

NONCOMPETITION BY GOVERNMENT

23A.1 Definitions.

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

1. *"Political subdivision"* means a city, county, or school corporation.
2. *"Private enterprise"* means an individual, firm, partnership, joint venture, corporation, association, or other legal entity engaging in the manufacturing, processing, sale, offering for sale, rental, leasing, delivery, dispensing, distributing, or advertising of goods or services for profit.
3. *"State agency"* includes a state department, board, commission, or other unit of state government regardless of whether moneys are appropriated to the agency.

88 Acts, ch 1230, §1

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 any of the following:
 - 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, or to full, 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 resource center 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 resource center 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 resource center is to participate in an employment or training program which pays a wage in compliance with the federal Fair Labor Standards Act, the state resource center 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 resource center and to live and work in the community. The state resource center 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 resource center, the state resource center shall request and the provider shall indicate in writing to the state

resource center 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 resource center 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 resource center shall seek an off-campus vocational or employment training program offered by a community-based provider who serves the county in which the state resource center 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 resource center 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 resource center shall seek an off-campus community-based vocational or employment training option for each resident placed in an on-campus program. The state resource center shall not place a resident in an off-campus program in which the cost to the state resource center 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 resource center 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 homeland security and emergency management division of the department of public defense.

n. The performance of an activity authorized pursuant to section 8D.11A.

o. The performance of an activity authorized pursuant to section 8A.202, subsection 2, paragraph "k".

88 Acts, ch 1230, §2; 90 Acts, ch 1129, §1; 96 Acts, ch 1129, § 113; 99 Acts, ch 86, §1; 2000 Acts, ch 1112, §51; 2001 Acts, ch 22, §2; 2001 Acts, ch 70, §4; 2002 Acts, ch 1117, §58; 2003 Acts, ch 44, §16, 17; 2003 Acts, ch 145, §146; 2003 Acts, ch 179, §157; 2004 Acts, ch 1101, §13

23A.2A Competition with private industry notation in legislation.

When a bill or joint resolution is requested, the legislative services agency shall make an initial determination of whether the bill or joint resolution may cause a service or product to be offered for sale to the public by a state agency or political subdivision that competes with private enterprise. If such a service or product may be offered as a result of the bill or resolution, that fact shall be included in the explanation of the bill or joint resolution.

2001 Acts, ch 66, §2; 2003 Acts, ch 35, §44, 49

23A.3 Local purchases.

A city, county, area education agency, or school district shall adopt a policy for purchasing goods or services from private enterprise which requires consideration of purchasing these goods or services from a locally

owned business located within the city, county, area education agency, or school district which offers these goods or services if the cost and other considerations are relatively equal. Nothing in this section shall be construed to prevent or prohibit the giving of a preference to businesses owned or operated by minorities or females as may be provided in any other provision of law.

88 Acts, ch 1230, §3

23A.4 Relief for aggrieved persons.

Any aggrieved person may, after pursuing remedies offered by chapter 17A, seek injunctive relief for violations of this chapter by filing an action in the district court for the county in which the aggrieved business is located.

A state agency or political subdivision found to be in violation of this chapter shall be assessed and shall pay to the aggrieved person fees and other expenses, as defined in section 625.28.

Chapter 17A and this section are the exclusive remedy for violations of this chapter. However, the office of the citizens' aide may review violations of this chapter and make recommendations as provided in chapter 2C.

88 Acts, ch 1230, §4