five hundred dollars. Computer damage in the fourth degree is a serious misdemeanor.

99 Acts, ch 153, §17
Section amended

716A.8 Computer damage in the fifth degree.

Computer damage is computer damage in the fifth degree when the damage results in a loss of property or services of not more than two hundred dollars. Computer damage in the fifth degree is a simple misdemeanor.

99 Acts, ch 153, §18
Section amended

716A.13 Computer theft in the fourth degree.

Computer theft is computer theft in the fourth degree when the theft involves or results in a loss of services or property of more than two hundred dollars but not more than five hundred dollars. Computer theft in the fourth degree is a serious misdemeanor.

99 Acts, ch 153, §19
Section amended

716A.14 Computer theft in the fifth degree.

Computer theft is computer theft in the fifth degree when the theft involves or results in a loss of services or property of not more than two hundred dollars. Computer theft in the fifth degree is a simple misdemeanor.

99 Acts, ch 153, §20
Section amended

CHAPTER 719

OBSTRUCTING JUSTICE

719.1 Interference with official acts.

1. A person who knowingly resists or obstructs anyone known by the person to be a peace officer, emergency medical care provider under chapter 147A, or fire fighter, whether paid or volunteer, in the performance of any act which is within the

scope of the lawful duty or authority of that officer, emergency medical care provider under chapter 147A, or fire fighter, whether paid or volunteer, or who knowingly resists or obstructs the service or execution by any authorized person of any civil or criminal process or order of any court, commits a

simple misdemeanor. In addition to any other penalties, the punishment imposed for a violation of this subsection shall include assessment of a fine of not less than two hundred fifty dollars. However, if a person commits an interference with official acts, as defined in this subsection, and in so doing inflicts bodily injury other than serious injury, that person commits an aggravated misdemeanor. If a person commits an interference with official acts, as defined in this subsection, and in so doing inflicts or attempts to inflict serious injury, or displays a dangerous weapon, as defined in section 702.7, or is armed with a firearm, that person commits a class "D" felony.

2. A person under the custody, control, or supervision of the department of corrections who knowingly resists, obstructs, or interferes with a correctional officer, agent, employee, or contractor, whether paid or volunteer, in the performance of the person's official duties, commits a serious misdemeanor. If a person violates this subsection and in so doing commits an assault, as defined in section 708.1, the person commits an aggravated misdemeanor. If a person violates this subsection and in so doing inflicts or attempts to inflict bodily injury other than serious injury to another, displays a dangerous weapon, as defined in section 702.7, or is armed with a firearm, the person commits a class "D" felony. If a person violates this subsection and uses or attempts to use a dangerous weapon, as defined in section 702.7, or inflicts serious injury to another, the person commits a class "C" felony.

3. The terms "*resist*" and "*obstruct*", as used in this section, do not include verbal harassment unless the verbal harassment is accompanied by a present ability and apparent intention to execute a verbal threat physically.

99 Acts, ch 153, §21
Subsection 1 amended

719.4 Escape or absence from custody.

1. A person convicted of a felony, or charged with or arrested for the commission of a felony, who intentionally escapes, or attempts to escape, from a detention facility, community-based correctional facility, or institution to which the person has been committed by reason of the conviction, charge, or arrest, or from the custody of any public officer or employee to whom the person has been entrusted, commits a class "D" felony.

2. A person convicted of, charged with, or arrested for a misdemeanor, who intentionally escapes, or attempts to escape, from a detention facility, community-based correctional facility, or institution to which the person has been committed by reason of the conviction, charge, or arrest, or from the custody of any public officer or employee to whom the person has been entrusted, commits a serious misdemeanor.

3. A person who has been committed to an institution under the control of the Iowa department

of corrections, to a community-based correctional facility, or to a jail or correctional institution, who knowingly and voluntarily is absent from a place where the person is required to be, commits a serious misdemeanor.

4. A person who flees from the state to avoid prosecution for a public offense which is a felony or aggravated misdemeanor commits a class "D" felony.

99 Acts, ch 182, §3
Subsections 1 and 2 amended

719.7 Possessing contraband.

1. "*Contraband*" includes but is not limited to any of the following:

a. A controlled substance or a simulated or counterfeit controlled substance, hypodermic syringe, or intoxicating beverage.

b. A dangerous weapon, offensive weapon, pneumatic gun, stun gun, firearm ammunition, knife of any length or any other cutting device, explosive or incendiary material, instrument, device, or other material fashioned in such a manner as to be capable of inflicting death or injury.

c. Rope, ladder components, key or key pattern, metal file, instrument, device, or other material designed or intended to facilitate escape of an inmate.

2. The department of corrections may x-ray a person under the control of the department if there is reason to believe that the person is in possession of contraband. A licensed physician or x-ray technician under the supervision of a licensed physician must x-ray the person.

3. A person commits the offense of possessing contraband if the person, not authorized by law, does any of the following:

a. Knowingly introduces contraband into, or onto, the grounds of a correctional institution or institution under the management of the department of corrections.

b. Knowingly conveys contraband to any person confined in a correctional institution or institution under the management of the department of corrections.

c. Knowingly makes, obtains, or possesses contraband while confined in a correctional institution or institution under the management of the department of corrections or while being transported or moved incidental to confinement.

4. A person who possesses contraband or fails to report an offense of possessing contraband commits the following:

a. A class "C" felony for the possession of contraband if the contraband is of the type described in subsection 1, paragraph "b".

b. A class "D" felony for the possession of contraband if the contraband is any other type of contraband.

c. An aggravated misdemeanor for failing to report a known violation or attempted violation of

this section to an official or officer at a correctional institution or institution under the management of the department of corrections.

5. Nothing in this section is intended to limit the authority of the administrator of any correctional institution or institution under the management of the department of corrections to prescribe or enforce rules concerning the definition of contraband, and the transportation, making, or possession of substances, devices, instruments, materials, or other items in the institutions.

99 Acts, ch 163, §1
Section stricken and rewritten

719.8 Furnishing a controlled substance or intoxicating beverage to inmates at a detention facility.

A person not authorized by law who furnishes or knowingly makes available a controlled substance or intoxicating beverage to an inmate at a detention facility, or who introduces a controlled substance or intoxicating beverage into the premises of such a facility, commits a class "D" felony.

99 Acts, ch 163, §2
Section amended

CHAPTER 726

PROTECTION OF THE FAMILY AND DEPENDENT PERSONS

726.6A Multiple acts of child endangerment — penalty.

A person who engages in a course of conduct including three or more acts of child endangerment as defined in section 726.6 within a period of twelve months involving the same child or a minor with a mental or physical disability, where one or more of

the acts results in serious injury to the child or minor or results in a skeletal injury to a child under the age of four years, is guilty of a class "B" felony. Notwithstanding section 902.9, subsection 2, a person convicted of a violation of this section shall be confined for no more than fifty years.

Section not amended; internal reference change applied

CHAPTER 727

HEALTH, SAFETY AND WELFARE

727.2 Fireworks.

The term "*fireworks*" includes any explosive composition, or combination of explosive substances, or article prepared for the purpose of producing a visible or audible effect by combustion, explosion, deflagration, or detonation, and includes blank cartridges, firecrackers, torpedoes, skyrockets, roman candles, or other fireworks of like construction and fireworks containing any explosive or flammable compound, or other device containing any explosive substance. The term "*fireworks*" does not include goldstar-producing sparklers on wires which contain no magnesium or chlorate or perchlorate, flitter sparklers in paper tubes that do not exceed one-eighth of an inch in diameter, toy snakes which contain no mercury, or caps used in cap pistols.

A person, firm, copartnership, or corporation who offers for sale, exposes for sale, sells at retail, or uses or explodes any fireworks, commits a simple misdemeanor. In addition to any other penalties, the punishment imposed for a violation of this section shall include assessment of a fine of not less than two hundred fifty dollars. However, the council of a city or a county board of supervisors may,

upon application in writing, grant a permit for the display of fireworks by municipalities, fair associations, amusement parks, and other organizations or groups of individuals approved by the city or the county board of supervisors when the fireworks display will be handled by a competent operator, but no such permit shall be required for the display of fireworks at the Iowa state fairgrounds by the Iowa state fair board, at incorporated county fairs, or at district fairs receiving state aid. Sales of fireworks for such display may be made for that purpose only.

This section does not prohibit the sale by a resident, dealer, manufacturer, or jobber of such fireworks as are not prohibited by this section, or the sale of any kind of fireworks if they are to be shipped out of the state, or the sale or use of blank cartridges for a show or the theater, or for signal purposes in athletic sports or by railroads or trucks, for signal purposes, or by a recognized military organization.

This section does not apply to any substance or composition prepared and sold for medicinal or fumigation purposes.

99 Acts, ch 153, §22
Unnumbered paragraph 2 amended

CHAPTER 730

EMPLOYER-EMPLOYEE OFFENSES

730.4 Polygraph examination prohibited.

1. As used in this section, “*polygraph examination*” means any procedure which involves the use of instrumentation or a mechanical or electrical device to enable or assist the detection of deception, the verification of truthfulness, or the rendering of a diagnostic opinion regarding either of these, and includes a lie detector or similar test.

2. An employer shall not as a condition of employment, promotion, or change in status of employment, or as an express or implied condition of a benefit or privilege of employment, knowingly do any of the following:

a. Request or require that an employee or applicant for employment take or submit to a polygraph examination.

b. Administer, cause to be administered, threaten to administer, or attempt to administer a polygraph examination to an employee or applicant for employment.

c. Request or require that an employee or applicant for employment give an express or implied waiver of a practice prohibited by this section.

3. Subsection 2 does not apply to the state or a political subdivision of the state when in the process of selecting a candidate for employment as a peace officer or a corrections officer.

4. An employee who acted in good faith shall not be discharged, disciplined, or discriminated against in any manner for filing a complaint or testifying in any proceeding or action involving violations of this section. An employee discharged, disciplined, or otherwise discriminated against in violation of this section shall be compensated by the employer in the amount of any loss of wages and benefits arising out of the discrimination and shall be restored to the employee’s previous position of employment.

5. This section may be enforced through a civil action.

a. A person who violates this section or who aids in the violation of this section is liable to an aggrieved employee or applicant for employment for affirmative relief including reinstatement or hiring, with or without back pay, or any other equitable relief as the court deems appropriate including attorney fees and court costs.

b. When a person commits, is committing, or proposes to commit, an act in violation of this section, an injunction may be granted through an action in district court to prohibit the person from continuing such acts. The action for injunctive relief may be brought by an aggrieved employee or applicant for employment, the county attorney, or the attorney general.

A person who in good faith brings an action under this subsection alleging that an employer has required or requested a polygraph examination in violation of this section shall establish that sufficient evidence exists upon which a reasonable person could find that a violation has occurred. Upon proof that sufficient evidence exists upon which a finding could be made that a violation has occurred as required under this paragraph, the employer has the burden of proving that the requirements of this section were met.

6. A person who violates this section commits a simple misdemeanor. In addition to any other penalties, the punishment imposed for a violation of this section shall include assessment of a fine of not less than two hundred fifty dollars.

99 Acts, ch 153, §23
Subsection 6 amended

730.5 Private sector drug-free workplaces.

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

a. “*Alcohol*” means ethanol, isopropanol, or methanol.

b. “*Drug*” means a substance considered a controlled substance and included in schedule I, II, III, IV, or V under the federal Controlled Substances Act, 21 U.S.C. § 801 et seq.

c. “*Employee*” means a person in the service of an employer in this state and includes the employer, and any chief executive officer, president, vice president, supervisor, manager, and officer of the employer who is actively involved in the day-to-day operations of the business.

d. “*Employer*” means a person, firm, company, corporation, labor organization, or employment agency, which has one or more full-time employees employed in the same business, or in or about the same establishment, under any contract of hire, express or implied, oral or written, in this state. “*Employer*” does not include the state, a political subdivision of the state, including a city, county, or school district, the United States, the United States postal service, or a Native-American tribe.

e. “*Good faith*” means reasonable reliance on facts, or that which is held out to be factual, without the intent to be deceived, and without reckless, malicious, or negligent disregard for the truth.

f. “*Medical review officer*” means a licensed physician, osteopathic physician, chiropractor, nurse practitioner, or physician assistant authorized to practice in any state of the United States, who is responsible for receiving laboratory results generated by an employer’s drug or alcohol testing

program, and who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result together with the individual's medical history and any other relevant biomedical information.

g. "Prospective employee" means a person who has made application, whether written or oral, to an employer to become an employee.

h. "Reasonable suspicion drug or alcohol testing" means drug or alcohol testing based upon evidence that an employee is using or has used alcohol or other drugs in violation of the employer's written policy drawn from specific objective and articulable facts and reasonable inferences drawn from those facts in light of experience. For purposes of this paragraph, facts and inferences may be based upon, but not limited to, any of the following:

(1) Observable phenomena while at work such as direct observation of alcohol or drug use or abuse or of the physical symptoms or manifestations of being impaired due to alcohol or other drug use.

(2) Abnormal conduct or erratic behavior while at work or a significant deterioration in work performance.

(3) A report of alcohol or other drug use provided by a reliable and credible source.

(4) Evidence that an individual has tampered with any drug or alcohol test during the individual's employment with the current employer.

(5) Evidence that an employee has caused an accident while at work which resulted in an injury to a person for which injury, if suffered by an employee, a record or report could be required under chapter 88, or resulted in damage to property, including to equipment, in an amount reasonably estimated at the time of the accident to exceed one thousand dollars.

(6) Evidence that an employee has manufactured, sold, distributed, solicited, possessed, used, or transferred drugs while working or while on the employer's premises or while operating the employer's vehicle, machinery, or equipment.

i. "Safety-sensitive position" means a job wherein an accident could cause loss of human life, serious bodily injury, or significant property or environmental damage, including a job with duties that include immediate supervision of a person in a job that meets the requirement of this paragraph.

j. "Sample" means such sample from the human body capable of revealing the presence of alcohol or other drugs, or their metabolites. However, sample does not mean blood except as authorized pursuant to subsection 7, paragraph "l".

k. "Unannounced drug or alcohol testing" means testing for the purposes of detecting drugs or alcohol which is conducted on a periodic basis, without advance notice of the test to employees, other than employees whose duties include responsibility for administration of the employer's drug or alcohol testing program, subject to testing prior to

the day of testing, and without individualized suspicion. The selection of employees to be tested from the pool of employees subject to testing shall be done based on a neutral and objective selection process by an entity independent from the employer and shall be made by a computer-based random number generator that is matched with employees' social security numbers, payroll identification numbers, or other comparable identifying numbers in which each member of the employee population subject to testing has an equal chance of selection for initial testing, regardless of whether the employee has been selected or tested previously. The random selection process shall be conducted through a computer program that records each selection attempt by date, time, and employee number.

2. Applicability. This section does not apply to drug or alcohol tests conducted on employees required to be tested pursuant to federal statutes, federal regulations, or orders issued pursuant to federal law. In addition, an employer, through its written policy, may exclude from the pools of employees subject to unannounced drug or alcohol testing pursuant to subsection 8, paragraph "a", employee populations required to be tested as described in this subsection.

3. Testing optional. This section does not require or create a legal duty on an employer to conduct drug or alcohol testing and the requirements of this section shall not be construed to encourage, discourage, restrict, limit, prohibit, or require such testing. In addition, an employer may implement and require drug or alcohol testing at some but not all of the work sites of the employer and the requirements of this section shall only apply to the employer and employees who are at the work sites where drug or alcohol testing pursuant to this section has been implemented. A cause of action shall not arise in favor of any person against an employer or agent of an employer based on the failure of the employer to establish a program or policy on substance abuse prevention or to implement any component of testing as permitted by this section.

4. Testing as condition of employment — requirements. To the extent provided in subsection 8, an employer may test employees and prospective employees for the presence of drugs or alcohol as a condition of continued employment or hiring. An employer shall adhere to the requirements of this section concerning the conduct of such testing and the use and disposition of the results of such testing.

5. Collection of samples. In conducting drug or alcohol testing, an employer may require the collection of samples from its employees and prospective employees, and may require presentation of reliable individual identification from the person being tested to the person collecting the samples. Collection of a sample shall be in conformance with the requirements of this section. The employer may

designate the type of sample to be used for this testing.

6. *Scheduling of tests.*

a. Drug or alcohol testing of employees conducted by an employer shall normally occur during, or immediately before or after, a regular work period. The time required for such testing by an employer shall be deemed work time for the purposes of compensation and benefits for employees.

b. An employer shall pay all actual costs for drug or alcohol testing of employees and prospective employees required by the employer.

c. An employer shall provide transportation or pay reasonable transportation costs to employees if drug or alcohol sample collection is conducted at a location other than the employee's normal work site.

