

## CHAPTER 97C

## FEDERAL SOCIAL SECURITY ENABLING ACT

Referred to in §97.52, 97B.4, 97B.42, 294.12, 331.324, 331.424

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**97C.1 Declaration of policy.**

In order to extend to employees of the state and its political subdivisions and to the dependents and survivors of such employees, the basic protection accorded to others by the old-age and survivors' insurance system embodied in the Social Security Act, Tit. II of the federal Social Security Act, it is hereby declared to be the policy of the general assembly, subject to the limitations of this chapter, that such steps be taken as to provide such protection to employees of the state and its political subdivisions on as broad a basis as is permitted under the Social Security Act, Tit. II.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §97C.1]

2010 Acts, ch 1061, §180

**97C.2 Definitions.**

For the purposes of this chapter:

1. The term “*employee*” includes elective and appointive officials of the state or any political subdivision thereof, except elective officials in positions, the compensation for which is on a fee basis, elective officials of school districts, elective officials of townships, and elective officials of other political subdivisions who are in part-time positions. However, a member of a county board of supervisors or a county attorney shall not be deemed to be an elective official in a part-time position, but every member of a county board of supervisors and every county attorney shall be deemed to be an employee under this chapter and is eligible to receive the benefits provided by this chapter to which the member may be entitled as an employee.

2. The term “*employer*” means the state of Iowa and all of its political subdivisions which employ persons eligible to coverage under an agreement entered into by this state and the federal security administrator under the provisions of the Social Security Act, Tit. II, of the Congress of the United States as amended.

3. The term “*employment*” means any service performed by an employee in the employ of the state, or any political subdivision thereof, for such employer, except service which in the absence of an agreement entered into under this chapter would constitute “*employment*” as defined in the Social Security Act; or service which under the Social Security Act may not be included in an agreement between the state and the federal security administrator entered into under this chapter.

4. The term “*federal Insurance Contributions Act*” means subchapter “A” of chapter nine of the federal Internal Revenue Code as such code has been and may from time to time be amended.

5. The term “*federal security administrator*” means the administrator of the federal security agency (or the administrator’s successor in function), and includes any individual to whom the federal security administrator has delegated any of the administrator’s functions

under the Social Security Act, Tit. II, with respect to coverage under such Act of employees of states and their political subdivisions.

6. The term “*political subdivision*” includes an instrumentality of the state of Iowa, of one or more of its political subdivisions, or of the state and one or more of its political subdivisions, but only if such instrumentality is a juristic entity which is legally separate and distinct from the state or subdivision and only if its employees are not by virtue of their relation to such juristic entity employees of the state or subdivisions.

7. The term “*Social Security Act*” means the Act of Congress approved August 14, 1935, Chapter 531, 49 Stat. 620, officially cited as the “Social Security Act,” Tit. II, (including regulations and requirements issued pursuant thereto) as such Act has been and may from time to time be amended.

8. The term “*state agency*” means the Iowa public employees’ retirement system created in section 97B.1.

9. The term “*wages*” means all remuneration for employment as defined herein, including the cash value of all remuneration paid in any medium other than cash, except that such term shall not include that part of such remuneration which, even if it were for “*employment*” within the meaning of the federal Insurance Contribution Act, would not constitute “*wages*” within the meaning of that Act.

[C46, 50, §97.45; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §97C.2]

86 Acts, ch 1245, §258; 87 Acts, ch 227, §22; 2003 Acts, ch 145, §181; 2005 Acts, ch 3, §23; 2010 Acts, ch 1061, §180; 2011 Acts, ch 25, §12

Referred to in §281.1, 97C.3, 97C.10, 97C.21

### **97C.3 Federal-state agreement.**

The state agency, with the approval of the governor and the attorney general, is hereby authorized to enter on behalf of the state into an agreement with the federal security administrator, consistent with the terms and provisions of this chapter, for the purpose of extending the benefits of the federal old-age and survivors’ insurance system to employees of the state or any political subdivision thereof with respect to services specified in such agreement which constitute “*employment*” as defined in section 97C.2 of this chapter. Such agreement may contain such provisions relating to coverage, benefits, contributions, effective date, modification and termination of the agreement, administration, and other appropriate provisions as the state agency and federal security administrator shall agree upon, but, except as may be otherwise required by or under the Social Security Act, Tit. II, as to the services to be covered, such agreement shall provide in effect that:

1. Benefits will be provided for employees whose services are covered by the agreement, and their dependents and survivors, on the same basis as though such services constituted employment within the meaning of Tit. II of said Social Security Act.