7. *Testing procedures.* All sample collection and testing for drugs or alcohol under this section shall be performed in accordance with the following conditions:

a. The collection of samples shall be performed under sanitary conditions and with regard for the privacy of the individual from whom the specimen is being obtained and in a manner reasonably calculated to preclude contamination or substitution of the specimen. If the sample collected is urine, procedures shall be established to provide for individual privacy in the collection of the sample unless there is a reasonable suspicion that a particular individual subject to testing may alter or substitute the urine specimen to be provided, or has previously altered or substituted a urine specimen provided pursuant to a drug or alcohol test. For purposes of this paragraph, "*individual privacy*" means a location at the collection site where urination can occur in private, which has been secured by visual inspection to ensure that other persons are not present, which provides that undetected access to the location is not possible during urination, and which provides for the ability to effectively restrict access to the location during the time the specimen is provided. If an individual is providing a sample and collection of the sample is directly monitored or observed by another individual, the individual who is directly monitoring or observing the collection shall be of the same gender as the individual from whom the sample is being collected.

b. Sample collection for testing of current employees, except for the collection of a sample for alcohol testing conducted pursuant to paragraph "f", subparagraph (2), shall be performed so that the specimen is split into two components at the time of collection in the presence of the individual from whom the sample or specimen is collected. The second portion of the specimen or sample shall be of sufficient quantity to permit a second, independent confirmatory test as provided in paragraph "i". If the specimen is urine, the sample shall be split such that the primary sample contains at least thirty milliliters and the secondary sample con-

tains at least fifteen milliliters. Both portions of the sample shall be forwarded to the laboratory conducting the initial confirmatory testing. In addition to any requirements for storage of the initial sample that may be imposed upon the laboratory as a condition for certification or approval, the laboratory shall store the second portion of any sample until receipt of a confirmed negative test result or for a period of at least forty-five calendar days following the completion of the initial confirmatory testing, if the first portion yielded a confirmed positive test result.

c. Sample collections shall be documented, and the procedure for documentation shall include the following:

(1) Samples, except for samples collected for alcohol testing conducted pursuant to paragraph "f", subparagraph (2), shall be labeled so as to reasonably preclude the possibility of misidentification of the person tested in relation to the test result provided, and samples shall be handled and tracked in a manner such that control and accountability are maintained from initial collection to each stage in handling, testing, and storage, through final disposition.

(2) An employee or prospective employee shall be provided an opportunity to provide any information which may be considered relevant to the test, including identification of prescription or nonprescription drugs currently or recently used, or other relevant medical information. To assist an employee or prospective employee in providing the information described in this subparagraph, the employer shall provide an employee or prospective employee with a list of the drugs to be tested.

d. Sample collection, storage, and transportation to the place of testing shall be performed so as to reasonably preclude the possibility of sample contamination, adulteration, or misidentification.

e. All confirmatory drug testing shall be conducted at a laboratory certified by the United States department of health and human services' substance abuse and mental health services administration or approved under rules adopted by the Iowa department of public health.

f. Drug or alcohol testing shall include confirmation of any initial positive test results. An employer may take adverse employment action, including refusal to hire a prospective employee, based on a confirmed positive drug or alcohol test.

(1) For drug or alcohol testing, except for alcohol testing conducted pursuant to subparagraph (2), confirmation shall be by use of a different chemical process than was used in the initial screen for drugs or alcohol. The confirmatory drug or alcohol test shall be a chromatographic technique such as gas chromatography/mass spectrometry, or another comparably reliable analytical method.

(2) Notwithstanding any provision of this section to the contrary, alcohol testing, including ini-

tial and confirmatory testing, may be conducted pursuant to requirements established by the employer's written policy. The written policy shall include requirements governing evidential breath testing devices, alcohol screening devices, and the qualifications for personnel administering initial and confirmatory testing, which shall be consistent with regulations adopted as of January 1, 1999, by the United States department of transportation governing alcohol testing required to be conducted pursuant to the federal Omnibus Transportation Employee Testing Act of 1991.

g. A medical review officer shall, prior to the results being reported to an employer, review and interpret any confirmed positive test results, including both quantitative and qualitative test results, to ensure that the chain of custody is complete and sufficient on its face and that any information provided by the individual pursuant to paragraph "c", subparagraph (2), is considered. However, this paragraph shall not apply to alcohol testing conducted pursuant to paragraph "f", subparagraph (2).

h. In conducting drug or alcohol testing pursuant to this section, the laboratory, the medical review officer, and the employer shall ensure, to the extent feasible, that the testing only measure, and the records concerning the testing only show or make use of information regarding, alcohol or drugs in the body.

i. (1) If a confirmed positive drug or alcohol test for a current employee is reported to the employer by the medical review officer, the employer shall notify the employee in writing by certified mail, return receipt requested, of the results of the test, the employee's right to request and obtain a confirmatory test of the second sample collected pursuant to paragraph "b" at an approved laboratory of the employee's choice, and the fee payable by the employee to the employer for reimbursement of expenses concerning the test. The fee charged an employee shall be an amount that represents the costs associated with conducting the second confirmatory test, which shall be consistent with the employer's cost for conducting the initial confirmatory test on an employee's sample. If the employee, in person or by certified mail, return receipt requested, requests a second confirmatory test, identifies an approved laboratory to conduct the test, and pays the employer the fee for the test within seven days from the date the employer mails by certified mail, return receipt requested, the written notice to the employee of the employee's right to request a test, a second confirmatory test shall be conducted at the laboratory chosen by the employee. The results of the second confirmatory test shall be reported to the medical review officer who reviewed the initial confirmatory test results and the medical review officer shall review the results and issue a report to the employer on whether the results of the second confirmatory test confirmed

the initial confirmatory test as to the presence of a specific drug or alcohol. If the results of the second test do not confirm the results of the initial confirmatory test, the employer shall reimburse the employee for the fee paid by the employee for the second test and the initial confirmatory test shall not be considered a confirmed positive drug or alcohol test for purposes of taking disciplinary action pursuant to subsection 10.

(2) If a confirmed positive drug or alcohol test for a prospective employee is reported to the employer by the medical review officer, the employer shall notify the prospective employee in writing of the results of the test, of the name and address of the medical review officer who made the report, and of the prospective employee's right to request records under subsection 13.

j. A laboratory conducting testing under this section shall dispose of all samples for which a negative test result was reported to an employer within five working days after issuance of the negative test result report.

k. Except as necessary to conduct drug or alcohol testing pursuant to this section and to submit the report required by subsection 16, a laboratory or other medical facility shall only report to an employer or outside entity information relating to the results of a drug or alcohol test conducted pursuant to this section concerning the determination of whether the tested individual has engaged in conduct prohibited by the employer's written policy with regard to alcohol or drug use.

l. Notwithstanding the provisions of this subsection, an employer may rely and take action upon the results of any blood test for drugs or alcohol made on any employee involved in an accident at work if the test is administered by or at the direction of the person providing treatment or care to the employee without request or suggestion by the employer that a test be conducted, and the employer has lawfully obtained the results of the test. For purposes of this paragraph, an employer shall not be deemed to have requested or required a test in conjunction with the provision of medical treatment following a workplace accident by providing information concerning the circumstance of the accident.

8. *Drug or alcohol testing.* Employers may conduct drug or alcohol testing as provided in this subsection:

a. Employers may conduct unannounced drug or alcohol testing of employees who are selected from any of the following pools of employees:

(1) The entire employee population at a particular work site of the employer except for employees who are not scheduled to be at work at the time the testing is conducted because of the status of the employees or who have been excused from work pursuant to the employer's work policy prior to the time the testing is announced to employees.

(2) The entire full-time active employee population at a particular work site except for employees who are not scheduled to be at work at the time the testing is to be conducted because of the status of the employee, or who have been excused from work pursuant to the employer's working policy.

(3) All employees at a particular work site who are in a pool of employees in a safety-sensitive position and who are scheduled to be at work at the time testing is conducted, other than employees who are not scheduled to be at work at the time the testing is to be conducted or who have been excused from work pursuant to the employer's work policy prior to the time the testing is announced to employees.

b. Employers may conduct drug or alcohol testing of employees during, and after completion of, drug or alcohol rehabilitation.

c. Employers may conduct reasonable suspicion drug or alcohol testing.

d. Employers may conduct drug or alcohol testing of prospective employees.

e. Employers may conduct drug or alcohol testing as required by federal law or regulation or by law enforcement.

f. Employers may conduct drug or alcohol testing in investigating accidents in the workplace in which the accident resulted in an injury to a person for which injury, if suffered by an employee, a record or report could be required under chapter 88, or resulted in damage to property, including to equipment, in an amount reasonably estimated at the time of the accident to exceed one thousand dollars.

9. *Written policy and other testing requirements.*

a. (1) Drug or alcohol testing or retesting by an employer shall be carried out within the terms of a written policy which has been provided to every employee subject to testing, and is available for review by employees and prospective employees. If an employee or prospective employee is a minor, the employer shall provide a copy of the written policy to a parent of the employee or prospective employee and shall obtain a receipt or acknowledgement from the parent that a copy of the policy has been received. Providing a copy of the written policy to a parent of a minor by certified mail, return receipt requested, shall satisfy the requirements of this subparagraph.

(2) In addition, the written policy shall provide that any notice required by subsection 7, paragraph "i", to be provided to an individual pursuant to a drug or alcohol test conducted pursuant to this section, shall also be provided to the parent of the individual by certified mail, return receipt requested, if the individual tested is a minor.

(3) In providing information or notice to a parent as required by this paragraph, an employer shall rely on the information regarding the identity of a parent as provided by the minor.

(4) For purposes of this paragraph, "*minor*" means an individual who is under eighteen years of age and is not considered by law to be an adult, and "*parent*" means one biological or adoptive parent, a stepparent, or a legal guardian or custodian of the minor.

b. The employer's written policy shall provide uniform requirements for what disciplinary or rehabilitative actions an employer shall take against an employee or prospective employee upon receipt of a confirmed positive drug or alcohol test result or upon the refusal of the employee or prospective employee to provide a testing sample. The policy shall provide that any action taken against an employee or prospective employee shall be based only on the results of the drug or alcohol test. The written policy shall also provide that if rehabilitation is required pursuant to paragraph "g", the employer shall not take adverse employment action against the employee so long as the employee complies with the requirements of rehabilitation and successfully completes rehabilitation.

c. Employers shall establish an awareness program to inform employees of the dangers of drug and alcohol use in the workplace and comply with the following requirements in order to conduct drug or alcohol testing under this section:

(1) If an employer has an employee assistance program, the employer must inform the employee of the benefits and services of the employee assistance program. An employer shall post notice of the employee assistance program in conspicuous places and explore alternative routine and reinforcing means of publicizing such services. In addition, the employer must provide the employee with notice of the policies and procedures regarding access to and utilization of the program.

(2) If an employer does not have an employee assistance program, the employer must maintain a resource file of alcohol and other drug abuse programs certified by the Iowa department of public health, mental health providers, and other persons, entities, or organizations available to assist employees with personal or behavioral problems. The employer shall provide all employees information about the existence of the resource file and a summary of the information contained within the resource file. The summary should contain, but need not be limited to, all information necessary to access the services listed in the resource file.

d. An employee or prospective employee whose drug or alcohol test results are confirmed as positive in accordance with this section shall not, by virtue of those results alone, be considered as a person with a disability for purposes of any state or local law or regulation.

e. If the written policy provides for alcohol testing, the employer shall establish in the written policy a standard for alcohol concentration which shall be deemed to violate the policy. The standard for alcohol concentration shall not be less than .04,

expressed in terms of grams of alcohol per two hundred ten liters of breath, or its equivalent.

f. An employee of an employer who is designated by the employer as being in a safety-sensitive position shall be placed in only one pool of safety-sensitive employees subject to drug or alcohol testing pursuant to subsection 8, paragraph “a”, subparagraph (3). An employer may have more than one pool of safety-sensitive employees subject to drug or alcohol testing pursuant to subsection 8, paragraph “a”, subparagraph (3), but shall not include an employee in more than one safety-sensitive pool.

g. Upon receipt of a confirmed positive alcohol test which indicates an alcohol concentration greater than the concentration level established by the employer pursuant to this section, and if the employer has at least fifty employees, and if the employee has been employed by the employer for at least twelve of the preceding eighteen months, and if rehabilitation is agreed upon by the employee, and if the employee has not previously violated the employer’s substance abuse prevention policy pursuant to this section, the written policy shall provide for the rehabilitation of the employee pursuant to subsection 10, paragraph “a”, subparagraph (1), and the apportionment of the costs of rehabilitation as provided by this paragraph.

(1) If the employer has an employee benefit plan, the costs of rehabilitation shall be apportioned as provided under the employee benefit plan.

(2) If no employee benefit plan exists and the employee has coverage for any portion of the costs of rehabilitation under any health care plan of the employee, the costs of rehabilitation shall be apportioned as provided by the health care plan with any costs not covered by the plan apportioned equally between the employee and the employer. However, the employer shall not be required to pay more than two thousand dollars toward the costs not covered by the employee’s health care plan.

(3) If no employee benefit plan exists and the employee does not have coverage for any portion of the costs of rehabilitation under any health care plan of the employee, the costs of rehabilitation shall be apportioned equally between the employee and the employer. However, the employer shall not be required to pay more than two thousand dollars towards the cost of rehabilitation under this subparagraph.

Rehabilitation required pursuant to this paragraph shall not preclude an employer from taking any adverse employment action against the employee during the rehabilitation based on the employee’s failure to comply with any requirements of the rehabilitation, including any action by the employee to invalidate a test sample provided by the employer pursuant to the rehabilitation.

h. In order to conduct drug or alcohol testing under this section, an employer shall require supervisory personnel of the employer involved with drug or alcohol testing under this section to attend a minimum of two hours of initial training and to attend, on an annual basis thereafter, a minimum of one hour of subsequent training. The training shall include, but is not limited to, information concerning the recognition of evidence of employee alcohol and other drug abuse, the documentation and corroboration of employee alcohol and other drug abuse, and the referral of employees who abuse alcohol or other drugs to the employee assistance program or to the resource file maintained by the employer pursuant to paragraph “c”, subparagraph (2).

10. *Disciplinary procedures.*

a. Upon receipt of a confirmed positive drug or alcohol test result which indicates a violation of the employer’s written policy, or upon the refusal of an employee or prospective employee to provide a testing sample, an employer may use that test result or test refusal as a valid basis for disciplinary or rehabilitative actions pursuant to the requirements of the employer’s written policy and the requirements of this section, which may include, among other actions, the following:

(1) A requirement that the employee enroll in an employer-provided or approved rehabilitation, treatment, or counseling program, which may include additional drug or alcohol testing, participation in and successful completion of which may be a condition of continued employment, and the costs of which may or may not be covered by the employer’s health plan or policies.

(2) Suspension of the employee, with or without pay, for a designated period of time.

(3) Termination of employment.

(4) Refusal to hire a prospective employee.

(5) Other adverse employment action in conformance with the employer’s written policy and procedures, including any relevant collective bargaining agreement provisions.

b. Following a drug or alcohol test, but prior to receipt of the final results of the drug or alcohol test, an employer may suspend a current employee, with or without pay, pending the outcome of the test. An employee who has been suspended shall be reinstated by the employer, with back pay, and interest on such amount at eighteen percent per annum compounded annually, if applicable, if the result of the test is not a confirmed positive drug or alcohol test which indicates a violation of the employer’s written policy.

11. *Employer immunity.* A cause of action shall not arise against an employer who has established a policy and initiated a testing program in accordance with the testing and policy safeguards provided for under this section, for any of the following:

a. Testing or taking action based on the results of a positive drug or alcohol test result, indicating the presence of drugs or alcohol, in good faith, or on the refusal of an employee or prospective employee to submit to a drug or alcohol test.

b. Failure to test for drugs or alcohol, or failure to test for a specific drug or controlled substance.

c. Failure to test for, or if tested for, failure to detect, any specific drug or other controlled substance.

d. Termination or suspension of any substance abuse prevention or testing program or policy.

e. Any action taken related to a false negative drug or alcohol test result.

12. *Employer liability — false positive test results.*

a. Except as otherwise provided in paragraph "b", a cause of action shall not arise against an employer who has established a program of drug or alcohol testing in accordance with this section, unless all of the following conditions exist:

(1) The employer's action was based on a false positive test result.

(2) The employer knew or clearly should have known that the test result was in error and ignored the correct test result because of reckless, malicious, or negligent disregard for the truth, or the willful intent to deceive or to be deceived.

b. A cause of action for defamation, libel, slander, or damage to reputation shall not arise against an employer establishing a program of drug or alcohol testing in accordance with this section unless all of the following apply:

(1) The employer discloses the test results to a person other than the employer, an authorized employee, agent, or representative of the employer, the tested employee or the tested applicant for employment, an authorized substance abuse treatment program or employee assistance program, or an authorized agent or representative of the tested employee or applicant.

(2) The test results disclosed incorrectly indicate the presence of alcohol or drugs.

(3) The employer negligently discloses the results.

c. In any cause of action based upon a false positive test result, all of the following conditions apply:

(1) The results of a drug or alcohol test conducted in compliance with this section are presumed to be valid.

(2) An employer shall not be liable for monetary damages if the employer's reliance on the false positive test result was reasonable and in good faith.