2. The state will pay to the secretary of the treasury, at such time or times as may be prescribed under the Social Security Act, Tit. II, contributions with respect to wages as defined in section 97C.2, equal to the sum of taxes which would be imposed by sections 1400 and 1410 of the federal Insurance Contributions Act, if the services covered by the agreement constituted employment within the meaning of that Act.

3. Such agreement shall be effective with respect to services in employment covered by the agreement performed after a date specified therein, but in no event may it be effective with respect to any such services performed prior to the first day of the calendar year in which such agreement is entered into or in which the modification of the agreement making it applicable to such services is entered into, provided that in the case of an agreement or modification made after May 3, 1953, and prior to January 1, 1954, such agreement or modification of the agreement shall be made effective with respect to any such services performed on or after January 1, 1951.

4. All services which constitute employment as defined in section 97C.2, and are

performed in the employ of the state, or any political subdivision, by employees of the state, or of any political subdivision, shall be covered by the agreement.

[C46, 50, §97.45; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §97C.3]

2010 Acts, ch 1061, §180; 2011 Acts, ch 34, §25

Referred to in §97C.4, 97C.5, 97C.13, 97C.14, 97C.15, 97C.17, 97C.21

#### **97C.4 Other states — joint agreements.**

Any instrumentality jointly created by this state and any other state or states is hereby authorized, upon the granting of like authority by such other state or states, to enter into an agreement with the federal security administrator whereby the benefits of the federal old-age and survivors' insurance system shall be extended to employees of such instrumentality; to require its employees to pay, and for that purpose to deduct from their wages, contributions equal to the amounts which they would be required to pay under section 97C.5 if they were covered by an agreement made pursuant to section 97C.3; and to make payments to the secretary of the treasury in accordance with such agreement, including payments from its own funds, and otherwise to comply with such agreements. Such agreement shall, to the extent practicable, be consistent with the terms and provisions of section 97C.3 and other provisions of this chapter.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §97C.4]

2011 Acts, ch 25, §13

#### **97C.5 Tax on employees.**

Every employee whose services are covered by an agreement entered into under section 97C.3 shall be required to pay for the period of such coverage into the contribution fund established by section 97C.12, a tax which is hereby imposed with respect to wages received during the calendar year of 1953, equal to such percentum of the wages received by the employee as imposed by Social Security Act, Tit. II, as such Act has been and may from time to time be amended. Such payment shall be considered a condition of employment as a public employee. Taxes deducted from the wages of the employee by the employer and taxes imposed upon the employer shall be forwarded to the state agency for recording and shall be deposited with the treasurer of state to the credit of the contribution fund established by section 97C.12 of this chapter.

[C46, 50, §97.9; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §97C.5]

2012 Acts, ch 1023, §16

Referred to in §97C.4, 97C.6, 97C.9, 97C.12

[T] Section amended

#### **97C.6 Collection of tax.**

The tax imposed by sections 97C.5 and 97C.14 shall be collected by each employer from the employee by deducting the amount of the tax from wages as and when paid, but failure to make such deduction shall not relieve the employee from liability for such taxes.

[C46, 50, §97.7, 97.9, 97.45; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §97C.6]

#### **97C.7 Reserved.**

#### **97C.8 Statement to employees.**

The employer shall furnish to all employees a written statement in a form prescribed by the state agency suitable for retention by the employees, showing the wages paid to the employee after January 1, 1953. Each statement shall cover a calendar year, or one, two or three quarters, whether or not within the same calendar year, and shall show the name of the employee, the period covered by the statement, the total amount of wages paid within such period, and the amount of tax imposed by this chapter with respect to such wages. Each statement shall be furnished to the employee not later than thirty days following the period covered by the statement, except that, if the employee leaves the employ of the employer, this final statement shall be furnished within thirty days after the last payment of wages is made to the employee. The employer may, at its option, furnish such a statement to any employee at the time of each payment of wages to the employee during any calendar quarter, in lieu

of a statement covering such quarter, and, in such case, the statement may show the date of payment of wages in lieu of the period covered by the statement.