13. *Confidentiality of results — exception.*

a. All communications received by an employer relevant to employee or prospective employee drug or alcohol test results, or otherwise received through the employer's drug or alcohol testing program, are confidential communications and shall

not be used or received in evidence, obtained in discovery, or disclosed in any public or private proceeding, except as otherwise provided or authorized by this section.

b. An employee, or a prospective employee, who is the subject of a drug or alcohol test conducted under this section pursuant to an employer's written policy and for whom a confirmed positive test result is reported shall, upon written request, have access to any records relating to the employee's drug or alcohol test, including records of the laboratory where the testing was conducted and any records relating to the results of any relevant certification or review by a medical review officer. However, a prospective employee shall be entitled to records under this paragraph only if the prospective employee requests the records within fifteen calendar days from the date the employer provided the prospective employee written notice of the results of a drug or alcohol test as provided in subsection 7, paragraph "i", subparagraph (2).

c. Except as provided by this section and as necessary to conduct drug or alcohol testing under this section and to file a report pursuant to subsection 16, a laboratory and a medical review officer conducting drug or alcohol testing under this section shall not use or disclose to any person any personally identifiable information regarding such testing, including the names of individuals tested, even if unaccompanied by the results of the test.

d. An employer may use and disclose information concerning the results of a drug or alcohol test conducted pursuant to this section under any of the following circumstances:

(1) In an arbitration proceeding pursuant to a collective bargaining agreement, or an administrative agency proceeding or judicial proceeding under workers' compensation laws or unemployment compensation laws or under common or statutory laws where action taken by the employer based on the test is relevant or is challenged.

(2) To any federal agency or other unit of the federal government as required under federal law, regulation or order, or in accordance with compliance requirements of a federal government contract.

(3) To any agency of this state authorized to license individuals if the employee tested is licensed by that agency and the rules of that agency require such disclosure.

(4) To a union representing the employee if such disclosure would be required by federal labor laws.

(5) To a substance abuse evaluation or treatment facility or professional for the purpose of evaluation or treatment of the employee.

However, positive test results from an employer drug or alcohol testing program shall not be used as evidence in any criminal action against the employee or prospective employee tested.

14. *Civil penalties — jurisdiction.*

a. Any laboratory or medical review officer which discloses information in violation of the provisions of subsection 7, paragraph “h” or “k”, or any employer who, through the selection process described in subsection 1, paragraph “k”, improperly targets or exempts employees subject to unannounced drug or alcohol testing, shall be subject to a civil penalty of one thousand dollars for each violation. The attorney general or the attorney general’s designee may maintain a civil action to enforce this subsection. Any civil penalty recovered shall be deposited in the general fund of the state.

b. A laboratory or medical review officer involved in the conducting of a drug or alcohol test pursuant to this section shall be deemed to have the necessary contact with this state for the purpose of subjecting the laboratory or medical review officer to the jurisdiction of the courts of this state.

15. *Civil remedies.* This section may be enforced through a civil action.

a. A person who violates this section or who aids in the violation of this section, is liable to an aggrieved employee or prospective employee for affirmative relief including reinstatement or hiring, with or without back pay, or any other equitable relief as the court deems appropriate including attorney fees and court costs.

b. When a person commits, is committing, or proposes to commit, an act in violation of this section, an injunction may be granted through an ac-

tion in district court to prohibit the person from continuing such acts. The action for injunctive relief may be brought by an aggrieved employee or prospective employee, the county attorney, or the attorney general.

In an action brought under this subsection alleging that an employer has required or requested a drug or alcohol test in violation of this section, the employer has the burden of proving that the requirements of this section were met.

16. *Reports.* A laboratory doing business for an employer who conducts drug or alcohol tests pursuant to this section shall file an annual report with the Iowa department of public health by March 1 of each year concerning the number of drug or alcohol tests conducted on employees who work in this state pursuant to this section, the number of positive and negative results of the tests, during the previous calendar year. In addition, the laboratory shall include in its annual report the specific basis for each test as authorized in subsection 8, the type of drug or drugs which were found in the positive drug tests, and all significant available demographic factors relating to the positive test pool.

99 Acts, ch 60, §1–8; 99 Acts, ch 114, §56, 59
For legislation correcting discrepancies in effective dates of 1998 legislation, see 99 Acts, ch 114, §56, 59

Subsection 7, paragraph b amended
Subsection 7, paragraph c, subparagraph (1) amended
Subsection 7, paragraphs f and g amended
Subsection 9, paragraph c, subparagraph (2) amended
Subsection 9, paragraph g, unnumbered paragraph 1 amended
Subsection 9, paragraph h amended

CHAPTER 803

JURISDICTION OF PUBLIC OFFENSES AND PLACE OF TRIAL

803.3 Place of trial — special provisions.

The following special provisions apply:

1. If conduct or results which constitute elements of an offense occur in two or more counties, prosecution of the offense may be had in any of such counties. In such cases, where a dominant number of elements occur in one county, that county shall have the primary right to proceed with prosecution of the offender.

2. If an offense commenced outside the state is consummated within this state, trial of the offense shall be held in the county or counties in which the offense is consummated or the interest protected by the involved penal statute is impaired.

3. If an offense is committed in or upon any conveyance in transit, and it cannot readily be determined in which county the offense was committed, trial of the offense may be held in any county through or over which the conveyance passed in the course of its journey.

4. If an offense is committed on the boundary of two or more counties, and it cannot readily be de-

termined within which county the commission took place, trial of the offense may be held in any of the counties concerned.

5. If the offense is a traffic offense, or a scheduled offense under section 805.8, section 805.13 shall apply.

6. a. If a person is charged with a violation of the tax laws arising out of individual tax liability, venue is in the county of residence of the person charged with the offense, unless the person is a nonresident of this state or the residence of the person cannot be established, in which event venue is in Polk county.

b. If a person is charged with a violation of the tax laws arising out of a business, venue is in any county where business was conducted. If a specific county cannot be established as a situs, venue is in Polk county.

c. If a person is charged with a violation of section 453B.12, venue is in the county of the residence of the person charged with the offense or the county in which the drugs were found.

d. If a person is charged with a violation of the tax laws in which venue is set under multiple provisions of this section, venue is in any county in

which one of the charges may be prosecuted.

99 Acts, ch 152, §37, 40
NEW subsection 6

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 one hundred 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 brake lights, under sections 321.317, 321.387, 321.388, 321.389, 321.390, 321.392, 321.393, 321.422, 321.432, 321.436, 321.437, 321.438, subsection 1 or 3, sections 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 321.404A or 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 driver's license under sections 321.180, 321.180B, 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 section 321.236, subsections 5 and 11, sections 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 section 321.236, subsections 5 and 11, sections 321.285, and 461A.36 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 section 321.236, subsections 3, 4, 9, and 12, section 321.275, subsections 1 through 7, sections 321.295, 321.297, 321.299, 321.303, 321.304, subsections 1 and 2, sections 321.305, 321.306, 321.311, 321.312, 321.314, 321.315, 321.316, 321.318, 321.323, 321.340, 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 section 321.257, subsection 2, sections 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 section 321.234, subsections 3 and 4, section 321.236, subsection 10, section 321.257, subsection 2, sections 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, subsections 1 and 2, the scheduled fine is twenty-five dollars. For violations of section 321.372, subsection 3, the scheduled fine is one hundred 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, sections 321.256, 321.257, subsection 2, sections 321.294, 321.304, subsection 3, sections 321.322, 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. Reserved.

q. For failure to have proper carrier identification markings under section 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 unlawful use of a driver's license or a nonoperator's identification card in violation of section 321.216, the scheduled fine is seventy-five 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 shall, when the violation is admitted and section 805.9 applies, be chargeable upon uniform citation and complaint, indictment, or county attorney's information, 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 pursuant to section 321.174, the scheduled fine is one hundred 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 8, the scheduled fine is five dollars.

z. For violations of section 321.460 prohibiting spilling loads on the highway and of section 321.208A prohibiting operation in violation of an out-of-service order, the scheduled fine is one hundred dollars.

aa. For violations of length, height, width, and other provisions of a permit, except weight provisions, under section 321E.16, the scheduled fine is one hundred dollars.

ab. For violations of importing fuel in the supply tank of a motor vehicle under section 452A.52, the scheduled fine is one hundred dollars.

ac. For violations of sections 321.341, 321.342, 321.343, and 321.344, the scheduled fine is fifty dollars.

ad. For violations of section 321.57, the scheduled fine is fifty dollars. For violations of section 321.62, the scheduled fine is fifty dollars.

ae. For operating a motor vehicle on the highways of this state with an expired driver's license pursuant to section 321.174A, the scheduled fine is twenty dollars.

af. For violations of section 321.277A, 321.369 or 321.370, the scheduled fine is twenty-five dollars.

ag. For violation of section 325A.8, the scheduled fine is fifty dollars. For violation of chapter 325A, other than a violation of section 325A.8, the scheduled fine is two hundred fifty dollars.

ah. If, in connection with a motor vehicle accident, a person is charged and found guilty of a violation of section 321.20B, subsection 1, the scheduled fine is five hundred dollars, otherwise the scheduled fine for a violation of section 321.20B, subsection 1, is two hundred fifty dollars. Notwithstanding section 805.12, fines collected pursuant to this paragraph shall be submitted to the state court administrator and distributed fifty percent to the victim compensation fund established in section 912.14*, twenty-five percent to the county in which such fine is imposed, and twenty-five percent to the general fund of the state.

2A. *Moving traffic violations — road work zones.* The scheduled fine for any moving traffic violations under chapter 321 as provided in this section shall be doubled if the violation occurs within any road work 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, sections 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 author-

ity 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 section 321G.9, subsections 1, 2, 3, 4, 5 and 7, sections 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.26, 481A.50, 481A.56, 481A.60 through 481A.62, 481A.83, 481A.84, 481A.92, 481A.123, 481A.145, subsection 3, sections 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.24, 481A.47, 481A.52, 481A.53, 481A.55, 481A.58, 481A.76, 481A.90, 481A.91, 481A.97, 481A.122, 481A.126, 481A.142, 481A.145, subsection 2, sections 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.

(5) Possession of a prohibited pistol or revolver while hunting deer, the scheduled fine is one hundred 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.144, subsection 4, or section 481A.145, subsections 4, 5, and 6, 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 section 456A.24, subsection 11, the scheduled fine is one hundred dollars.

5B. *Eurasian water milfoil.* For violations of section 456A.37, subsection 5, 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.*

a. For violations of section 123.49, subsection 2, paragraph "h", the scheduled fine for a licensee or permittee is one thousand five hundred dollars and the scheduled fine for a person who is employed by a licensee or permittee is five hundred dollars.

b. For violations under sections 321.284 and 321.284A, the scheduled fine is fifty dollars.

11. *Smoking violations.*

a. 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 penalty assessed for a violation of section 142B.6 is not paid in a timely manner, a citation shall be issued for the

violation in the manner provided in section 804.1. However, a person under age eighteen shall not be detained in a secure facility for failure to pay the civil penalty. The complainant shall not be charged a filing fee.

b. (1) For violations of section 453A.2, subsection 2, the scheduled fine is as follows 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:

(a) If the violation is a first offense, the scheduled fine is twenty-five dollars.

(b) If the violation is a second offense, the scheduled fine is fifty dollars.

(c) If the violation is a third or subsequent offense, the scheduled fine is one hundred dollars.

(2) For failing to pay the civil penalty under section 453A.2, subsection 2, the scheduled criminal fine is twenty-five dollars if the violation is a first offense, fifty dollars if the violation is a second offense, and one hundred dollars if the violation is a third or subsequent offense. Failure to pay the scheduled criminal fine shall not result in the person being detained in a secure facility. The complainant shall not be charged a filing fee.

12. *Violations of title laws.* For violations under sections 321.25, 321.45, 321.46, 321.48, 321.52, 321.67, and 321.104, the scheduled fine is fifty dollars.

97 Acts, ch 139, §16, 19; 99 Acts, ch 13, §26; 99 Acts, ch 77, §3

*Section 915.94 probably intended; corrective legislation is pending

Subsection 2, NEW paragraph ah, effective July 1, 1999; for penalties applicable to violations of §321.20B prior to July 1, 1999, see 97 Acts, ch 139, §15-19; 98 Acts, ch 1121, §9

For scheduled fines for alcoholic beverage violations under subsection 10 in effect from July 1, 1998, through December 31, 1998; see 98 Acts, ch 1204, §4, 6

Subsection 2, paragraph d amended

Subsection 2, former paragraph ah stricken and NEW paragraph ah added

Subsection 10, paragraph b amended

CHAPTER 808B

INTERCEPTION OF COMMUNICATIONS

808B.1 Definitions.

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

1. "*Aggrieved person*" means a person who was a party to an intercepted wire, oral, or electronic communication or a person against whom the interception was directed.

2. "*Contents*", when used with respect to a wire, oral, or electronic communication, includes any information concerning the identity of the parties to the communication or the existence, substance, purpose, or meaning of that communication.

3. "*Court*" means a district court in this state.

4. "*Electronic communication*" means any transfer of signals, signs, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic or photooptical system that affects intrastate, interstate, or foreign commerce, but excludes the following:

a. Wire or oral communication.

b. Communication made through a tone-only paging device.

c. Communication from a tracking device.

5. "*Electronic, mechanical, or other device*" means a device or apparatus which can be used to

intercept a wire, oral, or electronic communication other than either of the following:

a. A telephone or telegraph instrument, equipment, or facility, or any component of it which is either of the following:

(1) Furnished to the subscriber or user by a communications common carrier in the ordinary course of its business and being used by the subscriber or user in the ordinary course of the subscriber's or user's business.

(2) Being used by a communications common carrier in the ordinary course of its business, or by an investigative or law enforcement officer in the ordinary course of the officer's duties.

b. A hearing aid or similar device being used to correct subnormal hearing to not better than normal hearing.

6. "*Intercept*" or "*interception*" means the aural acquisition of the contents of a wire, oral, or electronic communication through the use of an electronic, mechanical, or other device.

7. "*Investigative or law enforcement officer*" means a peace officer of this state or one of its political subdivisions or of the United States who is empowered by law to conduct investigations of or to make arrests for criminal offenses, the attorney general, or a county attorney authorized by law to prosecute or participate in the prosecution of criminal offenses.

8. "*Oral communication*" means an oral communication uttered by a person exhibiting an expectation that the communication is not subject to interception, under circumstances justifying that expectation.

9. "*Pen register*" means a device which records or decodes electronic or other impulses which identify the numbers dialed or otherwise transmitted on the telephone line to which such device is attached. However, such term excludes any device used by a provider or customer of a wire or electronic communication service for billing, or recording as an incident to billing, for communications services provided by such provider of any device used by a provider, or any device used by a provider or customer of a wire communication service for cost accounting or other like purposes in the ordinary course of its business.

10. "*Special state agent*" means a sworn peace officer member of the department of public safety.

11. "*Trap and trace device*" means a device which captures the incoming electronic or other impulses which identify the originating number of an instrument or device from which a wire or electronic communication was transmitted.

12. "*Wire communication*" means a communication made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection between the point of origin and the point of reception, furnished or operated by a person engaged as a

common carrier in providing or operating the facilities for the transmission of communications.

99 Acts, ch 78, §1-5
Subsections 1 and 2 amended
NEW subsection 4 and former subsections 4-7 renumbered as 5-8
Subsection 5, unnumbered paragraph 1 amended
Subsection 6 amended
NEW subsection 9 and former subsection 8 renumbered as 10
NEW subsection 11 and former subsection 9 renumbered as 12

808B.2 Unlawful acts — penalty.

1. Except as otherwise specifically provided in this chapter, a person who does any of the following commits a class "D" felony:

a. Willfully intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept, a wire, oral, or electronic communication.

b. Willfully uses, endeavors to use, or procures any other person to use or endeavor to use an electronic, mechanical, or other device to intercept any oral communication when either of the following applies:

(1) The device is affixed to, or otherwise transmits a signal through, a wire, cable, or other like connection used in wire communication.

(2) The device transmits communications by radio, or interferes with the transmission of radio communications.

c. Willfully discloses, or endeavors to disclose, to any other person the contents of a wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral, or electronic communication in violation of this subsection.

d. Willfully uses, or endeavors to use, the contents of a wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral, or electronic communication in violation of this subsection.

2. a. It is not unlawful under this chapter for an operator of a switchboard, or an officer, employee, or agent of a communications common carrier, whose facilities are used in the transmission of a wire communication, to intercept, disclose, or use that communication in the normal course of employment while engaged in an activity which is a necessary incident to the rendition of service or to the protection of the rights or property of the carrier of the communication. However, communications common carriers shall not use service observing or random monitoring except for mechanical or service quality control checks.

b. It is not unlawful under this chapter for a person acting under color of law to intercept a wire, oral, or electronic communication, if the person is a party to the communication or one of the parties to the communication has given prior consent to the interception.

c. It is not unlawful under this chapter for a person not acting under color of law to intercept a

wire, oral, or electronic communication if the person is a party to the communication or if one of the parties to the communication has given prior consent to the interception, unless the communication is intercepted for the purpose of committing a criminal or tortious act in violation of the Constitution or laws of the United States or of any state or for the purpose of committing any other injurious act.

3. An operator of a switchboard, or an officer, employee, or agent of a communications common carrier, whose facilities are used in the transmission or interception of a wire, oral, or electronic communication shall not disclose the existence of any transmission or interception or the device used to accomplish the transmission or interception with respect to a court order under this chapter, except as may otherwise be required by legal process or court order. Violation of this subsection is a class "D" felony.

99 Acts, ch 78, §6-9
 Subsection 1, paragraphs a, c, and d amended
 Subsection 2, paragraphs b and c amended
 Subsection 3 amended

808B.3 Court order for interception by special agents.

The attorney general shall authorize and prepare any application for an order authorizing the interception of wire, oral, or electronic communications. The attorney general may apply to any district court of this state, or request that the county attorney in the district where application is to be made deliver the application of the attorney general, for an order authorizing the interception of wire, oral, or electronic communications, and the court may grant, subject to this chapter, an order authorizing the interception of wire, oral, or electronic communications by special state agents having responsibility for the investigation of the offense as to which application is made, when the interception may provide or has provided evidence of the following:

1. A felony offense involving dealing in controlled substances, as defined in section 124.101.
2. A felony offense involving money laundering in violation of chapter 706B.

99 Acts, ch 78, §10
 Section amended

808B.4 Permissible disclosure and use.

1. A special state agent who, by any means authorized by this chapter, has obtained knowledge of the contents of a wire, oral, or electronic communication, or has obtained evidence derived from a wire, oral, or electronic communication, may disclose the contents to another investigative or law enforcement officer to the extent that the disclosure is appropriate to the proper performance of the official duties of the officer making or receiving the disclosure.

2. An investigative or law enforcement officer who, by any means authorized by this chapter, has obtained knowledge of the contents of a wire, oral,

or electronic communication or has obtained evidence derived from a wire, oral, or electronic communication may use the contents to the extent the use is appropriate to the proper performance of the officer's official duties.

3. A person who has received, by any means authorized by this chapter, any information concerning a wire, oral, or electronic communication, or evidence derived from a wire, oral, or electronic communication intercepted in accordance with this chapter may disclose the contents of that communication or derivative evidence while giving testimony under oath or affirmation in a criminal proceeding in any court of the United States or of this state or in any federal or state grand jury proceeding.

4. An otherwise privileged wire, oral, or electronic communication intercepted in accordance with, or in violation of, the provisions of this chapter does not lose its privileged character.

5. If a special state agent, while engaged in intercepting a wire, oral, or electronic communication in the manner authorized, intercepts a communication relating to an offense other than those specified in the order of authorization, the contents of the communication, and the evidence derived from the communication, may be disclosed or used as provided in subsections 1 and 2. The contents of and the evidence derived from the communication may be used under subsection 3 when authorized by a court if the court finds on subsequent petition that the contents were otherwise intercepted in accordance with this chapter. The petition shall be made as soon as practicable.

99 Acts, ch 78, §11
 Section amended

808B.5 Application and order.

1. An application for an order authorizing or approving the interception of a wire, oral, or electronic communication shall be made in writing upon oath or affirmation to a court and shall state the applicant's authority to make the application. An application shall include the following information:

a. The identity of the special state agent requesting the application, the supervisory officer reviewing and approving the request, and the approval of the administrator of a division of the department of public safety under whose command the special state agent making the application is operating or the administrator's designee.

b. A full and complete statement of the facts and circumstances relied upon by the applicant to justify the belief that an order should be issued, including details as to the particular offense that has been, is being, or is about to be committed, a particular description of the nature and location of the facilities from which or the place where the communication is to be intercepted, a particular description of the type of communications sought to

be intercepted, and the identity of the person, if known, committing the offense and whose communications are to be intercepted.

c. A full and complete statement as to whether other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous.

d. A statement of the period of time for which the interception is required to be maintained. If the nature of the investigation is such that the authorization for interception should not automatically terminate when the described type of communication has been first obtained, a particular description of facts establishing probable cause to believe that additional communications of the same type will subsequently occur.

e. A full and complete statement of the facts concerning all previous applications known to the individuals authorizing and making the application, made to any court for authorization to intercept, or for approval of interceptions of, wire, oral, or electronic communications involving any of the same persons, facilities, or places specified in the application, and the action taken by the court on those applications.

f. If the application is for the extension of an order, a statement setting forth the results thus far obtained from the interception, or a reasonable explanation of the failure to obtain results.

2. The court may require the applicant to furnish additional testimony or documentary evidence in support of the application.

3. Upon application the court may enter an ex parte order, as requested or as modified, authorizing interception of wire, oral, or electronic communications within the territorial jurisdiction of the court, if the court finds on the basis of the facts submitted by the applicant all of the following:

a. There is probable cause for belief that an individual is committing, has committed, or is about to commit a felony offense involving dealing in controlled substances, as defined in section 124.101, subsection 5.

b. There is probable cause for belief that particular communications concerning the offense will be obtained through the interception.

c. Normal investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous.

d. There is probable cause for belief that the facilities from which, or the place where, the wire, oral, or electronic communications are to be intercepted are being used, or are about to be used, in connection with the commission of the offense, or are leased to, listed in the name of, or commonly used by the person whose communications are to be intercepted.

4. Each order authorizing the interception of a wire, oral, or electronic communication shall specify all of the following:

a. The identity of the person, if known, whose communications are to be intercepted.

b. The nature and location of the communication facilities as to which, or the place where, authority to intercept is granted.

c. A particular description of the type of communication sought to be intercepted, and a statement of the particular offense to which the communication relates.

d. The identity of the agency authorized to intercept the communications, and of the person requesting the application.

e. The period of time during which interception is authorized, including a statement as to whether the interception shall automatically terminate when the described communication has been first obtained.

5. Each order authorizing the interception of a wire, oral, or electronic communication shall, upon request of the applicant, direct that a communication common carrier, landlord, custodian, or other person shall furnish to the applicant all information, facilities, and technical assistance necessary to accomplish the interception inconspicuously and with a minimum of interference with the services that the carrier, landlord, custodian, or person is giving to the person whose communications are to be intercepted. Any communication common carrier, landlord, custodian, or other person furnishing facilities or technical assistance shall be compensated by the applicant at the prevailing rates.

6. An order entered under this section shall not authorize the interception of a wire, oral, or electronic communication for a period longer than is necessary to achieve the objective of the authorized interception, or in any event longer than thirty days. The thirty-day period shall commence on the date specified in the order upon which the commencement of the interception is authorized or ten days after the order is entered, whichever is earlier. An extension of an order may be granted, but only upon application for an extension made in accordance with subsection 1 and the court making the findings required by subsection 3. The period of extension shall be no longer than the authorizing court deems necessary to achieve the purposes for which it was granted and in no event longer than thirty days. Every order and its extension shall contain a provision that the authorization to intercept shall be executed as soon as practicable, shall be conducted in such a way as to minimize the interception of communications not otherwise subject to interception under this section and sections 808B.1 through 808B.4, 808B.6, and 808B.7, and shall terminate upon attainment of the authorized objective, or in any event in thirty days.

7. If an order authorizing interception is entered pursuant to this chapter, the order may require reports to be made to the court which issued the order showing what progress has been made to-

ward achievement of the authorized objective and the need for continued interception. The reports shall be made at intervals as the court requires.

8. The contents of a wire, oral, or electronic communication intercepted by a means authorized by this chapter shall, if possible, be recorded on tape or wire or other comparable device. The recording of the contents of a wire, oral, or electronic communication under this subsection shall be done in a way which will protect the recording from editing or other alterations. Immediately upon the expiration of the period of the order, or extensions of it, the recordings shall be made available to the court issuing the order and shall be sealed under the court's directions. Custody of the recordings shall be in accordance with the court order. Recordings shall be kept for five years and shall then be destroyed unless it is necessary to keep the recordings due to a continued legal process or court order, but the recordings shall not be kept for longer than ten years. Duplicate recordings may be made for disclosure or use pursuant to section 808B.4, subsections 1 and 2. The presence of a seal, or a satisfactory explanation for its absence, is a prerequisite for the disclosure or use of the contents of a wire, oral, or electronic communication or evidence derived from a communication under section 808B.4, subsection 3.

Applications made and orders granted under this chapter shall be sealed by the court. Custody of the applications and orders shall be in accordance with the directives of the court. The applications and orders shall be disclosed only upon a showing of good cause before a court and shall be kept for five years and shall then be destroyed unless it is necessary to keep the applications or orders due to a continued legal process or court order, but the applications and orders shall not be kept for longer than ten years.

A violation of this subsection may be punished as contempt of court.

9. Within a reasonable time, but not longer than ninety days, after the termination of the period of an order or its extensions, the court shall cause a notice to be served on all persons named in the order or the application which includes the following:

a. The names of other parties to intercepted communications if the court determines disclosure of the names to be in the interest of justice.

b. An inventory which shall include all of the following:

- (1) The date of the application.
- (2) The date of the entry of the court order and the period of authorized, approved, or disapproved interception, or the denial of the application.
- (3) Whether, during the period, wire, oral, or electronic communications were or were not intercepted.

The court, upon the filing of a motion by a person whose communications were intercepted, shall

make available to the person or the person's attorney for inspection the intercepted communications, applications, and orders. On an ex parte showing of good cause to a court, the service of the inventory required by this subsection may be postponed.

10. The contents of an intercepted wire, oral, or electronic communication or evidence derived from the wire, oral, or electronic communication shall not be received in evidence or otherwise disclosed in a trial, hearing, or other proceeding in a federal or state court unless each party, not less than ten days before the trial, hearing, or proceeding, has been furnished with a copy of the court order, and accompanying application, under which the interception was authorized. This ten-day period may be waived by the court if it finds that it was not possible to furnish the party with the above information ten days before the trial, hearing, or proceeding and that the party will not be prejudiced by the delay in receiving the information. If the ten-day period is waived by the court, the court may grant a continuance or enter such other order as it deems just under the circumstances.

11. An aggrieved person in a trial, hearing, or proceeding in or before any court, department, officer, agency, regulatory body, or other authority of this state, may move to suppress the contents of an intercepted wire, oral, or electronic communication, or evidence derived from the wire, oral, or electronic communication, on the grounds that the communication was unlawfully intercepted, the order of authorization under which it was intercepted was insufficient on its face, or the interception was not made in conformity with the order of authorization. The motion shall be made before the trial, hearing, or proceeding unless there was no opportunity to make the motion or the person was not aware of the grounds of the motion. If the motion is granted, the contents of the intercepted wire, oral, or electronic communication, or evidence derived from the wire, oral, or electronic communication, shall be treated as having been obtained in violation of this chapter.

12. An appeal by the attorney general from an order granting a motion to suppress or from the denial of an application for an order of approval shall be pursuant to section 814.5, subsection 2.

99 Acts, ch 78, §12-21; 99 Acts, ch 208, §63
 Subsection 1, unnumbered paragraph 1 and paragraph e amended
 Subsection 3, unnumbered paragraph 1 and paragraph d amended
 Subsection 4, unnumbered paragraph 1 amended
 Subsections 5 and 6 amended
 Subsection 8, unnumbered paragraph 1 amended
 Subsection 9, paragraph b, subparagraph (3) amended
 Subsections 10 and 11 amended

808B.7 Contents of intercepted wire, oral, or electronic communication as evidence.

The contents or any part of the contents of an intercepted wire, oral, or electronic communication and any evidence derived from the wire, oral, or electronic communication shall not be received in

evidence in a trial, hearing, or other proceeding in or before a court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the United States, a state, or political subdivision of a state if the disclosure of that information would be in violation of this chapter.

99 Acts, ch 78, §22
Section amended

808B.8 Civil damages authorized — civil and criminal immunity — injunctive relief.

1. A person whose wire, oral, or electronic communication is intercepted, disclosed, or used in violation of this chapter shall:

a. Have a civil cause of action against any person who intercepts, discloses, or uses or procures any other person to intercept, disclose, or use such communications.

b. Be entitled to recover from any such person all of the following:

(1) Actual damages, but not less than liquidated damages computed at the rate of one hundred dollars a day for each day of violation, or one thousand dollars, whichever is higher.

(2) Punitive damages upon a finding of a willful, malicious, or reckless violation of this chapter.

(3) A reasonable attorney's fee and other litigation costs reasonably incurred.

2. A good faith reliance on a court order shall constitute a complete defense to any civil or criminal action brought under this chapter.

3. A person whose wire, oral, or electronic communication is intercepted, disclosed, or used in violation of this chapter may seek an injunction, either temporary or permanent, against any person who violates this chapter.

99 Acts, ch 78, §23, 24
Subsection 1, unnumbered paragraph 1 amended
Subsection 3 amended

808B.10 Restrictions on use and installation of a pen register or a trap and trace device.

1. A person shall not install or use a pen register or a trap and trace device without first obtaining a court order pursuant to either section 808B.11 or 808B.12. However, a pen register or a trap and trace device may be used or installed without court order if any of the following apply:

a. It relates to the operation, maintenance, and testing of a wire or electronic communication service or to the protection of the rights or property of the provider of the service, or to the protection of users of the service from abuse of the service or unlawful use of the service.

b. If a wire or electronic communication was initiated or completed in order to protect the provider of the wire or electronic communication service, another provider furnishing service toward the completion of the wire or electronic communication, or a user of the service, from fraudulent, unlawful, or abusive use of the service.

c. If consent was obtained from the user of the electronic or wire communication service.

2. A person who knowingly violates this section commits a serious misdemeanor.

99 Acts, ch 78, §25
NEW section

808B.11 Application and order to install and use a pen register or trap and trace device.

1. An application for an order or an extension of an order authorizing or approving the installation and use of a pen register or a trap and trace device shall be made in writing by a prosecuting attorney upon oath or affirmation to a district court. Only a special state agent may conduct an investigation authorized under this section or section 808B.12. An application shall include the following information:

a. The identity of the prosecuting attorney, and the identity of the special state agent authorized to conduct the investigation.

b. A certified statement by the special state agent that the information likely to be obtained is relevant to an ongoing criminal investigation of an offense listed under section 808B.3 or an offense that may lead to an immediate danger of death or serious injury to a person.

2. Upon application, the court may enter an ex parte order or an ex parte extension of an order authorizing the installation and use of a pen register or trap and trace device within the territorial jurisdiction of the court, if the court finds that the special state agent has certified to the court that the information likely to be obtained by the use of a pen register or trap and trace device is relevant to an ongoing criminal investigation of an offense listed under section 808B.3, or an offense that may lead to an immediate danger of death or serious injury to a person.

3. Each order authorizing the interception of a communication under this section shall specify all of the following:

a. The identity of the person, if known, who owns or leases the telephone line where the pen register or trap and trace device will be attached.

b. The identity of the person, if known, who is the subject of the criminal investigation.

c. The telephone number if known, and the physical location of the telephone line where the pen register or trap and trace device will be attached, and the geographic limits of the trap and trace device.

d. Upon request of the applicant, direct the furnishing of information, facilities, and technical assistance necessary to accomplish the installation of a pen register or trap and trace device.

e. The period of time during which the use of the pen register or trap and trace device is authorized, which shall be no greater than sixty days.

f. If the application is for the extension of an order and after a judicial finding required under sub-

section 2, authorize the extension of an order. Each extension of an order shall not exceed sixty days.

4. Except as otherwise provided in paragraph "b", any order granted under this section shall be sealed until otherwise ordered by the court.

a. Any person owning or leasing the telephone line to which the pen register or trap and trace device is attached, or who has been ordered by the court to furnish information, facilities, or technical assistance to the applicant, shall not disclose the existence of the pen register or trap and trace device or the existence of the investigation of the listed subscriber, to any person, unless or until otherwise ordered by the court.

b. A prosecuting attorney or special state agent may utilize or share any information obtained from the use of a pen register or trap and trace device with other prosecuting attorneys or law enforcement agencies while acting within the scope of their employment.

c. A violation of this subsection may be punished as contempt of court.

99 Acts, ch 78, §26; 99 Acts, ch 208, §64, 65
NEW section

808B.12 Emergency application and order.

1. Notwithstanding any other provision of this chapter, the issuance of an order under this section may be based upon sworn oral testimony communicated by the director of the division of criminal investigation, the director of the division of narcotics enforcement, a special state agent authorized by the prosecuting attorney, or the prosecuting attorney, via the telephone, if the judge who is asked to issue the order is satisfied that the circumstances make it reasonable to dispense with a written affidavit. A pen register or trap and trace device may only be installed and used if both of the following occur:

a. The court reasonably determines that an emergency situation exists that involves an immediate danger of death of or serious injury to any person.

b. A written order approving the installation or use of a pen register or trap and trace device is obtained under section 808B.11 within forty-eight hours of the issuance of an order under this section.

2. In the absence of an authorizing order, under section 808B.11, an emergency order shall immediately terminate upon the earlier of obtainment of the information sought, denial of the application under section 808B.11, or the lapse of forty-eight hours after the authorization of the installation of the pen register or trap and trace device under subsection 1.