[C46, 50, §97.11; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §97C.8]

#### **97C.9 Adjustments or refund.**

If more or less than the correct amount of the tax imposed by section 97C.5 is paid or deducted with respect to any remuneration, proper adjustments, or refund if adjustment is impracticable, shall be made in such manner and at such times as the state agency shall prescribe.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §97C.9]

#### **97C.10 Tax on employer.**

In addition to all other taxes there is hereby imposed upon each employer as defined in section 97C.2, subsection 2, a tax equal to such percentum of the wages paid by the employer to each employee as imposed by the Social Security Act, Tit. II, as such Act has been and may from time to time be amended. The employer shall pay its tax or contribution from funds available and is directed to pay same from tax money or from any other income available. The political subdivision is hereby authorized and directed to levy in addition to all other taxes a property tax sufficient to meet its obligations under the provisions of this chapter, if such tax levy is necessary because other funds are not available.

[C46, 50, §97.12; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §97C.10]

2012 Acts, ch 1023, §17

Referred to in §97C.12

[T] Section amended

#### **97C.11 Payment — adjustment or refund.**

Taxes deducted by the employer from the earnings of employees or upon the employers shall be paid in a manner, at times and under conditions prescribed by the state agency. If more or less than the correct amount of the tax imposed upon the employer is paid or deducted, proper adjustments or refund, if adjustment is impracticable, shall be made in a manner and at times as the state agency prescribes.

[C46, 50, §97.7; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §97C.11]

84 Acts, ch 1285, §20

Referred to in §97C.12

#### **97C.12 Contribution fund.**

There is hereby established in the office of the treasurer of state a special fund to be known as the contribution fund. Such fund shall consist of, and there shall be deposited in such fund: (1) all taxes, interest, and penalties collected under sections 97C.5, 97C.10, and 97C.11; (2) all moneys appropriated thereto under this chapter; (3) any property or securities and earnings thereof acquired through the use of moneys belonging to the fund; (4) interest earned upon any moneys in the fund; and (5) all sums recovered upon the bond of the custodian or otherwise for losses sustained by the fund and all other moneys received for the fund from any other source. Subject to the provisions of this chapter, the state agency is vested with full power, authority and jurisdiction over the fund, including all moneys and property or securities belonging thereto, and may perform any and all acts whether or not specifically designated, which are necessary to the administration thereof and are consistent with the provisions of this chapter. All moneys in this fund shall be mingled and undivided.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §97C.12]

Referred to in §97C.5, 97C.14

#### **97C.13 Fund kept separate.**

The contribution fund shall be established and held separate and apart from any other funds or moneys of the state and shall be used and administered exclusively for the purpose of this chapter. Withdrawals from such fund shall be made for, and solely for, payment of amounts

required to be paid to the secretary of the treasury pursuant to an agreement entered into under section 97C.3, or the payment of refunds provided for in this chapter.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §97C.13]

**97C.13A Federal-state agreement administration — costs.**

Actual costs incurred by the state agency in the fulfillment of its duties under this chapter shall be paid as an expense authorized by the executive council from the appropriations addressed in section 7D.29. Costs paid from appropriations as provided in this section shall not exceed ten thousand dollars each fiscal year.

2012 Acts, ch 1073, §1

[T] NEW section

**97C.14 Elected officials — retroactive payments.**

Any elective official of the state of Iowa, or any of its political subdivisions, who becomes subject to federal social security coverage under the provisions of the agreement referred to in section 97C.3 shall, not later than October 1, 1953, pay into the contribution fund established by section 97C.12 a tax sufficient to pay in the elected official's behalf an amount equal to three percent of the official's compensation received as a public official for each year or portion thereof that the public elected official has served as a public elective official since January 1, 1951, not to exceed thirty-six hundred dollars for any year of service. The state agency shall collect the tax hereby imposed and the proceeds from such tax shall be used for the purpose of obtaining retroactive federal social security coverage for elective officials, for the period beginning January 1, 1951, in the same manner as is provided in the case of other public employees by the provisions in subsection 2 of section 97.51 in order to obtain retroactive federal social security coverage during this period of time, such contribution to be collected and guaranteed by the employer. The state agency will pay any such amount contributed to provide for retroactive federal social security coverage for the individual in question in the same manner as other payments are made for retroactive coverage of public employees. Provided that no member of a county board of supervisors shall be deemed to be an elective official in a part-time position, but every member of a county board of supervisors shall be deemed to be an employee within the purview of this chapter and shall be eligible to receive all of the benefits provided by this chapter to which the member may be entitled as an employee.