3. An investigative or law enforcement officer who knowingly uses a pen register or trap and trace device pursuant to this section after the effectiveness of the emergency order has terminated

pursuant to subsection 2 due to the lapse of the forty-eight hours commits a serious misdemeanor.

4. A provider for a wire or electronic communication service, landlord, custodian, or other person who furnishes facilities or technical assistance pursuant to this section shall be reasonably compensated for such reasonable expenses incurred in providing such facilities and assistance.

99 Acts, ch 78, §27; 99 Acts, ch 208, §66, 67
NEW section
Subsection 1, paragraph a amended
Subsection 3 amended

808B.13 Assistance in installation and use of a pen register or a trap and trace device.

1. Upon the request of the prosecuting attorney or the special state agent authorized to install and use a pen register under this chapter, and as directed by court order, a provider of a wire or electronic communication service, landlord, custodian, or other person shall furnish such investigative or law enforcement officer forthwith with all information, facilities, and technical assistance necessary to accomplish the installation of the pen register unobtrusively and with a minimum of interference with the service that the person so ordered by the court accords the party with respect to whom the installation and use is to take place.

2. Upon the request of the prosecuting attorney or the special state agent authorized to receive the results of a trap and trace device under this chapter, and as directed by court order, a provider of a wire or electronic communication service, landlord, custodian, or other person shall install such device forthwith on the appropriate telephone line and shall furnish such investigative or law enforcement officer with all additional information, facilities, and technical assistance including installation and operation of the device unobtrusively and with a minimum of interference with the services that the person so ordered by the court accords the party with respect to whom the installation and use is to take place. Unless otherwise ordered by the court, the results of the trap and trace device shall be furnished to the authorized law enforcement agency designated in the court order at reasonable intervals during regular business hours for the duration of the order.

3. A provider of a wire or electronic communication service, landlord, custodian, or other person who furnishes facilities or technical assistance pursuant to this section shall be compensated for reasonable expenses incurred in providing such facilities and assistance.

4. A cause of action shall not lie in any court against any provider of a wire or electronic communication service, its officers, employees, agents, or other specified persons for providing information, facilities, or assistance in accordance with the

terms of a court order under section 808B.11 or 808B.12.

5. A good faith reliance on a court order under section 808B.11 or 808B.12 is a complete defense against any civil or criminal action brought under this chapter or any other statute.

99 Acts, ch 78, §28
NEW section

808B.14 Reporting installation and use of pen registers and trap and trace devices.

In January of each year, the attorney general and

the county attorneys of this state shall report to the state court administrator the number of pen register orders and orders for trap and trace devices applied for and obtained by their offices during the preceding calendar year.

99 Acts, ch 78, §29
NEW section

CHAPTER 811

PRETRIAL RELEASE — BAIL

811.1 Bail and bail restrictions.

All defendants are bailable both before and after conviction, by sufficient surety, or subject to release upon condition or on their own recognizance, except that the following defendants shall not be admitted to bail:

1. A defendant awaiting judgment of conviction and sentencing following either a plea or verdict of guilty of a class "A" felony, murder, any class "B" felony included in section 707.6A; felonious assault; felonious child endangerment; sexual abuse in the second degree; sexual abuse in the third degree; kidnapping; robbery in the first degree; arson in the first degree; burglary in the first degree; any felony included in section 124.401, subsection 1, paragraph "a" or "b"; or a second or subsequent offense under section 124.401, subsection 1, paragraph "c"; or any felony punishable under section 902.9, subsection 1.

2. A defendant appealing a conviction of a class "A" felony; murder; any class "B" or "C" felony included in section 707.6A; felonious assault; felonious child endangerment; sexual abuse in the second degree; sexual abuse in the third degree; kidnapping; robbery in the first degree; arson in the first degree; burglary in the first degree; any felony included in section 124.401, subsection 1, paragraph "a" or "b"; or a second or subsequent conviction under section 124.401, subsection 1, paragraph "c"; or any felony punishable under section 902.9, subsection 1.

3. Notwithstanding subsections 1 and 2, a defendant awaiting judgment of conviction and sentencing following either a plea or verdict of guilty of, or appealing a conviction of, any felony offense included in section 708.11, subsection 3, or a felony offense under chapter 124 not provided for in subsection 1 or 2 is presumed to be ineligible to be admitted to bail unless the court determines that such release reasonably will not result in the person failing to appear as required and will not jeop-

ardize the personal safety of another person or persons.

99 Acts, ch 12, §10; 99 Acts, ch 71, §1; 99 Acts, ch 123, §1
See Form 5, Appendix of forms, R.Cr.P. 31
See also §124.416
See Code editor's note to §10A.202
Subsections 1–3 amended

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.

Any bailable defendant who is charged with unlawful possession, manufacture, delivery, or distribution of a controlled substance or other drug under chapter 124 and is ordered released shall be required, as a condition of that release, to submit to a substance abuse evaluation and follow any recommendations proposed in the evaluation for appropriate substance abuse treatment.

2. Determination of conditions. In determining which conditions of release will reasonably assure the defendant's appearance and the safety of another person or persons, the magistrate shall, on the basis of available information, take into account the nature and circumstances of the offense charged, the defendant's family ties, employment, financial resources, character and mental condition, the length of the defendant's residence in the community, the defendant's record of convictions, and the defendant's record of appearance at court proceedings or of flight to avoid prosecution or failure to appear at court proceedings.

3. Release at initial appearance. This chapter does not preclude the release of an arrested person as authorized by section 804.21.

4. Statement to all defendants. When a defendant appears before a magistrate pursuant to R.Cr.P. 2 or 3, the defendant shall be informed of the defendant's right to have said conditions of release reviewed. If the defendant indicates that the defendant desires such a review and is indigent and unable to retain legal counsel, the magistrate shall appoint an attorney to represent the defendant for the purpose of such review. Unless the conditions of release are amended and the defendant is thereupon released, the magistrate shall set forth in writing the reasons for requiring conditions imposed. A defendant who is ordered released by a magistrate other than a district court judge or district associate judge on a condition which required that the defendant return to custody after specified hours, shall, upon application, be entitled to review by the magistrate who imposed the condition in the

same manner as a defendant who remains in full-time custody. In the event that the magistrate who imposed conditions of release is not available, any other magistrate in the judicial district may review such conditions.

5. Statement of conditions when defendant is released. A magistrate authorizing the release of a defendant under this section shall issue a written order containing a statement of the conditions imposed if any, shall inform the defendant of the penalties applicable to violation of the conditions of release and shall advise the defendant that a warrant for the defendant's arrest will be issued immediately upon such violation.

6. Amendment of release conditions. A magistrate ordering the release of the defendant on any conditions specified in this section may at any time amend the order to impose additional or different conditions of release, provided that, if the imposition of different or additional conditions results in the detention of the defendant as a result of the defendant's inability to meet such conditions, the provisions of subsection 3 of this section shall apply.

7. Appeal from conditions of release.

a. A defendant who is detained, or whose release on a condition requiring the defendant to return to custody after specified hours is continued, after review of the defendant's application pursuant to subsection 3 or 5 of this section, by a magistrate, other than a district judge or district associate judge having original jurisdiction of the offense with which the defendant is charged, may make application to a district judge or district associate judge having jurisdiction to amend the order. Said motion shall be promptly set for hearing and a record made thereof.

b. In any case in which a court denied a motion under paragraph "a" of this subsection to amend an order imposing conditions of release, or a defendant is detained after conditions of release have been imposed or amended upon such a motion, an appeal may be taken from the district court. The appeal shall be determined summarily, without briefs, on the record made. However, the defendant may elect to file briefs and may be heard in oral argument, in which case the prosecution shall have a right to respond as in an ordinary appeal from a criminal conviction. The appellate court may, on its own motion, order the parties to submit briefs and set the time in which such briefs shall be filed. Any order so appealed shall be affirmed if it is supported by the proceeding below. If the order is not so supported, the court may remand the case for a further hearing or may, with or without additional evidence, order the defendant released pursuant to subsection 1 of this section.

8. Failure to appear — penalty. Any person who, having been released pursuant to this section, willfully fails to appear before any court or magistrate as required shall, in addition to the forfeiture of any security given or pledged for the person's re-

lease, 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.

99 Acts, ch 12, §11
See Forms 6 and 7, Appendix of forms, R.Cr.P. 31
Subsection 1, NEW unnumbered paragraph 2

811.9 Forfeiture of appearance bond.

Sections 811.6 through 811.8 shall not apply in a case where a simple misdemeanor is charged upon a uniform citation and complaint and where the defendant has submitted an unsecured appearance bond or has submitted bail in the form of cash, check, credit card as provided in section 805.14, or guaranteed arrest bond certificate as defined in section 321.1. When a defendant fails to appear as required in such cases, the court, or the clerk of the district court, shall enter a judgment of forfeiture of the bond or bail. The judgment shall be final upon entry and shall not be set aside.

99 Acts, ch 144, §14
Section amended

811.12 Limitations.

1. A person shall not take or attempt to take into custody the principal on a bail bond, either as a surety on a bail bond in a criminal proceeding or as an agent of such surety, unless such person has complied with all of the following, if applicable:

a. Notification or registration with a chief law enforcement officer under section 80A.3A.

b. Licensing requirements for bail enforcement businesses and bail enforcement agents under chapter 80A.

2. A person other than a certified peace officer shall not be authorized to apprehend, detain, or arrest a principal on a bail bond, wherever issued, unless one of the following applies:

a. The person is a bail enforcement agent licensed under chapter 80A and has notified the chief law enforcement officer under section 80A.3A.

b. The person is a bail enforcement agent licensed under the laws of another state and has registered with the chief law enforcement officer under section 80A.3A.

c. The person is a bail enforcement agent from a state that does not license such businesses who has registered with the chief law enforcement officer under section 80A.3A.

d. The person is a bail enforcement agent exempt from licensing requirements pursuant to section 80A.2, subsection 3.

99 Acts, ch 105, §1
Subsection 2, NEW paragraph d

CHAPTER 814

APPEALS FROM THE DISTRICT COURT

814.11 Indigent's right to counsel.

An indigent defendant is entitled to appointed counsel on the appeal of all indictable offenses. The appointment shall be made to the state appellate defender unless the state appellate defender is unable to handle the case due to a conflict of interest or because of a temporary overload of cases. If the state appellate defender is unable to handle the case, the court shall appoint an attorney who has a contract with the state public defender to handle

such an appeal. If the court determines that no contract attorney is available to handle the appeal, the court may appoint a noncontract attorney who has agreed to handle the case, but the order of appointment shall include a specific finding that no contract attorney was available. The appointment of noncontract attorneys shall be on a rotational or equalization basis, considering the experience of the attorney and the difficulty of the case.

99 Acts, ch 135, §23
Section amended

CHAPTER 815

COSTS — COMPENSATION AND FEES — INDIGENT DEFENSE

815.4 Special witnesses for indigents.

Witnesses secured for indigent defendants under R.Cr.P. 19 must file a claim for compensation supported by an affidavit specifying the time ex-

pected, services rendered, and expenses incurred on behalf of the defendant.

99 Acts, ch 135, §24
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 person referred to in section 815.4, or called by the state in criminal cases.

99 Acts, ch 135, §25
See R.Cr.P. 19(4)
Section amended

815.7 Fees to attorneys.

An attorney who has not entered into a contract authorized under section 13B.4 and who is appointed by the court to represent any person charged with a crime in this state, seeking postconviction relief, against whom a contempt action is pending, appealing a criminal conviction, appealing a denial of postconviction relief, or subject to a proceeding under chapter 229A, or to serve as counsel for any person or guardian ad litem for any child in juvenile court, shall be entitled to reasonable compensation and expenses. For appointments made on or after July 1, 1999, the reasonable compensation shall be calculated on the basis of sixty dollars per hour for class "A" felonies, fifty-five dollars per hour for class "B" felonies, and fifty dollars per hour for all other offenses. The expenses shall include any sums as are necessary for investigations in the interest of justice, and the cost of obtaining the transcript of the trial record and briefs if an appeal is filed. The attorney need not follow the case into another county or into the appellate court unless so directed by the court. If the attorney follows the case into another county or into the appellate court, the attorney shall be entitled to compensation as provided in this section. Only one attorney fee shall be so awarded in any one case except that in class "A" felony cases, two may be authorized.

99 Acts, ch 135, §26
Section amended

815.9 Indigent determined — penalty.

1. For purposes of this chapter, chapter 13B, chapter 229A, chapter 232, chapter 665, chapter 814, chapter 822, and the rules of criminal procedure, a person is indigent if the person is entitled to an attorney appointed by the court as follows:

a. A person is entitled to an attorney appointed by the court to represent the person if the person has an income level at or below one hundred twenty-five 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, unless the court determines that the person is able to pay for the cost of an attorney to represent the person on the pending charges. In making the determination of a person's ability to pay for the cost of an attorney, the court shall consider not only the person's income, but also the availability of any assets subject to execution, including but not limited

to cash, stocks, bonds, and any other property which may be applied to the satisfaction of judgments and the seriousness of the charge.

b. A person with an income level greater than one hundred twenty-five percent, but at or below two hundred percent, of the most recently revised poverty income guidelines published by the United States department of health and human services shall not be entitled to an attorney appointed by the court, unless the court makes a written finding that not appointing counsel on the pending charges would cause the person substantial hardship. In determining whether substantial hardship would result, the court shall consider not only the person's income, but also the availability of any assets subject to execution, including but not limited to cash, stocks, bonds, and any other property which may be applied to the satisfaction of judgments and the seriousness of the charge.

c. A person with an income level greater than two hundred percent of the most recently revised poverty income guidelines published by the United States department of health and human services shall not be entitled to an attorney appointed by the court, unless the person is charged with a felony and the court makes a written finding that not appointing counsel would cause the person substantial hardship. In determining whether substantial hardship would result, the court shall consider not only the person's income, but also the availability of any assets subject to execution, including but not limited to cash, stocks, bonds, and any other property which may be applied to the satisfaction of judgments and the seriousness of the charge.

2. A determination of whether a person is entitled to an appointed attorney shall be made on the basis of an affidavit of financial status submitted at the time of the person's initial appearance or at such later time as a request for court appointment of counsel is made. The state public defender shall adopt rules prescribing the form and content of the affidavit of financial status. The affidavit of financial status shall be signed under penalty of perjury and shall contain sufficient information to allow the determination to be made of whether the person is entitled to an appointed attorney under this section. If the person is granted an appointed attorney, the affidavit of financial status shall be filed and permanently retained in the person's court file.

3. If a person is granted an appointed attorney, the person shall be required to reimburse the state for the total cost of legal assistance provided to the person. "Legal assistance" as used in this section shall include not only an appointed attorney, but also transcripts, witness fees, expenses, and any other goods or services required by law to be provided to an indigent person entitled to an appointed attorney.

4. If the case is a criminal case, all costs and fees incurred for legal assistance shall become due

and payable to the clerk of the district court by the person receiving the legal assistance 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.

5. If the case is other than a criminal case, all costs and fees incurred for legal assistance shall become due and payable to the clerk of the district court by the person receiving the legal assistance not later than ten days from the date of any court ruling or trial held in the case, or if the case is dismissed, within ten days of the dismissal.

6. An appointed attorney shall submit a report pertaining to the costs and fees for legal assistance to the court at the times specified in subsections 4 and 5. If the appointed attorney is a public defender, the report shall specify the total hours of service plus other expenses. If the appointed attorney is a private attorney, the total amount of legal assistance shall be the total amount of the fees claimed by the appointed attorney together with other expenses.

7. If all costs and fees incurred for legal assistance are not paid at the times specified in subsections 4 and 5, the court shall order payment of the costs and fees in reasonable installments.

8. If a person is granted an appointed attorney or is receiving legal assistance in accordance with this section and the person is employed, the person shall execute an assignment of wages. An order for assignment of income, in a reasonable amount to be determined by the court, shall also be entered by the court. The state public defender shall prescribe forms for use in wage assignments and court orders entered under this section.

9. If any costs and fees are not paid at the times specified under subsections 4 and 5, a judgment shall be entered against the person for any unpaid amounts.

99 Acts, ch 135, §27
Section amended

815.9A Recovery of indigent defense costs. Repealed by 99 Acts, ch 135, § 31.

815.10 Appointment of counsel by court.

1. The court, for cause and upon its own motion or upon application by an indigent person or a public defender, shall appoint the state public defender, the state public defender's designee pursuant to section 13B.4, or an attorney pursuant to section 13B.9 to represent an indigent person at any stage of the criminal, postconviction, contempt, commitment under chapter 229A, or juvenile proceedings or on appeal of any criminal, postconviction, contempt, commitment under chapter 229A, or juvenile

action in which the indigent person is entitled to legal assistance at public expense. However, in juvenile cases, the court may directly appoint an existing nonprofit corporation established for and engaged in the provision of legal services for juveniles. An appointment shall not be made unless the person is determined to be indigent under section 815.9. Only one attorney shall be appointed in all cases, except that in class "A" felony cases the court may appoint two attorneys.

2. An attorney other than a public defender who is appointed by the court under this section shall apply to the state public defender for compensation and for reimbursement of costs incurred. The amount of compensation due shall be determined in accordance with any indigent defense contract or pursuant to section 815.7.

3. The state public defender shall adopt rules which specify the information which shall be included with all claims for compensation submitted by court-appointed attorneys under this section. The rules shall require that a court-appointed attorney shall obtain court approval of a claim prior to exceeding the fee limitations established pursuant to section 13B.4. However, a court-appointed attorney may request court approval after exceeding a fee limitation if good cause is shown. The order approving a claim that exceeds the fee limitation shall be included in the information submitted under this section. If the information required under this section and the rules of the state public defender is not submitted, the claim may be denied until the information is provided. If the information required under this section and the rules of the state public defender is submitted with the claim, the state public defender may approve reasonable and proper compensation to the court-appointed attorney in the manner provided in the rules.

99 Acts, ch 135, §28
Section amended

815.10A Claim for compensation — requirements. Repealed by 99 Acts, ch 135, § 31.

815.11 Appropriations for indigent defense.

Costs incurred under chapter 229A, 665, or 822, or section 232.141, subsection 3, paragraph "c", or sections 814.9, 814.10, 814.11, 815.4, 815.5, 815.6, 815.7, and 815.10, or the rules of criminal procedure on behalf of an indigent shall be paid from funds appropriated by the general assembly to the department of inspections and appeals for those purposes.

99 Acts, ch 135, §29
Section amended

CHAPTER 901

JUDGMENT AND SENTENCING PROCEDURES

901.2 Presentence investigation.

Upon a plea of guilty, a verdict of guilty, or a special verdict upon which a judgment of conviction of a public offense may be rendered, the court shall receive from the state, from the judicial district department of correctional services, and from the defendant any information which may be offered which is relevant to the question of sentencing. The court may consider information from other sources.

Notwithstanding section 13.10, the court may determine if the defendant shall be required to provide a physical specimen to be submitted for DNA profiling if the defendant is to be placed on probation or work release. The court shall consider the deterrent effect of DNA profiling, the likelihood of repeated violations by the defendant, and the seriousness of the offense. When funds have been allocated from the general fund of the state, or funds are provided by other public or private sources, the court shall order DNA profiling.

The court shall not order a presentence investigation when the offense is a class "A" felony. If, however, the board of parole determines that the Iowa medical and classification center reception report for a class "A" felon is inadequate, the board may request and shall be provided with additional information from the appropriate judicial district department of correctional services. The court shall order a presentence investigation when the offense is any felony punishable under section 902.9, subsection 1, or a class "B", class "C", or class "D" felony. A presentence investigation for any felony punishable under section 902.9, subsection 1, or a class "B", class "C", or class "D" felony shall not be waived. The court may order, with the consent of the defendant, that the presentence investigation begin prior to the acceptance of a plea of guilty, or prior to a verdict of guilty. The court may order a presentence investigation when the offense is an aggravated misdemeanor. The court may order a presentence investigation when the offense is a serious misdemeanor only upon a finding of exceptional circumstances warranting an investigation. Notwithstanding section 901.3, a presentence investigation ordered by the court for a serious misdemeanor shall include information concerning only the following:

1. A brief personal and social history of the defendant.
2. The defendant's criminal record.
3. The harm to the victim, the victim's immediate family, and the community, including any completed victim impact statement or statements and restitution plan.

The court may withhold execution of any judgment or sentence for such time as shall be reasonably necessary for an investigation with respect to deferment of judgment, deferment of sentence, or suspension of sentence and probation. The investigation shall be made by the judicial district department of correctional services.

The purpose of the report by the judicial district department of correctional services is to provide the court pertinent information for purposes of sentencing and to include suggestions for correctional planning for use by correctional authorities subsequent to sentencing.

99 Acts, ch 12, §12

Unnumbered paragraph 3 amended

901.4 Presentence investigation report confidential — distribution.

The presentence investigation report is confidential and the court shall provide safeguards to ensure its confidentiality, including but not limited to sealing the report, which may be opened only by further court order. At least three days prior to the date set for sentencing, the court shall serve all of the presentence investigation report upon the defendant's attorney and the attorney for the state, and the report shall remain confidential except upon court order. However, the court may conceal the identity of the person who provided confidential information. The report of a medical examination or psychological or psychiatric evaluation shall be made available to the attorney for the state and to the defendant upon request. The reports are part of the record but shall be sealed and opened only on order of the court. If the defendant is committed to the custody of the Iowa department of corrections and is not a class "A" felon, a copy of the presentence investigation report shall be forwarded to the director with the order of commitment by the clerk of the district court and to the board of parole at the time of commitment. The presentence investigation report may also be released by the department of corrections or a judicial district department of correctional services pursuant to section 904.602 to another jurisdiction for the purpose of providing interstate probation and parole compact services or evaluations. The defendant or the defendant's attorney may file with the presentence investigation report, a denial or refutation of the allegations, or both, contained in the report. The denial or refutation shall be included in the report. If the person is sentenced for an offense which requires registration under chapter 692A, the court shall release the report to the department which is responsible un-

der section 692A.13A for performing the assessment of risk.

99 Acts, ch 112, §20
Section amended

901.5A Reopening of a sentence.

1. A defendant sentenced by the court to the custody of the director of the department of corrections for an offense punishable under section 902.9, subsection 1, may have the judgment and sentence entered under section 901.5 reopened for resentencing if the following apply:

a. The county attorney from the county which prosecuted the defendant files a motion to reopen the sentence of the defendant based upon the defendant's cooperation in the prosecution of other persons.

b. The court finds the defendant cooperated in the prosecution of other persons.

2. Upon a finding by the court that the defendant cooperated in the prosecution of other persons, the court may reduce the maximum sentence imposed under the original sentencing order.

3. For purposes of calculating good conduct time under section 903A.2, the sentencing date for a defendant whose sentence has been reopened under this section shall be the date of the original sentencing order.

4. The filing of a motion or the reopening of a sentence under this section shall not constitute grounds to stay any other court proceedings, or to toll or restart the time for filing of any post-trial motion or any appeal.

5. The defendant may request appointment of counsel, if eligible under section 815.10, prior to and during any negotiations and proceedings pursuant to this section.

99 Acts, ch 12, §13
NEW section

901.10 Reduction of sentences.

1. A court sentencing a person for the person's first conviction under section 124.406, 124.413, or

902.7 may, at its discretion, sentence the person to a term less than provided by the statute if mitigating circumstances exist and those circumstances are stated specifically in the record.

2. Notwithstanding subsection 1, if the sentence under section 124.413 involves a methamphetamine offense under section 124.401, subsection 1, paragraph "a" or "b", the court shall not grant any reduction of sentence unless the defendant pleads guilty. If the defendant pleads guilty, the court may, at its discretion, reduce the mandatory minimum sentence by up to one-third. If the defendant additionally cooperates in the prosecution of other persons involved in the sale or use of controlled substances, and if the prosecutor requests an additional reduction in the defendant's sentence because of such cooperation, the court may grant a further reduction in the defendant's mandatory minimum sentence, up to one-half of the remaining mandatory minimum sentence.

3. A court sentencing a person for the person's first conviction under section 124.401D may, at its discretion, sentence the person to a term less than the maximum term provided under section 902.9, subsection 1, if mitigating circumstances exist and those circumstances are stated specifically in the record. However, the court shall not grant any reduction of sentence unless the defendant pleads guilty. If the defendant pleads guilty, the court may, at its discretion, reduce the maximum sentence by up to one-third. If the defendant cooperates in the prosecution of other persons involved in the sale or use of controlled substances, and if the prosecutor requests an additional reduction in the defendant's sentence because of such cooperation, the court may grant a further reduction in the defendant's maximum sentence.

4. The state may appeal the discretionary decision on the grounds that the stated mitigating circumstances do not warrant a reduction of the sentence.

99 Acts, ch 12, §14
Section amended

CHAPTER 902

FELONIES

902.3 Indeterminate sentence.

When a judgment of conviction of a felony other than a class "A" felony is entered against a person, the court, in imposing a sentence of confinement, shall commit the person into the custody of the director of the Iowa department of corrections for an indeterminate term, the maximum length of which shall not exceed the limits as fixed by section 902.9, unless otherwise prescribed by statute, nor shall

the term be less than the minimum term imposed by law, if a minimum sentence is provided. However, the court may sentence a person convicted of a class "D" felony for a violation of section 321J.2 to imprisonment for up to one year in a county jail under section 902.9, subsection 5, and the person shall not be under the custody of the director of the Iowa department of corrections.

99 Acts, ch 12, §15
Section amended

902.8A Minimum sentence for conspiring to manufacture or delivery of methamphetamine to a minor.

A person who has been convicted for a first violation under section 124.401D shall not be eligible for parole until the person has served a minimum term of confinement of ten years.

99 Acts, ch 12, §16
NEW section

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 felon sentenced for a first conviction for a violation of section 124.401D, shall be confined for no more than ninety-nine years.
2. A class "B" felon shall be confined for no more than twenty-five years.
3. An habitual offender shall be confined for no more than fifteen years.

4. A class "C" felon, not an habitual offender, shall be confined for no more than ten years, and in addition shall be sentenced to a fine of at least one thousand dollars but not more than ten thousand dollars.

5. A class "D" felon, not an habitual offender, shall be confined for no more than five years, and in addition shall be sentenced to a fine of at least seven hundred fifty 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.

99 Acts, ch 12, §17; 99 Acts, ch 65, §6, 7
Enhanced penalties in weapons free zones, see §724.4A
Habitual offender, §902.8
Surcharge on penalty, chapter 911
NEW subsection 1 and former subsections 1–4 renumbered as 2–5
Subsections 4 and 5 amended

CHAPTER 903

MISDEMEANORS

903.1 Maximum sentence for misdemeanants.

1. If a person eighteen years of age or older is convicted of a simple or serious misdemeanor and a specific penalty is not provided for or if a person under eighteen years of age has been waived to adult court pursuant to section 232.45 on a felony charge and is subsequently convicted of a simple, serious, or aggravated misdemeanor, the court shall determine the sentence, and shall fix the period of confinement or the amount of fine, which fine shall not be suspended by the court, within the following limits:

a. For a simple misdemeanor, there shall be a fine of at least fifty dollars but not to exceed five hundred dollars. The court may order imprisonment not to exceed thirty days in lieu of a fine or in addition to a fine.

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.

99 Acts, ch 153, §24
See also §701.8
Enhanced penalties in weapons free zones, see §724.4A
Surcharge on penalty, chapter 911
Subsection 1, paragraph a amended

CHAPTER 903A

REDUCTION OF SENTENCES

903A.1 Conduct review.

The director of the Iowa department of corrections shall appoint independent administrative law judges whose duties shall include but are not limited to review, as provided in section 903A.3, of the conduct of inmates in institutions under the department. Sections 10A.801 and 17A.11 do not apply to administrative law judges appointed pursuant to this section.

98 Acts, ch 1202, §44, 46

1998 amendment is effective July 1, 1999, and applies to agency proceedings commenced, or conducted on remand from a court or other agency, on or after that date; 98 Acts, ch 1202, §44, 46

Section amended

903A.5 Time to be served — credit.

An inmate shall not be discharged from the custody of the director of the Iowa department of corrections until the inmate has served the full term for which the inmate was sentenced, less good conduct time earned and not forfeited, unless the inmate is pardoned or otherwise legally released. Good conduct time earned and not forfeited shall apply to reduce a mandatory minimum sentence being served pursuant to section 124.406, 124.413, 902.7, 902.8, 902.8A, or 902.11. An inmate shall be deemed to be serving the sentence from the day on which the inmate is received into the institution. If an inmate was confined to a county jail or other correctional or mental facility at any time prior to sentencing, or after sentencing but prior to the case having been decided on appeal, because of failure to

furnish bail or because of being charged with a non-bailable offense, the inmate shall be given credit for the days already served upon the term of the sentence. However, if a person commits any offense while confined in a county jail or other correctional or mental health facility, the person shall not be granted jail credit for that offense. Unless the inmate was confined in a correctional facility, the sheriff of the county in which the inmate was confined shall certify to the clerk of the district court from which the inmate was sentenced and to the department of corrections' records administrator at the Iowa medical and classification center the number of days so served. The department of corrections' records administrator, or the administrator's designee, shall apply jail credit as ordered by the court of proper jurisdiction or as authorized by this section and section 907.3, subsection 3, and shall forward a copy of the number of days served to the clerk of the district court from which the inmate was sentenced.

An inmate shall not receive credit upon the inmate's sentence for time spent in custody in another state resisting return to Iowa following an escape, or for time served in an institution or jail of another jurisdiction during any period of time the person is receiving credit upon a sentence of that other jurisdiction.

99 Acts, ch 12, §18; 99 Acts, ch 182, §4

See Code editor's note to §10A.202

Section amended

CHAPTER 904

DEPARTMENT OF CORRECTIONS

904.108 Director — duties, powers.

1. The director shall:

a. Supervise the operations of the institutions under the department's jurisdiction and may delegate the powers and authorities given the director by statute to officers or employees of the department.

b. Supervise state agents whose duties relate primarily to the department.

c. Establish and maintain a program to oversee women's institutional and community corrections programs and to provide community support to ensure continuity and consistency of programs. The person responsible for implementing this section shall report to the director.

d. Establish and maintain acceptable standards of treatment, training, education, and rehabilitation in the various state penal and corrective

institutions which shall include habilitative services and treatment for offenders with mental retardation. For the purposes of this paragraph, "*habilitative services and treatment*" means medical, mental health, social, educational, counseling, and other services which will assist a person with mental retardation to become self-reliant. However, the director may also provide rehabilitative treatment and services to other persons who require the services. The director shall identify all individuals entering the correctional system who are persons with mental retardation, as defined in section 222.2, subsection 4. Identification shall be made by a qualified professional in the area of mental retardation. In assigning an offender with mental retardation, or an offender with an inadequately developed intelligence or with impaired mental abilities, to a correctional facility, the director shall

consider both the program needs and the security needs of the offender. The director shall consult with the department of human services in providing habilitative services and treatment to offenders with mental illness or mental retardation. The director may enter into agreements with the department of human services to utilize mental health institutions and share staff and resources for purposes of providing habilitative services and treatment, as well as providing other special needs programming. Any agreement to utilize mental health institutions and to share staff and resources shall provide that the costs of the habilitative services and treatment shall be paid from state funds. Not later than twenty days prior to entering into any agreement to utilize mental health institution staff and resources, other than the use of a building or facility, for purposes of providing habilitative services and treatment, as well as other special needs programming, the directors of the departments of corrections and human services shall each notify the chairpersons and ranking members of the joint appropriations subcommittees that last handled the appropriation for their respective departments of the pending agreement. Use of a building or facility shall require approval of the general assembly if the general assembly is in session or, if the general assembly is not in session, the legislative council may grant temporary authority, which shall be subject to final approval of the general assembly during the next succeeding legislative session.

e. Employ, assign, and reassign personnel as necessary for the performance of duties and responsibilities assigned to the department. Employees shall be selected on the basis of fitness for work to be performed with due regard to training and experience and are subject to chapter 19A.

f. Establish standards of mental fitness which shall govern the initial recruitment, selection, and appointment of correctional officers. To promote these standards, the director shall by rule require a battery of psychological tests to determine cognitive skills, personality characteristics and suitability of all applicants for a correctional career.

g. Examine all state institutions which are penal, reformatory, or corrective to determine their efficiency for adequate care, custody, and training of their inmates and report the findings to the board.

h. Prepare a budget for the department, subject to the approval of the board, and other reports as required by law.

i. Develop long-range correctional planning and an on-going five-year corrections master plan. The director shall annually report to the general assembly to inform its members as to the status and content of the planning and master plan.

j. Supervise rehabilitation camps within the state as may be established by the director. Persons committed to institutions under the department

may be transferred to the facilities of the camp system and upon transfer shall be subject to the same laws as pertain to the transferring institution.

k. Adopt rules subject to the approval of the board, pertaining to the internal management of institutions and agencies under the director's charge and necessary to carry out the duties and powers outlined in this section.

l. Adopt rules, policies, and procedures, subject to the approval of the board, pertaining to the supervision of parole and work release.

m. Provide routine administrative and support services to the board of parole.

n. Cooperate with Iowa state university of science and technology to provide, for purposes of agricultural research, development, and testing, the use of resources, including property, facilities, labor, and services, connected with institutions listed in section 904.102. However, use of the resources by the university is subject to approval by the director. Before granting approval, the director shall require that the university compensate the department for the use of the resources, on terms specified by the director.

o. Establish and maintain a correctional training center at the Mount Pleasant correctional facility.

2. The director, with the express approval of the board, may establish for any inmate sentenced pursuant to section 902.3 a furlough program under which inmates sentenced to and confined in any institution under the jurisdiction of the department may be temporarily released. A furlough for a period not to exceed fourteen days may be granted when an immediate member of an inmate's family is seriously ill or has died, when an inmate is to be interviewed by a prospective employer, or when an inmate is authorized to participate in a training program not available within the institution. Furloughs for a period not to exceed fourteen days may also be granted in order to allow inmates to participate in programs or activities that serve rehabilitative objectives.