[C46, 50, §97.7, 97.45; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §97C.14]

Referred to in §97C.6

**97C.15 Payments to secretary of treasury.**

From the contribution fund the custodian of the fund shall pay to the secretary of the treasury of the United States such amounts and at such time or times as may be directed by the state agency in accordance with any agreement entered into under section 97C.3 and the Social Security Act, Tit. II.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §97C.15]

2012 Acts, ch 1023, §18

[T] Section amended

**97C.16 Custodian of fund.**

The treasurer of state shall be ex officio treasurer and custodian of the contribution fund and shall administer such fund in accordance with the provisions of this chapter and the directions of the state agency and shall pay all warrants drawn upon it in accordance with the provisions of this section and with such regulations as the state agency may prescribe pursuant thereto.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §97C.16]

**97C.17 Standing appropriation.**

There is hereby authorized to be appropriated annually from the general fund of the state of Iowa to the contribution fund, in addition to the taxes collected and paid into the contribution fund, such additional sums as are found to be necessary in order to make payments to the

secretary of the treasury of the United States which the state is obliged to make pursuant to any agreement entered into under section 97C.3.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §97C.17]

#### **97C.18 Rules.**

The state agency shall make and publish such rules, not inconsistent with the provisions of this chapter, as it finds necessary or appropriate to the efficient administration of the functions with which it is charged under this chapter, and the state agency shall comply with regulations relating to payments and reports as may be prescribed by the federal security administrator.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §97C.18]

#### **97C.19 Apportionment of expense.**

The money spent for personnel, rentals, supplies, and equipment used by the state agency in administering this chapter and chapters 97 and 97B shall be equitably apportioned and charged against the funds provided for the administration of this chapter and those chapters.

[C46, 50, §97.48; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §97C.19]

86 Acts, ch 1245, §259; 2007 Acts, ch 22, §31

#### **97C.20 Referenda by governor.**

With respect to employees of the state the governor is empowered to authorize a referendum, and with respect to the employees of any political subdivision the governor shall authorize a referendum upon request of the governing body of such subdivision; and in either case the referendum shall be conducted, and the governor shall designate an agency or individual to supervise its conduct, in accordance with the requirements of section 218 “d” (3) of the Social Security Act, on the question of whether service in positions covered by a retirement system established by the state or by a political subdivision thereof should be excluded from or included under an agreement under this chapter. The notice of referendum required by section 218 “d” (3) (C) of the Social Security Act to be given to employees shall contain or shall be accomplished by a statement, in such form and such detail as the agency or individual designated to supervise the referendum shall deem necessary and sufficient, to inform the employees of the rights which will accrue to them and their dependents and survivors, and the liabilities to which they will be subject, if their services are included under an agreement under this chapter.

Upon receiving evidence satisfactory to the governor that with respect to any such referendum the conditions specified in section 218 “d” (3) of the Social Security Act have been met, the governor shall so certify to the secretary of health and human services.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §97C.20]

83 Acts, ch 101, §11

#### **97C.21 Voluntary coverage of elected officials.**

Notwithstanding any provision of this chapter to the contrary, an employer of elected officials otherwise excluded from the definition of employee as provided in section 97C.2, may, but is not required to, choose to provide benefits to those elected officials as employees as provided by this chapter. Alternatively, the governor may authorize a statewide referendum of the appointed and elected officials of the state and its political subdivisions on the question of whether to include in or exclude from the definition of employee all such positions. This choice shall be reflected in the federal-state agreement described in section 97C.3, and, if necessary, in this chapter. An employer who is providing benefits to elected officials otherwise excluded from the definition of employee prior to July 1, 2002, shall not be deemed to be in an erroneous reporting situation, and corrections for prior federal social security withholdings shall not be required. The implementation of this section shall be subject to the approval of the federal social security administration.

2002 Acts, ch 1135, §35; 2008 Acts, ch 1171, §60