3. The director may establish a sales bonus system for the sales representatives for prison industry products. If a sales bonus system is established, the system shall not affect the status of the sales representatives under chapter 19A.

4. The director may expend moneys from the support allocation of the department as reimbursement for replacement or repair of personal items of the department's employees damaged or destroyed by clients of the department during the employee's tour of duty. However, the reimbursement shall not exceed one hundred fifty dollars for each item. The director shall establish rules in accordance with chapter 17A to carry out the purpose of this subsection.

5. The director may obtain assistance for the department for construction, facility planning, and project accomplishment with the department of

general services and by contracting under chapter 28E for data processing with the department of human services or the department of general services.

6. The director may charge an inmate a correctional fee for custodial expenses incurred or which may be incurred while the inmate is in the custody of the department. The custodial expenses may include, but are not limited to, board and room, medical and dental fees, education costs, clothing costs, and the costs of supervision, services, and treatment to the inmate. The correctional fee shall not exceed the actual cost of keeping the inmate in custody. The correctional fees collected pursuant to this subsection shall be credited as a reimbursement to the appropriate correctional institution. This subsection does not limit the right of the director to obtain any other remedy authorized by law.

99 Acts, ch 114, §46

Subsection 1, paragraph d amended

904.515 Human immunodeficiency virus-related matters — exemption.

The provisions of chapter 141A relating to knowledge and consent do not apply to persons committed to the custody of the department. The department may provide for medically acceptable procedures to inform employees, visitors, and persons committed to the department of possible infection and to protect them from possible infection.

99 Acts, ch 181, §18

Section amended

904.703 Services of inmates — institutions and public service.

Inmates shall work on state account in the maintenance of state institutions, in the erection, repair, authorized demolition, or operation of buildings and works used in connection with the institutions, and in industries established and maintained in connection with the institutions by the director. The director shall encourage the making of agreements, including chapter 28E agreements, with departments and agencies of the state or its political subdivisions to provide products or services under an inmate work program to the departments and agencies. The director may implement an inmate work program for trustworthy inmates of state correctional institutions, under proper supervision, whether at work centers located outside the state correctional institutions or in construction or maintenance work at public or charitable facilities and for other agencies of state, county, or local government. The supervision, security, and transportation of, and allowances paid to inmates used in public service projects shall be provided pursuant to agreements, including chapter 28E agreements, made by the director and the agency for which the work is done. Housing and maintenance shall also be provided pursuant to the agreement, including a chapter 28E agreement, unless the inmate is housed and maintained in the correctional facility. All such work, including but not limited to that provided in this section, shall have as its pri-

mary purpose the development of attitudes, skills, and habit patterns which are conducive to inmate rehabilitation. The director may adopt rules allowing inmates participating in an inmate work program to receive educational or vocational training outside the state correctional institutions and away from the work centers or public or charitable facilities used under a program.

However, an inmate shall not work in a public service project if the work of that inmate would replace a person employed by the state agency or political subdivision, which employee is performing the work of the public service project at the time the inmate is being considered for work in the project.

99 Acts, ch 182, §5

Section 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.

5. *a.* An inmate of a correctional institution employed pursuant to this section shall surrender to the department of corrections the inmate's total earnings less deductions for federal, state, and local taxes, and any other payroll deductions re-

quired by law.

The inmate's employer shall provide each employed inmate with the withholding statement required under section 422.16, and any other employment information necessary for the receipt of the remainder of an inmate's payroll earnings.

b. From the inmate's gross payroll earnings, the following amounts shall be deducted:

(1) Twenty percent, to be deposited in the inmate's general account.

(2) All required tax deductions, to be collected by the inmate's employer.

(3) Five percent, to be deducted for the victim compensation fund created in section 915.94.

c. From the balance remaining after deduction of the amounts under paragraph "b", the following amounts shall be deducted in the following order of priority:

(1) An amount which the inmate may be legally obligated to pay for the support of the inmate's dependents, which shall be paid through the department of human services collection services center, and which shall include an amount for delinquent child support not to exceed fifty percent of net earnings.

(2) Restitution as ordered by the court under chapter 910.

(3) Any balance remaining after the deductions made under subparagraphs (1) and (2) shall represent the costs of the inmate's incarceration and shall be deposited, effective July 1, 2000, in the general fund of the state.

d. Of the amount credited to the inmate's general account, the department shall deduct an amount representing any other legal or administrative financial obligations.

99 Acts, ch 182, §6
Subsection 5 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 by rule for mental fitness which shall govern the initial recruitment, selection, and appointment of parole and probation officers.

99 Acts, ch 182, §7
Subsection 8 amended

CHAPTER 906

PAROLES AND WORK RELEASE

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 an offense punishable under section 902.9, subsection 1, 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.

99 Acts, ch 12, §19
Subsection 1, unnumbered paragraph 1 amended

CHAPTER 907

DEFERRED JUDGMENT, DEFERRED OR SUSPENDED SENTENCE AND PROBATION

907.3 Deferred judgment, deferred sentence or suspended sentence.

Pursuant to section 901.5, the trial court may, upon a plea of guilty, a verdict of guilty, or a special verdict upon which a judgment of conviction may be rendered, exercise any of the options contained in this section. However, this section does not apply to a forcible felony or to a violation of chapter 709 committed by a person who is a mandatory report-

er of child abuse under section 232.69 in which the victim is a person who is under the age of eighteen.

1. With the consent of the defendant, the court may defer judgment and may place the defendant on probation upon conditions as it may require. Upon a showing that the defendant is not cooperating with the program of probation or is not responding to it, the court may withdraw the defendant from the program, pronounce judgment, and im-

pose 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 and the payment of fees imposed and not waived by the judicial district department of correctional services under section 905.14, the defendant shall be discharged without entry of judgment. Upon violation of the conditions of probation, the court may proceed as provided in chapter 908.

However, this subsection shall not apply if any of the following is true:

a. The offense is a violation of section 709.8 and the child is twelve years of age or under.

b. The defendant previously has been convicted of a felony. “*Felony*” means a conviction in a court of this or any other state or of the United States, of an offense classified as a felony by the law under which the defendant was convicted at the time of the defendant’s conviction.

c. Prior to the commission of the offense the defendant had been granted a deferred judgment or similar relief, two or more times anywhere in the United States.

d. Prior to the commission of the offense the defendant had been granted a deferred judgment or similar relief in a felony prosecution anywhere in the United States within the preceding five years, measured from the date of granting of deferment of judgment to the date of commission of the offense.

e. The defendant committed an assault as defined in section 708.1, against a peace officer in the performance of the peace officer’s duty.

f. The defendant is a corporation.

g. The offense is a violation of section 321J.2 and the person has been convicted of a violation of that section or the person’s driver’s license has been revoked under chapter 321J, and any of the following apply:

(1) If the defendant’s alcohol concentration established by the results of an analysis of a specimen of the defendant’s blood, breath, or urine withdrawn in accordance with chapter 321J exceeds .15, regardless of whether or not the alcohol concentration indicated by the chemical test minus the established margin of error inherent in the device or method used to conduct the test equals an alcohol concentration of .15 or more.

(2) If the defendant has previously been convicted of a violation of section 321J.2, subsection 1, or a violation of a statute in another state substantially corresponding to section 321J.2, subsection 1.

(3) If the defendant has previously received a deferred judgment or sentence for a violation of section 321J.2, subsection 1, or for a violation of a statute in another state substantially corresponding to section 321J.2, subsection 1.

(4) If the defendant refused to consent to testing requested in accordance with section 321J.6.

(5) If the offense under chapter 321J results in bodily injury to a person other than the defendant.

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 conviction for or plea of guilty to a violation of section 236.8 or a finding of contempt pursuant to section 236.8 or 236.14.

j. The offense is a violation of section 707.6A, subsection 1; or a violation of section 707.6A, subsection 4, involving operation of a motor vehicle while intoxicated.

k. The offense is a violation of section 124.401, subsection 1, paragraph “*a*” or “*b*”, and the controlled substance is methamphetamine.

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. The court may assign the defendant to supervision or services under section 901B.1 at the level of sanctions which the district department determines to be appropriate, if an intermediate criminal sanctions plan and program has been adopted in the judicial district under section 901B.1. However, the court shall not defer the sentence for a violation of any of the following:

a. 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.

b. Section 236.8 or for contempt pursuant to section 236.8 or 236.14.

c. Section 321J.2, subsection 1, if any of the following apply:

(1) If the defendant’s alcohol concentration established by the results of an analysis of a specimen of the defendant’s blood, breath, or urine withdrawn in accordance with chapter 321J exceeds .15, regardless of whether or not the alcohol concentration indicated by the chemical test minus the established margin of error inherent in the device or method used to conduct the test equals an alcohol concentration of .15 or more.

(2) If the defendant has previously been convicted of a violation of section 321J.2, subsection 1, or a violation of a statute in another state substantially corresponding to section 321J.2, subsection 1.

(3) If the defendant has previously received a deferred judgment or sentence for a violation of sec-

tion 321J.2, subsection 1, or for a violation of a statute in another state substantially corresponding to section 321J.2, subsection 1.

(4) If the defendant refused to consent to testing requested in accordance with section 321J.6.

(5) If the offense under chapter 321J results in bodily injury to a person other than the defendant.

d. Section 707.6A, subsection 1; or section 707.6A, subsection 4, involving operation of a motor vehicle while intoxicated.

e. The offense is a violation of section 124.401, subsection 1, paragraph “a” or “b”, and the controlled substance is methamphetamine.

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 to be followed by a term of probation as specified in section 907.7, or commitment of the defendant to the judicial district department of correctional services for supervision or services under section 901B.1 at the level of sanctions which the district department determines to be appropriate and the payment of fees imposed under section 905.14. A person so committed who has probation revoked shall be given credit for such time served. However, the court shall not suspend any of the following sentences:

a. The minimum term of two days imposed pursuant to section 708.2A, subsection 6, paragraph “a”, or a sentence imposed under section 708.2A, subsection 6, paragraph “b”.

b. A sentence imposed pursuant to section 236.8 or 236.14 for contempt.

c. A mandatory minimum sentence of incarceration imposed pursuant to a violation of section 321J.2, subsection 1; furthermore, the court shall not suspend any part of a sentence not involving incarceration imposed pursuant to section 321J.2, subsection 2, beyond the mandatory minimum if any of the following apply:

(1) If the defendant’s alcohol concentration established by the results of an analysis of a specimen of the defendant’s blood, breath, or urine withdrawn in accordance with chapter 321J exceeds .15, regardless of whether or not the alcohol concentration indicated by the chemical test minus the established margin of error inherent in the device or method used to conduct the test equals an alcohol concentration of .15 or more.

(2) If the defendant has previously been convicted of a violation of section 321J.2, subsection 1,

or a violation of a statute in another state substantially corresponding to section 321J.2, subsection 1.

(3) If the defendant has previously received a deferred judgment or sentence for a violation of section 321J.2, subsection 1, or for a violation of a statute in another state substantially corresponding to section 321J.2, subsection 1.

(4) If the defendant refused to consent to testing requested in accordance with section 321J.6.

(5) If the offense under chapter 321J results in bodily injury to a person other than the defendant.

d. A sentence imposed pursuant to section 707.6A, subsection 1; or section 707.6A, subsection 4, involving operation of a motor vehicle while intoxicated.

e. The offense is a violation of section 124.401, subsection 1, paragraph “a” or “b”, and the controlled substance is methamphetamine.

99 Acts, ch 182, §8

Subsection 3, unnumbered paragraph 1 amended

907.8A Sixth judicial district — determination of issues during probationary period.

1. Except as otherwise provided, the probation violation sanctioning jurisdiction of the court in the sixth judicial district shall be transferred to an administrative parole and probation judge upon entry of the sentencing order for each person who is sentenced to the custody of the director of the department of corrections and whose sentence is suspended. The court shall retain jurisdiction to establish the amount of restitution, approve the plan of restitution, and for reconsideration of the original sentence. The court shall also retain jurisdiction for arrest warrants, initial appearances, preliminary probation violation informations, bond proceedings, violations of restitution plans, and appointment of counsel. If a person is not sentenced to the custody of the director of the department of corrections the court shall retain the jurisdiction over matters relating to those cases.

2. All issues relating to whether the probationer has violated or fulfilled the terms and conditions of probation, including but not limited to express violations of a specific term of probation, new violations of the law, and changes of the term of probation as provided in sections 907.7, 908.11, and 910.4, which would otherwise be determined by the court, shall be determined instead by an administrative parole and probation judge. The administrative parole and probation judge, who shall be an attorney, shall be appointed by the board of parole, notwithstanding chapter 17A. The costs of employing the administrative parole and probation judge shall be borne by the board of parole.

A probation hearing conducted by an administrative parole and probation judge shall be conducted in the same manner as hearings regarding revocations or modifications of or discharge from parole. The hearing may be conducted electronically.

ly. The probation officer shall notify the county attorney at least five days prior to any probation hearing. The interests of the state shall be represented by the probation officer at the probation hearing, unless the county attorney or the county attorney's designee elects to assist the probation officer. The board of parole, the department of corrections, and the clerk of the district court in the sixth judicial district shall devise and implement a system for the filing of documents and records of probation hearings conducted under this section.

The system shall allow for the electronic filing of records and documents where electronic filing is practicable.

3. Appeals from orders of the administrative parole and probation judge which pertain to the revocations or modifications of or discharge from probation shall be conducted in the manner provided in rules adopted by the board of parole.

For future repeal of this section, effective July 1, 2000, see 98 Acts, ch 1197, §10, 13

Appropriation of funds for continuation of pilot program; 98 Acts, ch 1222, §17; 99 Acts, ch 202, §18

Section not amended; footnote revised

CHAPTER 915

VICTIM RIGHTS

915.10 Definitions.

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

1. "*Notification*" means mailing by regular mail or providing for hand delivery of appropriate information or papers. However, this notification procedure does not prohibit an agency from also providing appropriate information to a registered victim by telephone.

2. "*Registered*" means having provided the county attorney with the victim's written request for registration and current mailing address and telephone number.

3. "*Victim*" means a person who has suffered physical, emotional, or financial harm as the result of a public offense or a delinquent act, other than a simple misdemeanor, committed in this state. "*Victim*" also includes the immediate family members of a victim who died or was rendered incompetent as a result of the offense or who was under eighteen years of age at the time of the offense.

4. "*Victim impact statement*" means a written or oral presentation to the court by the victim or the victim's representative that indicates the physical, emotional, financial, or other effects of the offense upon the victim.

5. "*Violent crime*" means a forcible felony, as defined in section 702.11, and includes any other felony or aggravated misdemeanor which involved the actual or threatened infliction of physical or emotional injury on one or more persons.

99 Acts, ch 114, §47
Subsection 3 amended

915.23 Employment discrimination against witnesses prohibited.

1. An employer shall not discharge an employee, or take or fail to take action regarding an employee's promotion or proposed promotion, or take action to reduce an employee's wages or bene-

fits for actual time worked, due to the service of an employee as a witness in a criminal proceeding.

2. An employer who violates this section commits a simple misdemeanor.

3. An employee whose employer violates this section shall also be entitled to recover damages from the employer. Damages recoverable under this section include, but are not limited to, actual damages, court costs, and reasonable attorney fees.

4. The employee may also petition the court for imposition of a cease and desist order against the person's employer and for reinstatement to the person's previous position of employment.

99 Acts, ch 96, §52
Subsection 1 amended

915.24 Notification of victim of juvenile by juvenile court officer.

1. If a complaint is filed alleging that a child has committed a delinquent act, the alleged victim, as defined in section 915.10, has and a juvenile court officer shall notify the alleged victim of the following rights:

a. To be notified of the names and addresses of the child and of the child's custodial parent or guardian.

b. To be notified of the specific charge or charges filed in a petition resulting from the complaint and regarding any dispositional orders or informal adjustments.

c. To be informed of the person's rights to restitution.

d. To be notified of the person's right to offer a written victim impact statement and to orally present the victim impact statement.

e. To be informed of the availability of assistance through the crime victim compensation program.

2. The juvenile court and the county attorney shall coordinate efforts so as to prevent duplication

of notification under this section and section 915.13.

99 Acts, ch 96, §53
Subsection 1, unnumbered paragraph 1 amended

915.40 Definitions.

As used in this subchapter, 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. “*Alleged offender*” means a person who has been charged with the commission of a sexual assault or a juvenile who has been charged in juvenile court with being a delinquent as the result of actions that would constitute a sexual assault.

3. “*Authorized representative*” means an individual authorized by the victim to request an HIV-related test of a convicted or alleged offender who is any of the following:

a. The parent, guardian, or custodian of the victim if the victim is a minor.

b. The physician of the victim.

c. The victim counselor or person requested by the victim to provide counseling regarding the HIV-related test and results.

d. The victim’s spouse.

e. The victim’s legal counsel.

4. “*Convicted offender*” means a person convicted of a sexual assault or a juvenile who has been adjudicated delinquent for an act of sexual assault.

5. “*Department*” means the Iowa department of public health.

6. “*Division*” means the crime victims assistance division of the office of the attorney general.

7. “*HIV*” means the human immunodeficiency virus identified as the causative agent of AIDS.

8. “*HIV-related test*” means a test for the antibody or antigen to HIV.

9. “*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.

10. “*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 or an alleged offender to be deemed a significant exposure.

11. “*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 or alleged offender. “*Significant exposure*” is presumed to have occurred when there is a showing that there was penetration of the convicted or alleged offender’s penis into the victim’s vagina or anus, contact between the mouth and genitalia, or contact

between the genitalia of the convicted or alleged offender and the genitalia or anus of the victim.

12. “*Victim*” means a petitioner or a person who is the victim of a sexual assault which resulted in significant exposure, or the parent, guardian, or custodian of such a victim if the victim is a minor, for whom the victim or the peace officer files an application for a search warrant to require the alleged offender to undergo an HIV-related test. “*Victim*” includes an alleged victim.

13. “*Victim counselor*” means a person who is engaged in a crime victim center as defined in section 915.20A, 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.

99 Acts, ch 181, §19
Subsection 3, paragraph c amended

915.41 Medical examination costs.

The cost of a medical examination of a victim for the purpose of gathering evidence and the cost of treatment of a victim for the purpose of preventing venereal disease shall be paid from the fund established in section 915.94.

99 Acts, ch 114, §48
Section amended

915.42 Right to HIV-testing of convicted or alleged assailant.

1. Unless a petitioner chooses to be represented by private counsel, the county attorney shall represent the victim’s interest in all proceedings under this subchapter.

2. If a person is convicted of sexual assault or adjudicated delinquent for an act of sexual assault, the county attorney, if requested by the petitioner, shall petition the court for an order requiring the convicted offender 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 or adjudicated delinquent included sufficient contact between the victim and the convicted offender to be deemed a significant exposure pursuant to section 915.40.

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.

3. If a person is an alleged offender, the county attorney, if requested by the victim, shall make application to the court for the issuance of a search warrant, in accordance with chapter 808, for the purpose of requiring the alleged offender to submit to an HIV-related test, if all of the following conditions are met:

a. The application states that the victim believes that the sexual assault for which the alleged offender is charged included sufficient contact be-

tween the victim and the alleged offender to be deemed a significant exposure pursuant to section 915.40 and states the factual basis for the belief that a significant exposure exists.

b. The authorized representative of the victim, the county attorney, or the court sought to obtain written informed consent to the testing from the alleged offender.

c. Written informed consent was not provided by the alleged offender.

4. Upon receipt of the petition or application filed under subsection 2 or 3, 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 to provide counseling regarding the nature, reliability, and significance of the HIV-related test and of the serologic status of the convicted or alleged offender.

b. Schedule a hearing to be held as soon as is practicable.

c. Cause written notice to be served on the convicted or alleged 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 or alleged offender is represented by legal counsel, provide written notice to the convicted or alleged offender and the convicted or alleged offender's legal counsel.

d. Provide for the appointment of legal counsel for a convicted or alleged offender if the convicted or alleged offender desires but is financially unable to employ counsel.

e. Furnish legal counsel with copies of the petition or application, written informed consent, if obtained, and copies of all other documents related to the petition or application, including, but not limited to, the charges and orders.

5. 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 or adjudicated delinquent or for which the alleged offender was charged provided sufficient contact between the victim and the convicted or alleged offender to be deemed a significant exposure, and to questions of law.

b. In determining whether the contact should be deemed a significant exposure for a convicted offender, 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. In determining whether the contact should be deemed a significant exposure for an alleged offender, the court shall base the determination on the application and the factual basis pro-

vided in the application for the belief of the applicant that a significant exposure exists.

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 or search warrant requiring testing.

d. The hearing shall be in camera unless the convicted or alleged offender and the petitioner or victim 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.

6. Following the hearing, the court shall require a convicted or alleged offender to undergo an HIV-related test only if the petitioner or victim 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 or victim, the county attorney, or the court sought to obtain written informed consent from the convicted or alleged offender.

c. Written informed consent was not provided by the convicted or alleged offender.

7. 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.

99 Acts, ch 114, §49, 50; 99 Acts, ch 181, §20
See Code editor's note to §10A.202
Subsection 4, paragraph a amended
Subsection 6, paragraph b amended

915.43 Testing, reporting, and counseling — penalties.

1. The physician or other practitioner who orders the test of a convicted or alleged offender for HIV under this subchapter shall disclose the results of the test to the convicted or alleged offender, and to the victim counselor or a person requested by the victim to provide counseling regarding the HIV-related test and results who shall disclose the results to the petitioner.

2. All testing under this chapter shall be accompanied by counseling as required under section 141A.7.

3. Subsequent testing arising out of the same incident of exposure shall be conducted in accordance with the procedural and confidentiality requirements of this subchapter.

4. Results of a test performed under this subchapter, except as provided in subsection 13, shall

be disclosed only to the physician or other practitioner who orders the test of the convicted or alleged offender, the convicted or alleged offender, the victim, the victim counselor or person requested by the victim to provide counseling regarding the HIV-related test and results, the physician of the victim if requested by the victim, the parent, guardian, or custodian of the victim, if the victim is a minor, and the county attorney who filed the petition for HIV-related testing under this chapter, who may use the results to file charges of criminal transmission of HIV under chapter 709C. Results of a test performed under this subchapter shall not be disclosed to any other person without the written informed consent of the convicted or alleged offender. A person to whom the results of a test have been disclosed under this subchapter is subject to the confidentiality provisions of section 141A.9, and shall not disclose the results to another person except as authorized by section 141A.9, subsection 13.

5. If testing is ordered under this subchapter, the court shall also order periodic testing of the convicted offender during the period of incarceration, probation, or parole of the alleged offender during a period of six months following the initial test if the physician or other practitioner who ordered the initial test of the convicted or alleged 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 or alleged offender was HIV-infected at the time the sexual assault or alleged 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 or alleged offender, the convicted or alleged offender, the victim counselor or person requested by the victim to provide the counseling regarding the HIV-related test and results who shall disclose the results to the petitioner, the physician of the victim, if requested by the victim, and the county attorney who may use the results as evidence in the prosecution of the sexual assault or in the prosecution of the offense of criminal transmission of HIV under chapter 709C.

6. 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.

7. The fact that an HIV-related test was performed under this subchapter 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.

8. The fact that an HIV-related test was performed under this subchapter and the results of the test shall not be used as a basis for further prosecution of a convicted offender in relation to the inci-

dent which is the subject of the testing, to enhance punishments, or to influence sentencing.

9. 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 subchapter, legal protections which attach to such testing shall be the same as those which attach to an initial test under this subchapter, and the rights to a predisclosure hearing and to appeal provided under section 915.42 shall apply.

10. HIV-related testing required under this subchapter shall be conducted by the state hygienic laboratory.

11. Notwithstanding the provisions of this subchapter requiring initial testing, if a petition is filed with the court under section 915.42 requesting an order for testing and the order is granted, and if a test has previously been performed on the convicted or alleged offender while under the control of the department of corrections, the test results shall be provided in lieu of the performance of an initial test of the convicted or alleged offender, in accordance with this subchapter.

12. In addition to the counseling received by a victim, referral to appropriate health care and support services shall be provided.

13. In addition to persons to whom disclosure of the results of a convicted or alleged offender's HIV-related test results is authorized under this subchapter, 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.

14. A person to whom disclosure of a convicted or alleged offender's HIV-related test results is authorized under this subchapter shall not disclose the results to any other person for whom disclosure is not authorized under this subchapter. A person who intentionally or recklessly makes an unauthorized disclosure in violation of this subsection 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 subchapter. Proceedings maintained under this subsection shall provide for the anonymity of the test subject and all documentation shall be maintained in a confidential manner.

99 Acts, ch 114, §51; 99 Acts, ch 181, §21
Subsections 1, 2, 4, 5, and 11 amended

915.50 General rights of domestic abuse victims.

In addition to other victim rights provided in this chapter, victims of domestic abuse shall have the following rights:

1. The right to file a pro se petition for relief from domestic abuse in the district court, pursuant to sections 236.3 through 236.10.

2. The right, pursuant to section 236.12, for law enforcement to remain on the scene, to assist the victim in leaving the scene, to assist the victim in obtaining transportation to medical care, and to provide the person with a written statement of victim rights and information about domestic abuse shelters, support services, and crisis lines.

3. The right to receive a criminal no-contact order upon a finding of probable cause, pursuant to section 236.14.

99 Acts, ch 114, §52
Subsection 2 amended

915.84 Application for compensation.

1. To claim compensation under the crime victim compensation program, a person shall apply in writing on a form prescribed by the department and file the application with the department within two years after the date of the crime, the discovery of the crime, or the date of death of the victim. The department may waive the time limitation if good cause is shown.

2. A person is not eligible for compensation unless the crime was reported to the local police department or county sheriff department within seventy-two hours of its occurrence. If the crime cannot reasonably be reported within that time period, the crime shall have been reported within seventy-two hours of the time a report can reasonably be made. The department may waive this requirement if good cause is shown.

3. Notwithstanding subsection 2, a victim under the age of eighteen or dependent adult as defined in section 235B.2 who has been sexually abused or subjected to any other unlawful sexual conduct under chapter 709 or 726 or who has been the subject of a forcible felony is not required to report the crime to the local police department or county sheriff department to be eligible for compensation if the crime was allegedly committed upon a child by a person responsible for the care of a child, as defined in section 232.68, subsection 7, or upon a dependent adult by a caretaker as defined in section 235B.2, and was reported to an employee of the department of human services and the employee verifies the report to the department.

4. When immediate or short-term medical services or mental health services are provided to a victim under section 915.35, the department of human services shall file the claim for compensation as provided in subsection 3 for the victim.

5. When immediate or short-term medical services to a victim are provided pursuant to section 915.35 by a professional licensed or certified by the state to provide such services, the professional shall file the claim for compensation, unless the department of human services is required to file the claim under this section. The requirement to report

the crime to the local police department or county sheriff department under subsection 2 does not apply to this subsection.

6. The victim shall cooperate with reasonable requests by the appropriate law enforcement agencies in the investigation or prosecution of the crime.

99 Acts, ch 10, §1
Subsection 1 amended

915.86 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 fifteen thousand 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 915.20A.

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 six 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 seven 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.

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 915.20A, 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.

7. In the event of a victim's death, reasonable charges incurred for health care for the victim's spouse, children, parents, siblings, or persons related by blood or affinity to the victim not to exceed three thousand dollars per survivor.

8. In the event of a victim's death, loss of income from work that, but for the death of the victim, would have been earned by the victim's spouse, child, parent, sibling, or person cohabiting with or related by blood or affinity to the victim, not to exceed six thousand dollars.

9. Reasonable expenses incurred for cleaning the scene of a homicide, if the scene is a residence, not to exceed one thousand dollars.

10. Reasonable charges incurred for mental health care for secondary victims which include the services provided by a psychologist licensed under chapter 154B, a person holding at least a master's degree in social work, counseling, or a related field, a victim counselor as defined in section 915.20A, or a psychiatrist licensed under chapter 147, 148, or 150A. The allowable charges under this subsection shall not exceed one thousand dollars per secondary victim.

99 Acts, ch 10, §2
Subsection 1 amended

915.100 Victim restitution rights.

1. Victims, as defined in section 910.1, have the right to recover pecuniary damages, as defined in section 910.1.

2. The right to restitution includes the following:

a. In all criminal cases in which there is a plea of guilty, verdict of guilty, or special verdict upon which a judgment of conviction is rendered, the sentencing court shall order that restitution be made by each offender to victims of the offender's criminal activities.

b. A judge may require a juvenile who has been found to have committed a delinquent act to compensate the victim of that act for losses due to the act.

c. In cases where the act committed by an offender causes the death of another person, in addition to the amount ordered for payment of the vic-

tim's pecuniary damages, the court shall also order the offender to pay at least one hundred fifty thousand dollars in restitution to the victim's estate, pursuant to the provisions of section 910.3B.

d. The clerk of court shall forward a copy of the plan of payment or the modified plan of payment to the victim or victims.

e. Victims shall be paid in full pursuant to an order of restitution, before fines, penalties, surcharges, crime victim compensation program reimbursement, public agency reimbursement, court costs, correctional fees, court-appointed attorney fees, expenses of a public defender, or contributions to local anticrime organizations are paid.

f. A judgment of restitution may be enforced by a victim entitled under the order to receive restitution, or by a deceased victim's estate, in the same manner as a civil judgment.

g. A victim in a criminal proceeding who is entitled to restitution under a court order may file a restitution lien.

h. If a convicted felon or the representative of a convicted felon receives or is owed any profit which is realized as a result of the commission of the crime, and the attorney general brings an action to recover such profits, the victim may be entitled to funds held in escrow, pursuant to the provisions of section 910.15.

i. The right to victim restitution for the pecuniary damages incurred by a victim as the result of a crime does not limit or impair the right of the victim to sue and recover damages from the offender in a civil action.

99 Acts, ch 10, §3; 99 Acts, ch 114, §53
Subsection 2, paragraphs c and h amended

**CONVERSION TABLES OF SENATE AND HOUSE FILES
AND JOINT RESOLUTIONS TO
CHAPTERS OF THE ACTS OF THE GENERAL ASSEMBLY**

1999 REGULAR SESSION

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1184	1	602.4101(1)		25	17A.23
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	3	10A.801		29	86.17(1)
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	7	17A.3(1c)		34	203C.10
	8	17A.4(1b)		35	207.14(2)
	9	Repealing		36	216.15(3a)
	10	17A.4A		37	216.17(6)
	11	17A.7		38	252.27
	12	17A.8(9)		39	256.7(6)
	13	17A.9		40	368.22(4-6)
	14	17A.10A		41	421.17(20)
	15	17A.11		42	535B.7(2)
	16	17A.12(3)		43	602.9206
	17	17A.15(3)		44	903A.1
	18	17A.16(1)		45	Repealing
	19	17A.17		46	Notes applied
	20	17A.18(3)	1207	19	Repealing

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2	1	257.1(2)		11	321.178(1)
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	3	446.28		19	321A.17(8)
	4	Note under 446.7, 446.9, 446.28		20	321E.8(2, 3)
5	1	96.7(2b)		21	321E.12
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6	1	524.544(1)		23	322.5(5)
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7	1	321.34(3)		25	322.21
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	3	321.34(8A)		27	Omitted
	4	321.34(10, 10A)		28	Repealing
	5	321.34(11a)		29	Partially omitted and note under 321.449
	6	321.34(11Aa)	14	1	455D.9A
	7	321.34(11Ba)	15	1	535.10(3)
	8	321.34(12a)		2	535.14
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8	1	321.20(1)		4	537.3206(4)
9	1	21.6(3b)	16	1	476.103
10	1	915.84(1)		2	714D.1
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11	1	702.18		5	714D.4
12	1	13B.4(1) as amended by 99 Acts-208-46		6	714D.5
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	7	189.16	18	1	256D.1
	8	200.14(2)		2	256D.2
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	10	811.1(1, 2)		4	256D.4
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	14	901.10		8	256D.8
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	16	902.8A	19	1	147.14(3)
	17	902.9(1)	20	1	475A.6
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	3	692A.1(8d)	46	1	455B.501(2)
	4	692A.13(6)		2	455B.503
	5	Omitted		3	Repealing
24	1	15.364(9b)	47	1	714.16B
25	1	622.10A		2	715A.8
26	1-3	Omitted		3	715A.9
27	1	28K.3	48	1	350.7
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28	1	259.4(6, 7)		2	104A.2
29	1	446.19A		3	Omitted
	2	447.9(1)	50	1	Repealing
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	3	533.28		2	Omitted
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	4	347.12		3	Repealing
	5	Repealing	55	1	237.13(3)
	6	347.13(10)		2, 3	Repealing
	7	347.14(11)		4	237.13(6)
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	9	347.30	56	1	614.14(4b)
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37	1	232.148(2)		4	633.357
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38	1	598.41B	57	1	236.5(2e)
39	1	481A.38(4)		2	236.19(2)
40	1	481A.92	58	1	481A.130(1h)
41	1	514C.14	59	1	422.45(7B)
	2	514C.15		2	Note under 422.45
	3	514C.16	60	1	730.5(7b)
	4	514C.17		2	730.5[7c(1)]
	5	514F.4		3	730.5(7f)
	6	514F.5		4	730.5(7g)
	7	514J.1		5	730.5[9c(2)]
	8	514J.2		6	730.5(9g)
	9	514J.3		7	730.5(9h)
	10	514J.4		8	Omitted
	11	514J.5	61	1	229A.2(2)
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	18	514J.12		8	229A.10
	19	514J.13		9	229A.12
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	51	249A.18		14-17	Omitted
	52	514I.11		18	Note under 270.7
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